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# House of Representatives

The House met at 10 a.m.

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

Lord God who neither deceives nor will be deceived, our trust is placed in You as persons and as a nation. Our hope is not a mocking dream. For You, Lord God, have placed in our hearts great desires for what is good for Your people and a deep sense of needing Your assistance to meet the challenges You set before this Congress. We could not expect any response to our prayer or have unfailing hope in You, unless You had not already placed in our hearts a glimpse of a vision that there is something to hope for.

Lord God, You are creating a new world and a better America by placing within us hopes and dreams of greater tranquility in this world and enduring justice for Your people. Having begun this good work in us, bring it now to completion. This we ask seeking Your kingdom now and forever. Amen.

## THE JOURNAL

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

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

## PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Oregon (Mr. DEFAZIO) come forward and lead the House in the Pledge of Allegiance.

Mr. DEFAZIO 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

The SPEAKER. The Chair will entertain up to 10 one-minutes on each side.

**NOTICE**

If the 109th Congress, 1st Session, adjourns sine die on or before December 20, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

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TRENT LOTT, *Chairman.*



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## PRESCRIPTION DRUG PRICING

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

Mr. MURPHY. Mr. Speaker, Americans purchase 68 percent more prescription drugs today than they did just 10 years ago, and at the same time, retail prescription prices have risen three times the rate of inflation.

How can people afford the medication they need? Some propose price controls, others want the government to pay, but let us also give the power to the patient. Whether we are buying groceries or clothes or cars or even airline tickets, when consumers can compare prices they can drive those prices down. Why not do the same for prescription drugs?

Today, many State governments are setting up Web sites for consumers to compare drug prices in their area. These Internet sites help patients to shop smarter and get more affordable choices. One study found that Web sites offering drug comparisons can save patients as much as 40 percent. Congress should support public-private partnerships for sharing online information to help lower these costs for consumers. I urge my colleagues to learn more about how informed consumers can lower their costs on prescription drugs by visiting my Web site at murphy.house.gov.

## RECORD TRADE DEFICIT

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

Mr. DEFAZIO. Madam Speaker, well, the Bush administration set yet another record yesterday. Congratulations to the Bush administration. We set the highest 1-month trade deficit in the history of the United States, eclipsing the highest deficit figure previous record which was set last month.

We are headed toward a $718 billion trade deficit this year. We are borrowing $2 billion a day from people overseas to buy things made overseas that used to be made here, and they keep standing up on that side of the aisle and saying what is wrong with Americans, can't they see the economy is booming? Yes, it is booming, we are borrowing money overseas to buy goods overseas, and that makes it look like a booming economy while people are losing their jobs here in America, 3 million manufacturing jobs left, and these trade policies are driving down wages in this country.

That is their idea of a successful economy, because the CEOs and a few investors are doing really well. It is a disaster. No more record trade deficits. We need a new trade policy for this country.

## HONORING RALPH H. BAER

(Mr. BRADLEY of New Hampshire asked and was given permission to address the House for 1 minute.)

Mr. BRADLEY of New Hampshire. Madam Speaker, I rise today to pay tribute to Ralph H. Baer of Manchester, New Hampshire who has recently been named the recipient of the National Medal of Technology. Mr. Baer has achieved great success, and his home State is extremely proud of him.

Mr. Baer left Nazi Germany with his family at the age of 14, and moved to Manchester in 1955 to work as a chief engineer with Transitron, Incorporated. He later joined Sanders Associates as a staff engineer to manage the equipment design division. Since 1975, he has successfully owned and operated R.H. Baer Consultants.

The National Medal of Technology has been bestowed by the President since 1985 as the Nation's highest award for innovation. The award was mandated by Congress in 1980 to recognize the significant contributions that America's leading innovators have made to the Nation's economic strength and standard of living. The National Medal of Technology laureates are also recognized for innovation that has revolutionized communication, education, entertainment, medicine, and transportation.

I applaud Mr. Baer for his creativity and the risks he took in his career. Technological innovations like those developed by Mr. Baer have allowed the United States to continue to break down the barriers to scientific advancement. I am honored to recognize his contributions to science and our Nation.

## TRADE POLICY

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

Mr. FOLEY. Madam Speaker, I enjoyed my colleague's tirade on trade. He says there is too much coming in, but they consistently vote against any going out. They do not assist us in the trade policy that will bring balance to trade.

What have we done positively? Let us talk a little bit about the economy. GDP is up. The stock market is nearing 11,000. Not since 9/11 have we seen such a robust economy. Consumer confidence is up. Gas prices are subsiding. Unemployment in Florida and the Nation is the lowest it has been in decades; and the Nation is at an all-time high in prosperity index. We have had job creation; and, yes, we have had tax relief, giving people their own money back to spend in their communities. That is leadership.

If you listen to the other side of the aisle, it is a pity party, it is pessimism, it is negativity, and it seems to spawn itself to a defeatist attitude whether it is about the war in Iraq, or the health of our economy. We have got a lot to boast about, and I think it is important that national leaders stand up and talk about the great things that are happening in this country. I applaud what we have done. Reflective in the numbers we have shown leadership, the Nation is stronger than ever, our economy is better than ever, and I think we all ought to wish people a Merry Christmas as we head into a prosperous season.

## RECOGNIZING MAGNET AMERICA

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

Ms. FOXX. Madam Speaker, I rise today to recognize a wonderful family-owned business headquartered in the heart of North Carolina's Fifth Congressional District.

Magnet America based in King, North Carolina is the original creator of the yellow Support Our Troops ribbon car magnets. All of their products are made in the U.S.A., and all of their employees are true American patriots.

This company is exceptional because it serves as a fund-raising tool to help the families of our troops and to send care packages to those serving overseas. The company has had an amazing success story. Dwain Guillion first made the ribbon magnets to sell at his family's Christian bookstore. The idea took off when he sent a box of 50 magnets to a national convention of Vietnam veterans. Within weeks, he was getting orders from all over the country. By 2004, his company had 150 employees and was shipping more than 100,000 magnets per week.

It is unfortunate that Chinese knockoffs of their designs are having a negative impact on Magnet America's business. It is my hope that people will visit www.magnetamerica.com and support this great American company.

## IRAQ'S PARLIAMENTARY ELECTIONS

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

Mr. CONAWAY. Madam Speaker, I rise today in support of the Iraqi people. Today, millions of people in Iraq are headed to the polls to cast their vote for a free and open society. This vote stands directly in opposition to the prior government which was predicated on terror and fear, and ruled by the iron fist of one of the world's most vicious dictators. This is the most powerful blow to the terrorists and rejectionist elements of the Iraqi insurgency to date. Iraqis are determining their own destination, their own destiny, and by doing so they have reached an important benchmark drawing the U.S. closer to victory and reducing American presence in Iraq. Today's parliamentary elections in Iraq

have the makings of a watershed moment in history, not only for the Middle East, but for the long-term security of the United States.

A democratic Iraq is absolutely essential to winning the global war on terror. Now, more than ever, America's leaders must stand united behind the Iraqi people as they venture forward in the hope for a better future.

## IRAQI ELECTIONS

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

Mr. KENNEDY of Minnesota. Madam Speaker, what a difference 2 years makes. In August of 2003, I was in Iraq, and every Marine I met wanted to show me the field that Iraqis began digging in as soon as they took control of it. A mass grave was there with 3,000 bodies, part of the 400,000 to 500,000 mass graves around the country. This hopelessness has really driven the Iraqis to embrace the freedom that our brave soldiers have given them the opportunity for. That is why, as we stand here today, millions of Iraqis, Shia, Sunni, Kurds are giving the terrorists the finger, the ink-stained finger voting for the third time this year, and as they do that, they are piercing through the hopelessness that breeds terrorism. They are giving themselves the opportunities for a better life. They are transforming a region. They are making America safer. We applaud the Iraqis. We thank the American troops that have made this possible.

## MEDICARE PART D

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

Mr. GINGREY. Madam Speaker, I rise today to encourage all Americans to talk with their loved ones about Medicare part D, the new voluntary prescription drug benefit available to all seniors.

Now is the perfect time to assist a senior with this important decision. After all, many of us are about to spend the holiday season with several generations of our family, and it is easy to help. In fact, this past weekend, I help my mother, Helen Gingrey, enroll in a Medicare part D plan. Now, my mother is in her eighties, and while she is a sharp lady, she is not very familiar with computers, but together, we visited the Web site www.medicare.gov, and walked through the enrollment process. It took less than an hour, and now starting January 1, my mother will have affordable prescription drug coverage.

If everyone in our community took the time to assist just one senior in this way we could help millions of seniors get access to the prescription drugs they need to stay well. Seniors can choose a plan and enroll by visiting the Web site www.medicare.gov, or by calling 1–800–Medicare.

Madam Speaker, I encourage all Americans to help a senior in their lives with this important health care decision.

## NEITHER PEACE ON EARTH, NOR GOODWILL TOWARD MEN

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

Mr. DOGGETT. Madam Speaker, today Republicans propose to criminalize those who offer the slightest help to undocumented immigrants—water to the thirsty or food for the hungry. Church members could become felons for their faith, facing 5 years in prison.

So if on some silent night, when all is calm and all is bright, a young man and a clearly pregnant woman from out of town ask if they can rest by your manger, be warned: first verify their visas.

With similar zealotry to preserve the right to torture, cut food stamps and deny aid to abused and neglected children, these same folks publicly preach that it's the rest of us who have forgotten the meaning of Christmas.

But this year the Administration's true Christmas tidings seem to be—''Neither Peace on Earth, nor Goodwill Toward Men.''

□ 1015

## STRONG ECONOMY

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

Mr. SHAW. Madam Speaker, with Christmas just around the corner, the latest economic indicators are welcome gifts to the American people. In the last 5 years, this country has endured terrorist attacks, stock market decline and natural disasters. Yet despite all of this, the latest numbers show that our economy is strong and it is getting stronger.

Just in time for holiday travel, gas prices continue to decline and are down nearly 23 cents in the last 4 weeks. Sales of new homes rose 13 percent in October, which was the largest monthly gain in 12 years. Finally, nearly 4.5 million jobs have been added in the last 2½ years. We have even seen an impressive 200,000 jobs per month.

And, State and local revenue has risen 7.2 percent. In fact, in my State of Florida, we expect a surplus of more than $3 billion.

These positive numbers are the result of Republicans' pro-growth economic policies. The Democrats, however, believe that a good gift is to continue to tax and spend.

Madam Speaker, right now we have a strong, vibrant economy. Republicans remain committed to these policies that will endure and all Americans can realize the American dream and have a merry, merry Christmas.

## RESPECTFUL BORDER SECURITY

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

Mr. PRICE of Georgia. Madam Speaker, we are all descendants of immigrants—legal immigrants. America is a good and a generous Nation. We open our arms to the world. It is that spirit that makes us unique, inviting and vulnerable.

The world has changed. Our borders must be secure for our Nation to be secure. This week we finally have an opportunity to fulfill our responsibility to our constituents. We have an opportunity to address the issue of border security for the first time in years.

Madam Speaker, if our borders are not secure, our Nation is not secure. A solution to this crisis is being demanded by our constituents. This should be a positive action. It should be one respectful of history and all Americans.

I urge my colleagues to be respectful of the institution, to be respectful of the wonder of the deliberative process, to be respectful of motive, to be respectful of each other. Madam Speaker, it is time we take the honorable steps necessary to ensure that our borders and our Nation are secure.

## IRAQ AND IMMIGRATION

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

Mrs. BLACKBURN. Madam Speaker, the world is watching democracy in action today. I applaud our Iraqi allies and thank our men and women in uniform for making this historic election possible. We are reshaping a region responsible for creating terrorism that murdered nearly 3,000 Americans on September 11. Today's election is a step in the right direction.

Madam Speaker, I also want to commend Chairman SENSENBRENNER for leading the House in the effort to get a hold on our illegal immigration problem. In both the 108th and 109th Congresses, I introduced the Federal Contractors Security Act to tackle the problem we have seen, a documented and publicized problem, of illegal entrants working for Federal contractors at critical infrastructure sites.

I am pleased the Judiciary Committee inserted many of the provisions of my bill into H.R. 4437 to implement the worker verification system. Chairman SENSENBRENNER listened to our concerns and his bill will do so much to address the problem of illegal entry into this great Nation.

## IRAQI PARLIAMENTARY ELECTIONS

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

Mr. PITTS. Madam Speaker, today is a historic day for democracy and freedom. Iraqis go to the polls to democratically elect the 275 seats of the new Iraqi Council of Representatives. The newly elected Council will then select a Prime Minister, a Presidency Council, and a Cabinet of Ministers.

By any measure, today's elections are remarkable. In just under 3 years, 26 million Iraqis have gone from brutal tyranny to representative democracy. A ruthless and dangerous dictator has been removed, and the stabilizing influence of democracy is taking root in a region desperately in need of it.

This progress is a fitting tribute to the brave men and women in uniform who have sacrificed so much to see this day realized. There is more work to be done and there will be more setbacks to overcome, but this is tremendous progress. I salute them.

## WELCOMING HOME UNITS OF TEXAS ARMY NATIONAL GUARD

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

Mr. BURGESS. Madam Speaker, the gentleman from Pennsylvania is exactly right. In fact if my arithmetic is correct, the polls in Iraq closed just a little over an hour ago. Of course, we owe the great success of three successful elections in Iraq to the dedication of our troops that have served so well over there. In fact, this past weekend in Waco, Texas, citizens of Texas welcomed back the 56th Combat Brigade, over 2,000 Texans from the Texas Army National Guard who have been serving for 11 months in the country of Iraq.

This is especially important to my hometown of Denton, Texas. Seventy-eight members of the Denton-based Company A, 2nd Battalion of the 112th Army, have returned to their homes in north Texas. This is the first deployment of the Denton-based Texas National Guard since World War II, according to an editorial in the Denton Record Chronicle last week.

The 56th Battalion was not without its casualties. There were six who died in combat, two who died in training accidents, and 58 were wounded. Fortunately, none of the soldiers that left from Denton, Texas, were killed in action in Iraq. Only one was wounded. During that time they performed 7,000 combat patrols, escorted convoys for 1.3 million miles, and built 15 schools.

There is a parade in Denton this Saturday morning. We may not be done voting, I may not be able to attend, but my heart will be with my citizens in Denton as they welcome their sons and daughters home.

## NEEDS OF THE AMERICAN PEOPLE

(Ms. SOLIS asked and was given permission to address the House for 1 minute.)

Ms. SOLIS. Madam Speaker, today I rise to express my strong disappointment in the misguided priorities of the Republican majority in Congress. As we are preparing to adjourn for this year, we have not addressed the real needs of the American people. In my district in East Los Angeles and the San Gabriel Valley and across this country, more and more families are being forced to make difficult choices. The absence of affordable housing, health care, a living wage for workers and high heating costs are just a few of the reasons that more people are slipping into poverty.

According to the U.S. census, there were 37 million people living in poverty in 2004, an increase of 5.4 million during the Bush administration. In my district alone, 20,000 families live below the poverty line. We are failing the working men and women of our country, we are failing our children, and we are failing the senior citizens as well.

I urge my colleagues today to work together to meet the needs of all American people and let's put their priorities first.

## IMMIGRATION ENFORCEMENT

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

Mr. KING of Iowa. Madam Speaker, today as we celebrate Iraqi Freedom Day, I want to raise a different subject, and that is that we will be bringing legislation to the floor of this House that will bring some enforcement to our immigration laws. It has been a long time coming. There has been a lot of good work done by a lot of people. I am hopeful that this legislation now will also include an amendment that I hope to propose, H.R. 3095, the New IDEA bill. New IDEA stands for the Illegal Deduction Elimination Act.

The IRS is more inclined, I believe, to enforce our immigration laws than DHS has proven to be. I would submit that they can go in and do their regular audits and check the Social Security numbers of the employees through the instant check program that will be renamed the employer verification system hopefully today or tomorrow and then give safe harbor to those employers that do that verification of their employees. Otherwise the expense that is a business expense that will be written off will have to be denied as a deduction so that it becomes taxable if it is a profitable business. That takes a $10 an hour illegal up to a $16 an hour and lets the legal person have a job instead of the illegal person.

## SALUTING PROGRESS AND MILESTONE ELECTIONS IN IRAQ

(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, in October 2002, Saddam Hussein ridiculously reported he received 100 percent support during a sham election in which he was the only candidate in the race. Three years later due the bravery of American troops and Iraqi security forces, the people of Iraq now have an historic opportunity to select 275 individuals from over 6,655 candidates to serve in their national Council of Representatives.

National elections in Iraq are another symbol of progress and another demonstration of our coalition troops' efforts, including my son who served a year in Iraq, to spread freedom throughout the world. Our brave soldiers recognize that they are fighting in a war that will secure democracy in Iraq which ultimately protects American families from terrorists who would rather attack our citizens.

As the Iraqi people continue down the path of democracy, they should know the American people are proud of their continued successes and believe in the future of Iraq.

In conclusion, God bless our troops, and we will never forget September 11.

## PROVIDING FOR CONSIDERATION OF H.R. 2830, PENSION PROTECTION ACT OF 2005

Mr. HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 602 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 602

*Resolved*, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 2830) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes. The bill shall be considered as read. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means now printed in the bill, the amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted. All points of order against 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) 90 minutes of debate equally divided among and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce and the chairman and ranking minority member of the Committee on Ways and Means; and (2) one motion to recommit with or without instructions.

SEC. 2. During consideration of H.R. 2830 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

The SPEAKER pro tempore (Mrs. MILLER of Michigan). The gentleman from Washington (Mr. HASTINGS) is recognized for 1 hour.

Mr. HASTINGS of Washington. Madam Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending

which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Madam Speaker, House Resolution 602 is a closed rule providing for 90 minutes of debate in the House on H.R. 2830, the Pension Protection Act, as amended, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce and the chairman and ranking minority member of the Committee on Ways and Means. The rules waives all points of order against consideration of the bill. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means now printed in the bill, the amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying the resolution shall be considered as adopted. The rule waives all points of order against the bill, as amended, and provides one motion to recommit, with or without instructions. Finally, it provides that notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

Madam Speaker, the recent financial troubles and pension terminations at several large companies underscore the need for fundamental pension reform. H.R. 2830, the Pension Protection Act, will ensure that millions of hard-working Americans who rely on single and multi-employer pension benefits can continue to count on them. It is vital that we modernize current pension laws by strengthening workers' retirement security and reducing the prospect of a future multi-billion-dollar taxpayer bailout. The Pension Protection Act will fix outdated pension rules and help workers by giving employers incentives to properly and adequately fund their pension plans, and by enhancing transparency and disclosures about the status of their pension plans. In recent years, we have seen participants mistakenly believe that their pension plans were well funded, only to be surprised when their plan was abruptly terminated. This bill is intended to end that practice.

The Pension Protection Act encourages workers to increase their personal savings by permanently extending several provisions to enhance pension participation and retirement savings that are currently set to expire in the year 2010. Among the provisions to be permanently extended are: increasing annual contribution limits for individual retirement accounts and qualified pension plans, allowing additional catchup contributions to individuals age 50 and older, and establishing incentives for small employers to offer pension plans. The bill also encourages lower income workers and families to plan and save for their retirement by permanently extending a Federal ''match'' in the form of an income tax credit for the first $2,000 of annual contributions to an individual retirement account or qualified pension plan.

□ 1030

Madam Speaker, the Pension Protection Act implements a comprehensive and bipartisan investment advice proposal that allows employers to provide workers access to qualified investment advisers who can inform them of the need to diversify and help them choose appropriate investments while including safeguards to ensure that the advice is solely in their best interest. This changes outdated Federal rules which actually discourage employers from providing workers with access to professional advice.

One provision, Madam Speaker, I am especially pleased was included in this bill, was to allow employees who participate in tax-preferred flexible spending accounts to carry forward up to $500 of their unused balances each year. This provides flexibility to employees that otherwise must use all of their balances each year or lose it to their employers.

Madam Speaker, without a comprehensive fix to our outdated pension plans more companies will default on their worker pension plans and more will stop providing defined benefit pension plans to their workers entirely. Now is the time for Congress to act on this important piece of legislation.

The Rules Committee approved this House Resolution 602 by a voice vote. Accordingly, I encourage my colleagues to support the rule and the underlying bill, the Pension Protection Act.

Madam Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Madam Speaker, I yield 1½ minutes to my colleague on the Rules Committee, the gentleman from Florida (Mr. HASTINGS).

Mr. HASTINGS of Florida. Madam Speaker, Mr. MCGOVERN, my distinguished friend from Massachusetts; my good friend, the distinguished gentleman from the State of Washington; and I were in 6 hours of hearings yesterday on something called border security, anti-terrorism, and illegal immigration, and we came here this morning at 7 a.m., ostensibly to pass out the rules necessary to hear that bill. Until 15 minutes ago, I was on this floor of this House waiting to hear that bill.

I ask my colleagues in the majority: Where is this terribly onerous, atrocious bill? Why do you not pull it? The reason that we are not taking it first, rather than what we are now patching up as pensions, and caution to America, what we are about to see is protection of CEOs with their golden parachutes while workers and their pensions are getting a brass shaft.

But that is not my point I want to make. What I want to say is we are getting ready to create fear and confusion, and there is substantial confusion on the majority side in light of the fact that they are shifting from this bill to that bill and not dealing with the things we need to do and get on out of here.

We do not need to do this immigration and border security bill, and I hope that your confusion led you to the same conclusion and that you will pull that sucker.

Mr. MCGOVERN. Well, let me thank my colleague from Florida for that eloquent and accurate statement and assessment of where we are here.

And, Madam Speaker, let me thank my friend from Washington (Mr. HASTINGS) for yielding me the customary 30 minutes, and I yield myself 7 minutes.

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

Mr. MCGOVERN. Madam Speaker, millions of Americans who work in the private sector are relying on having an employer-sponsored pension plan when they retire. An important part of the American dream is to have a nest egg that people can tap into during their golden years so that they are not forced to literally work until they die. American workers have fought for and earned the right to pay into a pension system that will provide an income once they retire. Unfortunately, there are serious problems with America's private pension system.

Madam Speaker, pension security is an important issue, one indeed which should be addressed by this Congress, but pension security must be addressed in the right way and it deserves to be addressed in a democratic way.

Bankruptcies in the airlines, steel, and the auto parts industries, for example, are straining the abilities of the Pension Benefit Guaranty Corporation, or the PBGC, to guarantee the private pensions of workers in these industries. The PBGC was created as an insurance system for America's private pension plans. It exists to make sure that America's workers will receive a pension when they retire, even if the company they work for cannot pay that pension.

Now, while there are real problems in some industries, like the steel industry, there are also serious cases of pension dumping, where a corporation claims it cannot fulfill its obligations and dumps its pension onto the PBGC. The net effect is a real strain on the PBGC and ultimately a crisis in the pension system.

The PBGC is an insurance policy for America's workers. It is a safety net should a company not be able to pay its pension obligations. But it is not supposed to be a dumping ground for corporations who want to boost their bottom line and just do not feel like paying the pensions they promised their workers. It is this looming crisis in America's pension system that brings us here today.

Now, no one believes we should sit and wait while America's pension system crashes around us, but we need to address this problem in the right way, and regrettably, Madam Speaker, the Pension Protection Act the Republicans have concocted is not the right way.

Mr. BOEHNER, one of the authors of this bill, told the Rules Committee yesterday that this bill is tough medicine. What he did not say is that it is tough medicine for America's workers. Madam Speaker, this bill will have a real effect on millions of Americans' lives and on the quality of their lives as they grow older.

The fact is that this bill that Chairman THOMAS and Chairman BOEHNER have brought before us will make the problem worse, not better. This is the wrong prescription for what ails America's pension system. Both the Congressional Budget Office and the PBGC estimate that the Pension Protection Act will actually lead to an increase in pension plan terminations and an increase in the PBGC's liabilities by billions of dollars. Clearly, that simply cannot be what anyone in this Chamber really wants.

The goal should be to enact legislation that guarantees workers their full pensions. Instead, passage of this bill will allow corporations to turn their backs on their loyal employees and shirk the responsibilities they face to provide a real pension to their employees.

There exists in this country a culture of corporate corruption, where companies like Enron and WorldCom squander billions of dollars in retirement funds, and this legislation does not do anything, nothing, to fix that.

Congressman GEORGE MILLER, a strong champion of the American worker and working families, recently released a report entitled: Broken Promises—America's Pension Plans At Risk. This report shows that pension plans are underfunded by $450 billion; that the PBGC is $23 billion in the red, with more obligations coming in every day, and that the current pension and bankruptcy laws allow companies to dump their unwanted pension obligations on to the PBGC. Proving that this bill makes things worse and not better, the report documents that the Boehner-Thomas bill could, and I quote, ''cause as many as half of all large pension plans to freeze benefits.''

Ranking Member MILLER, along with Ranking Member on the Ways and Means Committee RANGEL, have an answer. They have crafted a substitute that actually protects workers' pensions. The substitute also reforms the bankruptcy laws so that corporations cannot hide behind bankruptcy in order to dump their pension obligations onto the PBGC.

In addition, the Miller-Rangel bill addresses a serious inequity where rank and file pension plans are at risk of being dumped onto the PBGC but somehow the corporate executives continue to receive golden parachutes. A CEO should not receive millions of dollars in bonuses and other incentives if they have terminated the pension plan for their rank-and-file workers.

Now, I am sure my friends on the other side of the aisle will boast about how their legislation they have crafted is fabulous. I disagree, but I respect their right to have their say and to have their views debated. Those of us on this side of the aisle believe we have a better approach, one that is fair to millions of Americans and their families who get up every morning, put in a hard day's work and are the very backbone of America's economy and our communities.

Unfortunately, Madam Speaker, we will not have an opportunity to present our proposal. The Republicans on the Rules Committee late last night said, no, an alternative viewpoint will not be tolerated, cannot be presented to the Members of this House, and it certainly will not be debated and voted on on this floor.

Apparently, the Republican definition of democracy is my way or the highway. They have decided that the United States House of Representatives is really not a deliberative body, it is a place that does not respect differing viewpoints, and it is unreasonable to have a full and open debate on an issue as important as pension protection.

Last night, Chairman BOEHNER, to his credit, said he had no problem with Democrats having an ability to offer a substitute. So what happened? I will tell you what happened. The Republican leadership, in yet another display of arrogance and disrespect, decided to close the process, to gag us, to use the Rules Committee as a weapon to stifle debate. Once again the Rules Committee is where democracy comes to die.

Now, let me say, with all due respect to my friends on the other side of the aisle, it is the majority that is responsible for creating a climate in this House that is devoid of bipartisanship and civility. It is beyond my comprehension why the majority would deliberately choose to shut us out of being able to offer an alternative.

This is not the House of only Republicans, this is the people's House, where serious issues should be debated and voted on. This rule is anti-democratic, this rule is closed, and this rule should be defeated.

BROKEN PROMISES—AMERICA'S PENSION PLANS AT RISK: INDEPENDENT ANALYSIS FINDS THAT REPUBLICAN PLAN MAKES PENSION CRISIS WORSE

BROKEN PROMISES PUT MILLIONS OF AMERICANS' PENSIONS AT RISK

Americans are worried sick about their retirement nest-egg, and they are demanding decisive action by Congress. They saw what happened at Enron and WorldCom and at other companies—where billions of hard earned investments by employees disappeared forever in only months due to corporate fraud and mismanagement.

Today employees and retirees are watching as some employers like United and USAir have rushed to dump their pension promises onto the taxpayer and other employers, at the expense of employees and retirees who face billions in uninsured pension promises. Traditional pension plans, once the sturdy pillar of retirement security, are very much at risk unless Congress takes immediate action.

Here are the serious warning signs that threaten our nation's pension plans:

Pension plans are now underfunded by $450 billion, up over 1,000% since 2000.

The agency that insures traditional pension plans (the Pension Benefit Guaranty Corporation) is $23 billion in the red, and is facing billions more in possible claims from companies such as Delta Airlines, Delphi, and Northwest Airlines.

Pension and bankruptcy laws allow companies to dump their unwanted pension promises onto the PBGC, leaving taxpayers, employees and retirees to foot the bill.

Like the savings and loan debacle of the 1980s, taxpayers are at risk of having to pay billions of dollars due to broken promises, this time by company-sponsored pension plans.

Many employees and retirees face severe reductions in their promised pension benefits as their plans are turned over to the federal government, or frozen by companies when their sponsor falls behind in their obligation to fund promised benefits.

Employees are blindsided when their plan is dumped onto the federal government because they are not provided up-to-date information on the real financial condition of their pension plan.

Employees and retirees in such cases are not only cheated out of promised pension benefits, but sometimes suffer further injury and insult by company executives who cut their own sweetheart golden parachute deals.

Now Delta and Northwest are in bankruptcy and very well could dump their pension plans onto the PBGC. According to the PBGC, Delta Airlines is underfunded by $10.6 billion. The PBGC loss would be $8.4 billion, and the employees and retirees would lose $2.2 billion in promised benefits. Northwest Airlines is $5.7 billion underfunded. The PBGC loss would be $2.8 billion, and the employee loss even greater—$2.9 billion. And now more dominos are falling. Delphi Auto Parts has filed for bankruptcy—the largest such filing in the history of the auto industry. According the PBGC, the Delphi claim on the PBGC would be $4.1 billion. The hit on employees—estimated over $10 billion in uninsured losses—would be the largest ever. That tops the $6 billion in worker losses that PBGC estimates occurred from its 4 previous largest pension plan terminations.

REPUBLICAN PROPOSAL ACTUALLY MAKES PENSION CRISIS WORSE, NOT BETTER

According to the Congressional Budget Office, the Republican House Bill (H.R. 2830) passed by the Education and Workforce Committee and Ways and Means Committee would increase the PBGC's red ink by $9 billion over the next ten years. The PBGC also analyzed the House bill and found it would increase the agency's deficit bill billions more than current law projections. Specifically, it found that Republican House bill would permit pension sponsors to slash required contributions by $75 billion over the next ten years compared to contributions required under current law. The PBGC's 35 page study released on October 26, 2005 analyzed detailed information of 400 pension plans, representing 50% of the liabilities and underfunding in the pension system. The Republican proposal could cause as many as half of all large pension plans to freeze benefits. The PBGC estimates that more than 50% of a sample of large pension plans would

either have to freeze some or all benefits if the Republican proposal's benefit limitation provisions had been in effect (based on the Administration's most recent data.) The limitations would prevent benefit increases and lump sum payments for all affected plans, and prohibit future benefit accruals by the most underfunded plans.

H.R. 2830 fails to reform pensions in several other respects. The bill fails to stop companies from dumping their obligations on to the federal government, fails to provide employees with accurate information on the financial condition of pension plans, fails to stop executives from cutting and running with their own sweetheart pension deal while slashing employee pensions, fails to protect older employees when a company converts to ''cash balance'' plans, permits conflicted investment advice, and punishes employees for plan underfunding by curtailing benefits.

DEMOCRATS FIGHT TO SAVE AND STRENGTHEN TRADITIONAL PENSION PLANS

Democrats are fighting to save and strengthen pension plans by: Stopping companies like United from dumping their unwanted pension promises onto the taxpayers and employees. Because the Congress didn't lift a finger to stop United from unloading its pension plan, we have a new group of companies ready to dump and run. The government should not be a cookie jar for companies who failed to keep their fiduciary promise to set aside funds for their employee pension plans.

Requiring pension plans to follow a clear and fair plan to restore their pension funds. The pension bills going through Congress right now actually make underfunding worse according to the Congressional Budget Office and the PBGC government pension insurance agency.

Requiring pension plans to give employees accurate, up-to-date information on their pension plans financial condition. Employees should never have to wake up one morning and read in the papers that their pension plan has failed. Today, sponsors of pension plans are permitted to keep two sets of books, one set of books make available to the public and one set of more accurate books that is kept secret by the federal government.

Prohibiting company executives in charge of underfunded pension plans from entering into sweetheart retirement deals while they're moving to dump their employees pension plan on to the taxpayers.

CONCLUSION

Millions of Americans have worked hard to earn the retirement promised by their company. Without urgent, decisive action by Congress, millions of Americans face the loss of billions in irreplaceable like savings due to the broken promises of their plan sponsor. The Republican answer to this crisis is to hasten the unraveling of pension plans by allowing companies to skip out on over $75 billion in contributions over the next 10 years, and increasing PBGC's red ink by billions of dollars. At the same time, Republicans are refusing to stop companies from dumping their unwanted pension promises onto the PBGC at the expense of taxpayers, employees, and other employers.

Madam Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Madam Speaker, I am pleased to yield 3 minutes to the gentleman from Michigan (Mr. EHLERS), a member of the committee.

Mr. EHLERS. Madam Speaker, I thank the gentleman for yielding me this time.

Madam Speaker, I rise today in support of House Resolution 602, the rule for consideration of the Pension Protection Act, H.R. 2830. Both the rule and the bill are excellent. I would especially like to commend Chairman BOEHNER and Chairman THOMAS for their work on this very important pension bill.

In recent years low-interest rates, the stock market decline, and the increasing number of retirees have left many defined-benefit pension plans underfunded. As a result, companies from many industries claim that they will soon be unable to contribute the amount they are required to contribute under law. In particular, the aviation and manufacturing industries have been hard hit by these and other financial difficulties, and the penalties under the current pension law are creating tremendous financial burdens for already struggling employers, and in fact encouraging them to go into bankruptcy so they can get out from under the burdens of the current pension law.

The Pension Protection Act provides the long-term solution that is sorely needed to shore up pension benefits for millions of Americans. It makes the most comprehensive reforms to our Nation's traditional pension system in more than a generation.

The bill ensures that employers fund their pension promises to workers. It also keeps employers and unions from making pension promises that cannot be kept. I would note that the manager's amendment includes compromise language that will ensure that UAW retirees' pensions are protected, something very important in my district and, indeed, in all of Michigan.

I was surprised at the comments of the previous speaker, who has attacked the bill on that point. And certainly if the UAW believes it is a good bill, it cannot be as bad as the speaker claimed it is. In fact, I believe it is a very good bill, and it is designed to address the problems that he outlined.

The bill does not, however, ensure that airline workers' pensions receive needed additional protection. The Senate bill, the Pension Securities and Transparency Act of 2005, contains airline pension provisions. The Senate bill allows the airlines to pay their pension obligations over an extended period of time, ensuring that airlines can fund their pension obligation and helping to prevent the Pension Benefit Guaranty Corporation from becoming insolvent as a result of taking on the burden of the airline pensions.

I understand that Chairman BOEHNER intends to support airline pension provisions in the conference committee, and I strongly support him in his efforts to include airline pension provisions in the final version of the conference report.

I urge my colleagues to support this excellent rule and also encourage them later in the day to support the Pension Protection Act when it is considered.

Mr. MCGOVERN. Madam Speaker, we will have an opportunity to debate the substance of this bill, I guess not only during the rule but afterwards, but I am still kind of baffled as to why this bill has to be brought to the floor under a closed rule, why the ranking Democrats on the committee of jurisdiction could not even be given the courtesy of being allowed to offer an alternative. This is unbelievable to me, that a bill of this importance would come to the floor and we are entirely shut out.

And speaking of being shut out, the gentleman from Indiana (Mr. VISCLOSKY) had four amendments to be brought before the Rules Committee. He waited patiently and testified before the Rules Committee. Four good amendments, and all four of those were dismissed routinely as well.

Madam Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. VISCLOSKY).

Mr. VISCLOSKY. Madam Speaker, I rise today in strong opposition to the restrictive rule for H.R. 2830, the Pension Protection Act, and I ask my colleagues to join me in opposition.

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Last night not only were my four amendments disallowed, but a substitute measure offered by Mr. RANGEL and Mr. MILLER was also disallowed. From my perspective, given the importance of the underlying legislation, we ought to have an open debate. We ought to have votes, and we ought to have decisions made by the full membership.

In terms of the amendments I offered last night to the Rules Committee, the first set essentially said that the funds in retirement accounts are the workers' money, and employees ought to have a voice in single employer pension plans regarding the management of those moneys. Given the number of pensions that have been thrown overboard, and given the tens of thousands of Americans who have been hurt, I also think, as a bare minimum, companies ought to once, every 3 years, be required to inform their employees of the health of their pension funds.

The third amendment I offered essentially said that every last option, whether it be from the perspective of the PBGC or the company be exhausted before that pension is assumed by the Pension Benefit Guaranty Corporation, given the fact that, on average, at least 15 percent of the retirees who have their pensions assumed by the corporation are going to receive less than their full promised pension.

A case in point was in United Airlines negotiations, the unions of the company were still bargaining and the PBGC came in and unilaterally assumed that pension.

The final goes to the heart of the matter, and that is to close that gap. For those pensioners that do not receive their full pension under the PBGC, they are out that pension money. I am disgusted by the fact that they do not have standing under the

procedures. And I would use Adelphi Corporation, which recently declared bankruptcy as an example of the abuse of the system and the disadvantage that the employees are put under.

Adelphi, headed by Mr. Smith, who also was at Bethlehem Steel when they went bankrupt and they dumped their pensions over, really has no interest in going out of business. They want to dump their liabilities. Under the Bankruptcy Code, Mr. Miller and up to 500 executives at Adelphi are entitled to 30 to 250 percent bonuses for running their company into the ground, going through bankruptcy, dumping their liabilities and hurting people.

What happens to the workers who do not get their full pension after Mr. Miller and his gang dump those pensions overboard, they have no standing under the Bankruptcy Code.

All I asked the Rules Committee last night was that we ought to talk about that here on the House floor and we ought to have a debate. Those people who gave their lives to that company who are now short money for the rest of their lives when they need it the most should have some standing. I ask Members to oppose the rule.

Mr. Speaker, I rise today in strong opposition to this restrictive rule for H.R. 2830, the Pension Protection Act and I ask that my colleagues join me in opposition.

Last night in the Rules Committee, I offered four amendments that I believe would have made this a better bill, none of which were found to be in order. Furthermore, this restrictive closed rule does not even make in order a substitute measure authored by Ranking Members MILLER and RANGEL. In a time when Delphi will be awarding 500 executives, bonuses of 30 percent to 250 percent of their base salaries, workers are seeing their pensions frozen, I find it very troubling that the majority refuses to have a full and open debate on an issue so critical to our Nation's retirement security.

My first amendment would have put employee representatives on the trustee board of single employer pension plans, which would ensure that employees have a voice in how their investments are managed. The growing significance of pension plans in the U.S. economy has sparked a continued public debate over the control of pension fund investments. A generation ago, Congress took action to safeguard pensions in response to an Enron-like debacle at Studebaker. These protections for defined benefit plans included diversification requirements as well as government insurance. Pension funds represent deferred compensation and there is no reason why single-employer pension plans still lack employee representation on their boards.

My second amendment would have required that plan sponsors furnish pension participants with the most current benefit statement at least once every 3 years. Fiscally unhealthy pensions have caused severe hardship on employees who have depended on their pensions as part of their retirement security. In order for pensioners to have a more complete understanding of the health of their pension fund, it is necessary to provide full and accurate information on a timely basis. Both the underlying bill as well as Mr. MILLER's substitute address this issue, but I do not believe that they go far enough.

My third amendment would make it more difficult for companies to abuse the bankruptcy process in order to dump their pension obligations. Specifically, this provision requires that alternatives to pension-dumping be identified, which would essentially make pension-dumping a last resort for companies rather than a financial-planning tool. The amendment would require both employer-initiated and PBGC-initiated terminations to identify and disclose alternatives to dumping their pension obligations.

There is a disturbing trend of companies dumping their pension obligations not because the company is going out of business, but because the company does not want to follow through on the financial commitment made to its employees. This legislation would make it more difficult for financially-viable companies to engage in pension dumping to increase their long-term profits. Current law does not sufficiently protect against the termination of plans. By implementing this provision, pension participants would have greater opportunity to work with companies to find alternatives to eliminating existing pension plans.

After a company successfully terminates its pension plan, the Pension Benefit Guarantee Corporation, PBGC, takes over the financial obligations to make payments to pensioners. In certain instances, the maximum amount the PBGC will pay is less than the original amount promised by the pension.

My final amendment would have made the cost of the pension payment "gap" an administrative expense for the company, which would make it easier for pensioners to collect the missing funds in bankruptcy court. Pensioners deserve the full pension amount they were promised. In cases where the company goes bankrupt, and the PBGC payment is less than the original amount promised, pensioners deserve to be near the front of the line when it comes to collecting debts from the company in bankruptcy court. I believe that a promise is a promise, and if a company emerges from bankruptcy with the finances to pay the difference of a lower pension, they should do so.

Once again, I urge my colleagues to oppose this restrictive rule.

Mr. HASTINGS of Washington. Madam Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. PRICE), a member of the committee.

Mr. PRICE of Georgia. Madam Speaker, I thank the gentleman for yielding me this time to address both the rule and the bill.

Madam Speaker, I rise in support of the rule and the bill. And frankly, I never cease to be amazed by some of the discussion from the other side, for oftentimes they accurately identify the problem, and then completely ignore the solution.

Madam Speaker, traditional pension plans once the legacy of a lifetime of work are crumbling. They are crumbling. We are able to bring this bill to the floor today for swift passage because there is an ever-growing coalition of support behind it from labor and employer groups to other individuals who know acutely the problem that we have.

Action by Congress is necessary to protect the important retirement of all hardworking Americans. Large and small businesses need changes to current law in order to have greater flexibility to help their employees plan for their financial security.

Current plans, defined benefit plans primarily, have not adapted to the times. They have used the same formula since their inception: The number of years worked multiplied by a certain amount of money. This formula does not account for a changing marketplace, and it does not result in the most benefit for workers. Today, a retirement plan must be as dynamic as our society. Inflexibility for both employers and employees is imperative. This Pension Protection Act is a step in the right direction, and it is important that Congress pass it.

A couple of the provisions I would like to highlight are reforms. These are significant changes and require employers to make significant contributions to the plans to meet 100 percent of the funding target. That is an improvement. This bill provides for a permanent interest rate to more accurately measure liabilities. That is an improvement. It appropriately raises premiums that employers pay into the PBGC. We understand and appreciate that the PBGC, that cushion between pension plans and the taxpayer, needs to be more financially secure. It requires defined benefit plans to include detailed information and greater disclosures, and allows employees to receive better investment advice. Madam Speaker, these are all improvements.

The other side says this allows employers to shirk their responsibilities. Frankly, that is just plain wrong. Without reform, the system may very well collapse under the weight of mounting deficits and the government and taxpayer bailouts are not fair for employers, they are not fair for employees, and they are not fair, certainly, for taxpayers. Americans expect us to solve difficult problems. The Pension Protection Act is one of those things that requires and deserves ours attention.

I urge my colleagues to support both the rule and the underlying bill. I also look forward to the discussion with the chairman of the committee during the debate on the bill itself, and highlight the need for reform in the airline industry, which, in my area and across this Nation, is so drastically calling out for reform.

Mr. MCGOVERN. Madam Speaker, the gentleman from Georgia just gave a nice speech, but nobody on that side has explained why on this very important issue that the Democrats and people with alternative views should be entirely locked out from participating in amending this bill. This is an outrage.

Madam Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Madam Speaker, I thank the gentleman for yielding me this time.

Madam Speaker, I see the chairman of the Committee on Education and the Workforce is in the Chamber. I want to give him initially a compliment. That committee has had a number of hearings. I believe the gentleman has wrestled with this issue, and I believe he has come up with a deeply flawed solution, but I give him credit for an initial effort.

Now on the other hand the chairman deserves much rebuke for tolerating the process that is unfolding here.

Madam Speaker, getting pension funding fixed, getting this done correctly is a technically exacting proposition with enormous risks because if we miss the mark, pension plans are going to terminate. Pension plans are going to freeze. Millions of workers will lose their pension coverage. This is not a Republican thing, it is not a Democrat thing. Trying to get this right ought to be a shared purpose, and so how dare you participate in a process that does not give us a substitute? Your way is not the only reasonable way. Reasonable minds differ here. There are issues that we put forward in our substitute that were important for consideration by this body.

The legislative process ought to be run with a fundamental fairness that allows the consideration of various issues. There are a lot of important constituencies watching this debate, and I want them to know that the chairman of the Committee on Education and the Workforce complicit with the chairman of the Ways and Means Committee complicit with the majority leadership of this body worked to shut down the process, to shut out the consideration of other views, to present only their way or the highway as an ultimate resolution of this issue.

I firmly believe that healthy pension plans today will terminate or freeze their benefits for other workers going forward, because I believe this is a deeply flawed proposal, and I know there has been an effort to pick a group here and pick a group there and make a compromise here and make a compromise there, but the core of the bill is rotten and we could have had a much better result. Shame on you for depriving us of our alternative. Defeat this rule.

Mr. HASTINGS of Washington. Madam Speaker, I yield 2 minutes to the gentleman from Florida (Mr. WELDON).

Mr. WELDON of Florida. Madam Speaker, I rise in support of this rule and the underlying bill.

I believe this piece of legislation is one of the most important pieces of legislation that we will take up in the 109th Congress, and I do not believe it is getting an adequate level of public attention considering the enormity of the significance.

In my 11 years in the House of Representatives, I have seen more and more the movement of our economy into a global economy where our U.S. corporations are increasingly finding themselves having to compete no longer with other domestic corporations, but foreign companies that operate under very, very different rules in their domestic country of origin, and particularly as it relates to pension plans.

What I am getting at, Madam Speaker, is that we desperately need to modernize our pension laws and probably most importantly, more than anything else, we have seen tragically, in recent years, many workers come to their retirement years to find that their pension plans are insolvent, that the company that had guaranteed them a retirement is bankrupt, and increasingly that these pension plans are underfunded.

Now is this a perfect bill? No. There is no bill that comes through a legislative process as complex as this involving two committees that anybody can label as perfect. But this is moving us in the right direction. We are going to go to conference with the Senate and what is going to emerge is going to be a good bill. I think this is a very good product.

Chairman BOEHNER and Chairman THOMAS deserve a great deal of credit for the effort and hard work they have put into this. I believe this is going to have ramifications for protecting our workers and making our companies more competitive in this global marketplace so we can increasing compete effectively and create jobs and protect jobs and defend the hardworking American people who are depending on these retirement plans to be there in their retirement years.

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

Madam Speaker, once again, we heard an interesting speech but no explanation as to why we have to bring this bill to the floor under a closed process and why we are shut out from even offering an alternative.

Madam Speaker, I yield 4 minutes to the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Madam Speaker, I thank the gentleman for all his hard work on the Rules Committee.

It is rather interesting, and Mr. MCGOVERN has alluded to this a number of times, but it is interesting today as we watch with great anxiety and anticipation and a sense of celebration as Iraqis run the gauntlet of violence to go out and vote for democracy, at the same time the Republicans in the House of Representatives close down democracy in the people's House.

Republicans, a number of them stood up here today and said this is a very complex bill. This is the most important bill that may come before this Congress because it affects millions of Americans' livelihoods and retirements, but it has to come under a closed rule. It cannot withstand debate, it cannot withstand amendments, and it cannot withstand changes. That is the death of democracy in the people's House.

So let us applaud it in Iraq today, but let us understand what is happening here, the gradual glacial process of destroying debate on the floor of the House of Representatives and the right of Members. Mr. VISCLOSKY wanted to talk about people who were being impacted by these policies who were losing their jobs and losing their workplace and losing their retirement benefits, but he was not going to be allowed to offer those amendments to have that amendment because of the autocratic nature of the Republican leadership in this House. They cannot stand democracy, they cannot stand open rules, and they cannot stand open debate. Because it is their way, as Mr. MCGOVERN says, or the highway.

This Republican pension bill is the greatest assault on the middle class standard of living in the history of Congress because this bill accelerates the process by which millions of American workers will lose the retirement nest eggs that they were counting on. They will lose the security of their golden years, if you will, because of the accounts that they were counting on.

□ 1100

And it need not happen. It is not just about the organized plans, UAW or the Teamsters or the building trades. This is about millions of Americans who do not have the benefit of a union, who do not have the benefit of collective bargaining, because in a survey of the major employers by the Benefits Association, 60 percent of those people say that this bill will cause them to freeze their plans, freeze their retirement benefits. You can continue to work, but you will not continue to get any retirement, additional retirement benefits.

What does the CBO say about this bill? It says it makes this problem $9 billion worse for the Pension Guaranty Corporation. What does the Pension Guaranty Corporation say about this bill? That it will make it billions of dollars worse over the next few years. So we have made the problem worse, which is the solvency of the Pension Guaranty Corporation, and that is a corporation that protects pensions that now is anticipating hundreds of billions of dollars of potential liabilities in the future.

So we accelerate the problem and we diminish the capacities of the government to deal with this and the ability of the private sector to deal with it. And interestingly enough, we make it easier for corporations to simply get rid of these pension benefits without negotiations just as United Airlines did. We were told that a couple of those plans possibly could have been saved, according to the Pension Guaranty Corporation. Two days later they were put into bankruptcy.

This pension plan was designed when corporations went out of business. The

gentleman from Indiana is here. When Studebaker went out of business we created this because there was no more company. Yesterday in USA Today United Airlines announced it is coming out of bankruptcy and a couple of hundred executives are going to take 15 percent ownership in the company and they are going to leave bankruptcy with $285 million in their pocket, in their pocket. And those workers who gave back their pensions, gave back their wages year after year after year to help this airline which was mismanaged and run into the ground, they leave with nothing. You say, oh, they have a job. Well, the people who are responsible, the executives for running this company, they leave with stock bonuses.

That is what this bill does. It continues this problem, this absolute problem of corruption of the rights of people to protect their retirements.

Mr. HASTINGS of Washington. Madam Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. SOUDER).

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

Mr. SOUDER. Madam Speaker, I appreciate my friend and colleague from California's passion, even when he is wrong and overstates his case. The comparison to Iraq is just such an egregious misrepresentation of American democracy to anybody in the world who is watching this. We sat in the Education Committee for days, into the late hours of the night taking amendment after amendment. They lost the amendments. That does not mean democracy does not work. It means that we spent in the areas of the subcommittee and the committee working this for years, working through committee and bringing the document to the floor with many compromises in it.

Now, I share some of the concerns of my colleague from California, because I have had a frustration in watching people who work their whole life, see their pensions reduced or eliminated at the time some of the executives have enriched themselves. And I supported this bill. I supported this bill because long term it will help the Pension Guaranty Corporation, but short term our goal has to be how are these companies not going to go into bankruptcy? How can we make sure that they can function, have their pension funds there and avoid the problem, and then long term stabilize the Guaranty Corporation?

Secondly, as a representative of the number one manufacturing district in America, I have more manufacturing jobs and percentage of the work force in my district in manufacturing than any other, I was very concerned about some of the provisions and how this might relate to GM. I very much appreciate the leadership of Chairman BOEHNER in our committee of working first the process through so that people have the hopes of pension. I mean, we all understand the basic principle here. We have the same problem in Social Security. We are more underfunded, quite frankly, than private areas. We have this in Medicare. We have this in any savings program where we assumed there was going to be a huge work force paying in and now it is a declining work force paying into a huge retirement population. How do we work this through? This bill is an attempt to address it in a comprehensive way. But I was concerned about a provision that would allow the basic pensioners to have to pay first. In other words, there would have been the option, even when the company had an ability, through changing their funds around, to not freeze pension wages, and pension benefits, that they could have done so.

Chairmen BOEHNER and Chairman THOMAS have fixed this. This is now supported by the UAW and by GM. That is a pretty big accomplishment, to have a pension bill supported by the UAW and GM, and I want to commend the leadership of the Education Committee, Chairman BOEHNER and the chairman of the Ways and Means Committee for working out this critical thing so that management does not get crippled in their ability to put funds in to strengthen these pensions. At the same time, people who are 50, 55, already retired, who do not have the ability to adjust their pensions will not get it arbitrarily frozen. And I think this is a great compromise that had hours and hours and days and days of work on this, and it is an example of how democracy works, not how it does not work.

Mr. SOUDER. Madam Speaker, I rise today to commend the distinguished chairman of the Education and Workforce Committee for putting together a well-balanced bill to reform our Nation's outdated pension laws. Putting this bill together has been a long and difficult process, and the Chairman should be commended for his perseverance and diligence.

Our Nation's pension laws have not undergone comprehensive reform for over 30 years. Unfortunately, the recent examples of United Airlines and Bethlehem Steel show that this system is broken. We cannot have a situation where companies continually underfund their pension plans, go bankrupt, and then transfer their pensions to the PBGC. Workers lose the money they were depending on for retirement, and American taxpayers are expected to pick up the slack for companies' irresponsibility.

H.R. 2830 will help ensure that workers' pensions are better funded. It changes current law to require plans to be 100 percent funded. If plans are underfunded, this bill will force companies to make up their shortfall in 7 years. H.R. 2830 will also help stabilize the PBGC by raising the premiums companies pay for the PBGC's protection. Further, by requiring employers that terminate their pensions in bankruptcy to pay an annual premium of $1,250 per participant to the PBGC for the 3 years after they emerge from bankruptcy, this bill makes terminating pension plans a less attractive option for employers. Companies who want to dump their pensions to escape bankruptcy and raise their bottom line will have a tougher time doing so.

Furthermore, the Pension Protection Act will help stop the unacceptable practice of labor and management negotiating for pension benefits that both sides know are unaffordable. If a pension plan is underfunded, it will not be able to increase benefits or pay shutdown benefits unless it pays for such benefits immediately.

I would also like to commend Chairman BOEHNER for his efforts this week to reach an agreement with the United Auto Workers union over their concerns with the bill. Mr. Chairman, I have the largest manufacturing district in the country, and many union members let me know their concerns with this bill in its original form. Unfortunately, this bill would have allowed some companies to freeze their employees' pension benefits and limit accruals—even if they had the money to fund them. The agreement that Chairman BOEHNER reached with the UAW requires companies to use all the money in their plan before they can freeze benefits and limit accruals. This will prevent companies from gaming their funded status in order to deliberately trigger these benefit restrictions.

Again, I thank Chairman BOEHNER for his hard work writing a bill supported by such a broad coalition of both labor and management groups, and urge my colleagues to support it.

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

The gentleman from Indiana tells us we should all be happy because the Education Committee deliberated on this and there were votes in that committee. I should remind the gentleman that there are 49 members of the Education Committee. There are 435 Members of the House of Representatives.

The gentleman gets all upset when Mr. MILLER talks about the fact that it is important for us to be an example to Iraq about what democracy is, and that there are elections in Iraq and, you know, here we are engaged in an undemocratic process here today. But I will say this. At least in Iraq everyone has an opportunity to vote. Here we are being denied an opportunity deliberately on this floor on an issue that impacts millions and millions of our fellow citizens. This is an outrage. You know, I am amazed that people on the other side, who only a few years back would decry a closed process like this, have now come to embrace this process. This has become the norm in this House, and it has to stop. This is not democracy. This is not a deliberative process. This is a closed process where legitimate, important debate on important issues is being denied routinely.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have to join the gentleman from Massachusetts on his concern and dismay, frustration, and I think that outrage that the opportunity for a Democratic substitute, first of all, to express some of the failures of this particular underlying bill and as well the opportunities to improve this legislation seemingly has been denied.

I speak from a particularly unique perspective, Mr. Speaker, because my district contained Enron, and the thousands of employees that, within hours of the bankruptcy filing by Enron, lost not only their jobs but their lives, their homes and their future. I cannot tell you the number of individuals in Houston and the surrounding areas and other areas that were impacted, lost their lives, actually died because of the absolute oppression and outrage and the impact of what happened to them.

And then we speak to the pensions and the investment of course in company stock. But this particular bill as it relates to the pension issue just does not go far enough because what it happens to do is it emphasizes the pension crisis, and it causes many of the companies, and I think those who are listening beyond the borders of this particular Chamber should understand that this bill that will be voted on today really causes companies to freeze or abandon your pension plans. This does not encourage investment in your pension plans. It also denies the necessary flexibility and relief for airlines that unfortunately did not get in this bill, but is in the Senate bill.

Any of us who fly the Nation's airways know that the flight attendants are constantly saying that we, after 20 years and 30 years, are being forced to give up our pension rights. Why could we not come to the floor of the House and have a better plan?

This, of course, provides a funding crisis that is far worse. It increases the debt by $9 billion. It causes companies, it does not stop companies from dumping underfunded pension plans onto taxpayers. And so, if you want to look into the eyes of despair, just follow the track of Enron when those particular employees who had bought into the seriousness and the depth of commitment called family that Enron represented, and in a matter of a pen, in the matter of 48 hours, they were not only dumped, their pensions were dumped and they had nothing.

What we should be doing in this instance is then ensuring and shoring up those liabilities or the potential of those liabilities and the negative impact it would have on people who work so very hard.

I would ask my colleagues, we have enough time. There is time to continue this debate and to send this particular underlying bill back. There is time to make this bill compatible with the Senate before it even leaves the House. There is time, I guess if we wanted to waive the points of order, to allow a democratic substitute. But this is not the route that we should be taking. And in the name of those who we pretended to be concerned about, not only the Enron employees who spent almost 2 years with us here in the United States Congress, but other employees and workers around America, I would ask my colleagues to send this bill back and make a better bill.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 3 minutes to the gentleman from South Carolina (Mr. WILSON).

Mr. WILSON of South Carolina. Mr. Speaker, I rise in strong support of this rule and of H.R. 2830, the Pension Protection Act of 2005. I sincerely appreciate the strong leadership today of Mr. HASTINGS, as he is certainly presenting this in a very positive manner. I commend Chairmen BOEHNER and THOMAS for crafting just a comprehensive and necessary legislation. This measure will both preserve and strengthen our private sector, employer sponsored retirement system for both current and former retirees.

This legislation, when enacted, will provide the most significant reform of our pension system since the initial passage of ERISA in 1974. This legislation will require higher levels of funding for single employer plans and provide the tools necessary to trustees, both labor and management, of multiemployer plans to more effectively deal with distressed plans. This legislation is the product of more than a year of hard work among Congress, the executive branch and a broad coalition of employers, labor unions and retirement system advocates. This coalition strongly supports passage of the Pension Protection Act of 2005, and it will go a long way toward preserving the benefits of millions of American workers and their families.

That is why it is so disheartening to see the Democrats and their leader NANCY PELOSI continue their just say no obstructionism by urging their Members to oppose this critical legislation. Rather than support pension reform that would aid American workers, the Democratic leadership continues its cynical and destructive strategy of opposing all substantive legislation in a futile attempt to influence public opinion against the Republican Congress. The opposition's motives could not be more transparent on this issue.

Employers, including auto makers, airlines and manufacturers, along with labor unions, including the United Auto Workers, Carpenters, United Food and Commercial Workers all support this reform measure and have urged all Members of Congress to support passage of H.R. 2830. For those Members on the other side of the aisle who demonstrate courage and reject their leadership's contemptuous call to oppose this legislation, you will be rewarded by the gratitude of your constituents and all Americans for doing the right thing.

I urge all Members to support retirement security reform and vote yes on H.R. 2830.

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

Let me just again say to the gentleman from South Carolina who just spoke, what we are asking for here is an opportunity to offer what we think is best. We disagree with you. We disagree with your approach. Not only do we disagree with your approach, the AARP disagrees with your approach.

AARP,
*December 12, 2005.*

DEAR REPRESENTATIVE: AARP is writing to express its opposition to a number of critical elements of H.R. 2830, the Pension Protection Act of 2005, scheduled for House consideration this week. We share the goal of enacting new pension funding rules that will require employers to fully fund their pension plans and provide new revenue for the Pension Benefit Guaranty Corporation. These changes are long overdue and should be enacted into law as soon as possible. However, we cannot support legislation that would clarify the legal status of cash balance pension plans without providing protections for older, long-service workers involved in cash balance plan conversions and without including a prohibition on all discriminatory age based ''wearaway.'' We are also deeply concerned that this bill would, for the first time, permit defined contribution pension plans to provide investment advice subject to inherent financial conflicts.

1. Cash Balance Pension Plans

AARP believes that cash balance plans have a role to play in the private pension system if—and only if—they are designed and adopted in a manner that protects the millions of older workers who have given up wages in exchange for traditional defined benefit pensions.

Cash balance pension plan conversions change the rules in the middle of the game, and older, longer-service workers are at considerable risk. They generally lose out on larger late career benefits, have less time to accumulate benefits under the new cash balance formula, and are less able to leave their current job if benefits are cut because they typically have fewer job prospects.

H.R. 2830 does not protect older and longer-service workers that are involved in cash balance pension plan conversions. The bill represents a step back from the Administration's legislative proposal, which would eliminate wearaway (both normal and early retirement) and provide transition rules to protect some benefits for current workers. The recently passed Senate bill includes similar protections. The current legislation clearly fails to recognize the need for transition rules to protect promised benefits and fails to protect the most vulnerable older, longer service workers.

H.R. 2830 would not only lower the bar for transition protections for older workers set in the Administration proposal, but would lower it substantially below the ''best practices'' followed by companies involved in conversions over the past few years. Many employers—recognizing the harm to older workers—have adopted transition rules, such as the choice to remain under the old plan formula, or have ''grandfathered'' older, longer service workers under the traditional plan. As recent reports by both the General Accounting Office and AARP confirm, most employers have adopted transition practices designed to protect the benefits that older and longer serving employees have earned. Any legislation should ensure these protections for older workers, not undercut them.

2. Investment Advice

AARP shares the Committee's goal of increasing access to investment advice for individual account plan participants, but we oppose the elimination of the conflict-of-interest protection. The approach advanced in this bill would, for the first time, permit plans to provide advice subject to inherent financial conflicts. This is inconsistent with the Employee Retirement Income Security Act's (ERISA) longstanding protections for plan participants. While we agree that individualized advice can be helpful, such advice must be subject to ERISA's fiduciary rules, be based on sound investment principles, and be protected from conflicts of interest.

H.R. 2830 would turn back the clock and replace ERISA's prohibition on conflicts of interest with a weak disclosure model—an inappropriate and unnecessary step given today's marketplace. Over half of existing plans already provide investment advice to their employees through financial institutions and firms that do not have a financial conflict. In fact, most large financial service providers have already developed alliances with independent advisors to make such advice available.

Rather than permit advice subject to financial conflict, Congress should encourage more employers to provide independent advice by addressing the key barrier—employer liability. Potential employer liability is by far the most important reason that advice is not offered. Congress should clarify that the employer would not be liable for specific investment advice so long as the employer undertook due diligence in selecting and monitoring the independent advice provider. It is in the best interest of both the plan and participants to enhance the independent advice market, and we urge Congress to adopt this approach.

AARP urges you to stand with us in opposition to these critical provisions in H.R. 2830 in order to provide protections for older workers that are necessary, reasonable and fair, and to ensure that employers provide quality investment advice without the potential for conflict. If there are additional questions or you need further information, please feel free to call me or have your staff contact Frank Toohey at (202) 434–3760.

Sincerely,

WILLIAM D. NOVELLI,
*Chief Executive Officer.*

Mr. MCGOVERN. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. LEVIN).

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

Mr. LEVIN. Mr. Speaker, I mostly want to talk about substance. But you know it is so hypocritical for anybody on the majority side to come here and say that the minority is just saying no when you will not allow us to put on the floor a substitute to which we want to say a resounding yes. That is really hypocrisy. This is too important a subject to be governed by the tyranny of the majority. We need to strengthen and to save defined benefit plans in this country. This is the question. Will this bill do that? And I think the answer is basically, in all likelihood, it will not strengthen and preserve, but it will weaken and over time eliminate.

Look, when it came to Social Security your mantra was save, strengthen Social Security. And the President, in this Chamber, used those terms, when the real purpose was not to save and strengthen Social Security. The purpose was to replace it. And there is a legitimate issue here, whether what you are proposing here, when combined with the Senate's and with the administration's position, will it preserve and strengthen defined benefit plans or will it likely undermine?

□ 1115

And the answer, I think, is that it will do the latter.

When we come to the general debate, I am going to be talking about a number of the factors. There are four key factors at play in this bill. They are technical, but they are vital: the yield curve, the credit balance issue, the credit rating or how assets are evaluated, and the averaging and smoothing issues.

As to just one of them, the yield curve provision in this bill, the people who work with these issues, the chief financial investment people, 60 percent, say essentially that most of the pension plans are going to either be frozen or they are going to be eliminated. That is what 60 percent of these officers say will be the result.

So you are not going to be protecting workers from underfunded pension plans. What you are going to be doing, essentially, is putting in place rules that will make it difficult for pension plans to exist and, therefore, they will be withdrawn, if not, frozen. So that is really the basic issue here. And it is heightened because of the administration's position. They want to so tighten the rules that it will be hard for any of these defined benefit plans to survive.

So this is the basic issue, whether in this country we want to try to preserve defined benefit plans. Most of them are not in trouble. Many of them would be placed in trouble through a combination of the provisions in this bill and in the Senate bill.

So I want to close with this: What you are saying, and you have said it on the floor, is leave it to the conference committee. For example, there is no protection for airline workers here at all. Leave it to the conference committee. What you have said to a few of the people is we will make some adjustments here in this bill, but there is no assurance that those adjustments will prevail. So in a word, what you are trying to do is not protect defined benefit plans, but through these provisions and those in the Senate bill, with the help of the administration, you are going to accelerate their demise. That is our position. And it is worthy of discussion. It is worthy of debate, and it is worthy of your giving us a substitute that would make sure that defined benefit plans can survive in the United States of America for the workers of this country.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 3 minutes to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Speaker, I rise in strong support of this rule and the Pension Protection Act. Over the past several years, we have all witnessed some disturbing occurrences as we have seen far too many hardworking Americans contribute money into a pension plan, only to find their benefits dwindle or depleted entirely.

We must find ways to ensure that employers keep their promises to their retiring workers. I believe we have done so in this bill. Chairman BOEHNER and THOMAS are to be applauded for their determination to make this happen. They have spent countless hours in negotiations with employers, employees, unions, and all other parties who have a dog in this fight. The resulting bill we consider here today does exactly what its title says: It further protects the pensions of America's workers.

As I see it, the two most important parts of the Pension Protection Act are provisions to require more accountability and provisions that ensure fiscal responsibility. This bill strengthens current law and requires more accountability on the part of employers in funding their workers' benefit plans. It requires employers to put more cash contributions into worker pension plans. It closes loopholes allowing underfunded plans to skip pension benefits, and it calls for more transparency about the status of workers' pension plans. How can anyone oppose instilling more accountability into the pension system?

The Pension Protection Act is supported by a broad coalition of labor unions and employers like the United Auto Workers, the Brotherhood of Carpenters, the U.S. Chamber of Commerce, and the Financial Services Roundtable. The bill includes a broad package of multiemployer reforms sought by unions and employers. In addition to these reforms, the bill ends excessive compensation for executives if an employer plan is severely underfunded. It also insists on more accountability by prohibiting employers and unions from offering pension benefit increases when plans are already severely underfunded.

The Pension Benefit Guaranty Corporation is suffering from a $23 billion deficit. Unless we want all taxpayers to pony up and bail out the PBGC, we must demand reforms to place the defined benefit system on more solid ground. We must continue to fight for fiscal responsibility.

I urge my colleagues to support this bill.

Mr. MCGOVERN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, there are numerous problems with this bill. This bill, as Republicans have drafted it, makes the pension crisis worse. This bill would cause many employers to freeze or terminate pensions. This bill does nothing to protect the struggling American Continental, Delta, and Northwest Airline employees and retirees. This bill does not stop companies from dumping pension plans in bankruptcy or protect the United Airline employees and retirees. The bill would freeze and cut worker pension benefits. The bill does not ensure fairness between workers and executives. I mean, I could go on and on and on.

The bottom line is that many of us who have been on the side of workers consistently have deep concerns about this bill and what its impact will be on working families. We think that this bill should not only be much better, but, in fact, this bill, as it stands, will

be harmful to American families. And there will be a debate about that, but absent from the debate will be what we want to propose, what others in this House want to propose, what other ideas may be.

Let me just say to my friends on the other side of the aisle that you are not perfect. You are not always right. In fact, you are usually wrong. And when it comes to workers, you are usually wrong, in protecting workers' rights. To allow a bill this important to come to the floor without a single amendment being made in order, to allow this bill to come to the floor and shut us out and gag us is unconscionable.

For the life of me, I cannot understand what the hesitation is by the leadership on that side of the aisle to allow us to be able to deliberate on this bill, to have a give and take, to be able to offer an amendment, to be able to have an up-or-down vote.

The distinguished chairman of the Education Committee, when he was before the Rules Committee last night, said he had no problem with our offering an alternative. I commend him for that. I mean, that is the way this should be. We disagree. We have honest disagreements. We should be able to work them out in a deliberative way on the House floor. But here we are on a bill that impacts millions and millions of Americans, a bill that we believe adversely impacts millions of Americans, and we are totally shut out of this. It is not because of lack of time. We have plenty of time today. And the immigration bill seems all messed up; so we even have more time than we thought. But the fact of the matter is this important kind of legislation should not come to the floor under a closed process. This is outrageous. This has become the norm in this House.

And I would simply say to my colleagues on the other side of the aisle, someday the tables are going to turn. You are going to be in the minority again, hopefully sooner rather than later. I hope nobody over there cries and shouts and complains if a bill comes to the floor under a closed rule.

Defeat this rule.

Mr. HASTINGS of Washington. Mr. Speaker, I yield 6 minutes to the gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and the Workforce.

Mr. BOEHNER. Mr. Speaker, I appreciate my colleague from Washington for yielding me this time.

And I appreciate the concern that my colleague from Massachusetts has raised. Now, if this bill was as bad as the gentleman has tried to define it, why would we bring it to the floor? Why would any Member of this House seek to bring a bill to the floor that would hurt American workers?

Mr. MCGOVERN. Mr. Speaker, will the gentleman yield?

Mr. BOEHNER. I yield to the gentleman from Massachusetts.

Mr. MCGOVERN. I can say why do you bring most of the bills that you bring to the floor that I think adversely impact American workers, from repealing worker protections and worker benefits.

Mr. BOEHNER. Mr. Speaker, reclaiming my time, I think the gentleman is well aware that there is a crisis in America when it comes to the issue of protecting people's pensions. And I think all of us on both sides of the aisle have a responsibility to work hard, to develop legislation that will, in fact, protect American workers and retirees in the pensions that they have been promised.

Over the last 5 or 6 years, I have spent hundreds and hundreds of hours meeting with stakeholders from companies that offer plans voluntarily to union members and others, trying to craft a bill. We have worked with Members on both sides of the aisle in order to develop this legislation.

So what are the goals here? The goals here are, very simply, to make sure that those companies who offer defined benefit pension plans continue to keep them. Secondly, for companies who make promises to their workers, there ought to be some insurance that they will keep the commitments that they have made to their workers. And, thirdly, to the Pension Benefit Guaranty Corporation that ensures that these pension payments will be made, we need to strengthen the financial condition at the PBGC to avert a possible taxpayer bailout in the future.

What does this underlying bill do? It will, in fact, ensure that there is more money contributed to these pension plans, whether it is restricting the use of credit balances, whether it is using a more accurate interest rate to determine what those obligations are, whether it is closing down the amount of averaging that goes on. There are a number of provisions that we will talk about when we get into this bill that will strengthen these pension plans by moving more money into them.

The second part of this is to reduce the long-term exposure to the Pension Benefit Guaranty Corporation that is, in fact, facing a deficit. We not only increase premiums paid by employers to the Pension Benefit Guaranty Corporation as part of strengthening them; but long term, by requiring companies to fully fund their plans at 100 percent, we will, in fact, reduce the exposure of the PBGC long term to a taxpayer bailout.

Now, we are going to hear a lot of debate today as this bill comes up from those who have their own views as to how this should work, and I would ask my colleagues let us not make perfect the enemy of the good. We have a very good, sound bill that we are bringing to the floor, supported by many employer groups, supported by virtually every major labor group in America as well. There is a finely tuned balance in this bill, and I do, in fact, believe that it will pass today with broad bipartisan support.

Now let me address one other issue. And that issue is the fact that there is no substitute today. As the gentleman knows, in the Rules Committee last night and in a letter to the Rules Committee yesterday, I asked them to make a substitute in order. There was a question posed to me last night about supporting such a measure. And I said I would support not only amendments, but also a substitute as long as it did not contain tax issues in there that were unrelated or dealt with the tax side of this bill. I do not know whether the substitute had these or not. But all I can say is that there is no one in this House who has argued more for a fair, open debate than I have.

I have been in the minority. I have been in your position. I have made the arguments that you are making, and I do believe that when we stymie debate in the House, we short circuit our constitutional responsibilities.

I am sorry there is not a substitute here. I am not sure why, but I am sure there are very good reasons. Whether there are tax issues involved in what you were offering, I do not know.

But the fact is that it is a good underlying bill. We are going to have a very healthy debate about it today. And I would urge my colleagues, on behalf of American workers, that we have a responsibility to pass this bill now.

Is it perfect? I am sure it is not, but I do believe when this bill passes here today with bipartisan support, we will get to a conference with the Senate where we will hammer out the differences between the House and Senate bill. But the longer this House waits to move this bill, the longer we make arguments, that we make perfect the enemy of the good, the more we are jeopardizing the retirement security of American workers. And I believe that we have to act now, get ourselves to conference, and get a bill passed that brings comprehensive reform to our pension laws.

□ 1130

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this debate has been on the rule to deal with a very important bill that has been talked about on both sides that needs to be addressed. I would just simply point out that there will be a motion to recommit, which has always been part of what the Republican majority has suggested on every major piece of legislation since we have been in control.

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

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

Mr. MCGOVERN. 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 question will be postponed.

## PROVIDING FOR CONSIDERATION OF H.R. 4437, BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

Mr. GINGREY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 610 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 610

*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. 4437) to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed two hours equally divided among and controlled by the chairman and ranking minority member of the Committee on the Judiciary and the chairman and ranking minority member of the Committee on Homeland Security. After general debate the bill shall be considered for amendment under the five-minute rule. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in part A of the report of the Committee on Rules accompanying this resolution, shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. All points of order against the bill, as amended, are waived. Notwithstanding clause 11 of rule XVIII, no further amendment to the bill, as amended, shall be in order except those printed in part B of the report of the Committee on Rules. Each further 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 further amendments are waived. After disposition of the further amendments printed in part B of the report of the Committee on Rules, the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. GINGREY) is recognized for 1 hour.

Mr. GINGREY. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 610 is a structured rule. It provides 2 hours of general debate, equally divided among and controlled by the chairman and ranking minority member of the Committee on the Judiciary and the chairman and ranking minority member of the Committee on Homeland Security. It waives all points of order against consideration of the bill. It provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary and now printed in the bill, modified by the amendment printed in part A of the Rules Committee report accompanying the resolution, shall be considered as adopted in the House and in the Committee of the Whole and shall be considered as read. It waives all points of order against the bill, as amended.

This resolution makes in order only those amendments printed in part B of the Rules Committee report. It provides that the amendments printed in part B of the report 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. It waives all points of order against amendments printed in part B of the report, and it provides that after disposition of the amendments printed in part B of the report, the Committee of the Whole shall rise without motion, and no further consideration of the bill shall be in order except by a subsequent order of the House.

Mr. Speaker, I rise today in support of House Resolution 610 and the underlying H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005.

Today, this Congress continues an ongoing and difficult debate. The need for fundamental immigration reform is critical and long overdue. In 1986, President Reagan pushed for reforms to address this problem. In 1996, the 104th Congress pushed for more reforms to address the problem. Now here we are 10 years later. This Congress once again has an opportunity to debate how to best secure our borders and remove incentives for illegal immigration by enacting meaningful changes.

I want to thank Chairman SENSENBRENNER and Chairman KING for this bill to close our borders to illegal immigrants and potential terrorists.

Mr. Speaker, since the attacks of September 11, 4 years ago, the debate on immigration is a fundamentally different debate. Border security is no longer just a legal or economic issue, which of course it still is. Secure borders now are also a matter of national security.

Procrastination and ignoring the problem will simply not make it go away. Every day we put off debating and passing comprehensive reform creates more and more opportunities for illegal immigrants to break our laws and violate our borders with the social, economic and political repercussions. For instance, there are an estimated 376,000 illegal immigrants who live in my home State of Georgia and bear an incredible toll on our social services and health care system.

The burden of illegal immigrants continues to increase for the American citizens as hospitals and schools are filled with illegal immigrants who cannot pay for their education and medical expenses.

Mr. Speaker, some of our schools continue to struggle simply because of the inherent burden of some illegal immigrants who require extensive remedial education at the expense of the American taxpayer and our schoolchildren. Regardless of their intention, this effect on our schools highlights the fact that illegal immigration is not a victimless crime.

As this Congress continues to contemplate ways to relieve escalating medical costs, part of that expense is to reimburse doctors, nurses and hospitals who have treated illegal immigrants who could not pay their medical bills. I am a firsthand witness to doctors who have treated patients, only to have them skip out on a medical bill because they are here illegally and they do not want to be traced.

Mr. Speaker, illegal immigration also endangers the lives of the immigrants themselves. I do not think this can be stated too forcefully; illegal immigration also endangers the lives of the immigrants themselves. Just ask the families of the 19 illegal immigrants who were found dead in the back of a tractor-trailer truck in Victoria, Texas, in May of 2003. As long as incentives for human border smuggling persist, we will continue to see people manipulated, abused and, yes, even killed through this deplorable process.

As I mentioned earlier and as is clearly evidenced and described, illegal immigration is not a victimless crime, and H.R. 4437 goes a long way to combating it on multiple fronts, from the provision against illegal immigrants themselves to those who would either incentivize or aid them in illegally entering this country.

First, Mr. Speaker, this bill will make illegal immigration into this country a felony offense, thereby increasing the penalties for jumping the border. H.R. 4437 will combat the economic incentives for illegal immigration by transferring the current employment verification system that validates Social Security numbers from a voluntary program to a mandatory program.

□ 1145

This bill also would increase civil and criminal penalties for those employers who knowingly and repeatedly employ or hire an illegal worker. Further, this

bill would mandate detention for all aliens apprehended at the border while also stiffening the penalties for aliens already removed once from this country who try to reenter.

Additionally, H.R. 4437 would increase existing and establish further mandatory minimums for alien smuggling and would vigorously combat through deportation members of alien street gangs. From the border to the street of every city, this bill takes a holistic approach to reforming our immigration laws, strengthening our border in defense of our country against a very real threat to not only American security but also, Mr. Speaker, American sovereignty.

I ask for my colleagues' full support of the rule and this underlying bill.

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

Mr. HASTINGS of Florida. Mr. Speaker, I thank the gentleman from Georgia (Mr. GINGREY), my friend, for yielding the time.

Mr. Speaker, I yield 3 minutes to the gentleman from Mississippi (Mr. THOMPSON), the distinguished ranking member of the Committee on Homeland Security.

Mr. THOMPSON of Mississippi. Mr. Speaker, I appreciate the gentleman from Florida (Mr. HASTINGS) yielding me time.

Mr. Speaker, this rule demonstrates that this legislation is simply not ready for consideration by the House. I have worked carefully with my Republican colleague on the Homeland Security Committee, Chairman KING, to develop a border security bill that has made many good provisions. This rule defeats that.

We could have given the House a Christmas present of a bipartisan bill that would secure our border in a real and fair way. Now this bill looks like a gift from an extremist Grinch, rather than one from Santa Claus. The Committee on the Judiciary has so loaded up our bill with controversial immigration proposals that now it is opposed by every reasonable business, immigration or human rights group in America. The Irish Lobby for Immigration Reform opposes this bill. The U.S. Chamber of Commerce opposes it. The American Bar Association opposes it. The U.S. Conference of Catholic Bishops opposes it. What reasonable group, Mr. Speaker, does not oppose it?

Now the Republican leadership is grasping for straws as it tries to figure out what amendments can best fit the bill. We are now here debating a rule with only half the amendments to be allowed, but we have not even seen what the final version of the bill looks like. How can we be here debating amendments when we do not even know what we are amending? This feels like another Republican power grab.

Mr. Speaker, we need to go slow and think this thing through. Let us take the bill back to the drawing board and pass a real border security bill that is fair and effective, not a partisan bill that almost no reasonable organization supports. And now, as we are about to return to our districts, let us think about the people that this bill will hurt, what kind of Christmas they will have.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. KING), the chairman of the Committee on Homeland Security.

(Mr. KING of New York asked and was given permission to revise and extend his remarks.)

Mr. KING of New York. Mr. Speaker, I thank the gentleman from Georgia (Mr. GINGREY), my good friend, for yielding me time.

I rise in support of this rule and the underlying legislation, H.R. 4437. Let me just say at the outset, because I know this will be a very heated debate over the next several days, let me say I have had nothing but the utmost cooperation from my good friend, Mr. THOMPSON of Mississippi, the ranking member of the Homeland Security Committee. We did report out a piece of legislation which did pass by voice vote. And while there were differences along the way, they were resolved equitably. I wanted to commend Mr. THOMPSON from Mississippi for that and put that on the record.

This legislation, which incorporates both the bill adopted in the Homeland Security Committee and then the bill adopted in the Judiciary Committee under Chairman SENSENBRENNER, is a wide-ranging bill. All of us realize that more has to be done on the issue of immigration.

This is probably the first step in a three-legged stool. Much more has to be done. This is a very, very significant first step in protecting our borders, because until the borders are protected, we cannot have any type of meaningful immigration reform.

Just several of the high points is that it requires the Secretary of Homeland Security to do whatever has to be done to secure the border, using whatever physical infrastructure is required, whatever technology is required, whatever personnel is required. It also for the first time requires the Secretary of Homeland Security and the Secretary of Defense to utilize military technology to control the borders. This is a significant first step and I believe very, very important.

It also ends the practice of catch and release, whereby hundreds of thousands of illegal immigrants coming across the border would be captured and then released back into society and asked to return at some time for a hearing. Many, of course, never did. And the last several years we saw a significant increase in immigrants coming across the southern border illegally other than Mexicans, OTMs, which raises significant homeland security and national security issues.

This has gone beyond just being an immigration issue, just an issue with social aspects. It also has very, very severe homeland security, internal security and national security issues. The attacks of 9/11 made us aware of that. That is why I urge adoption of the rule and the underlying legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 3½ minutes to the gentlewoman from Houston, Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished member of the Rules Committee for yielding me time, and I thank you, Mr. Speaker, very much for allowing me the opportunity to cast this debate hopefully in as broad a light as it possibly can be cast.

I would like to suggest that members of the Homeland Security Committee and Committee on the Judiciary all have participated in what we call the ''heavy lifting.'' As a member of both committees, I know that there are individuals, well intentioned, who had come together to try to construct, if you will, a reasonable response to this pending and ongoing concern that Americans have expressed.

But let me tell you why this rule is fractured and why the underlying bill needs to be returned back to not only the Rules Committee but the committee in order to put together for America the real comprehensive immigration reform that I hope legislators will bring to the floor of the House, as opposed to political sound bites.

It is well known that America is asking for the enforcement of our immigration laws, but they are not asking for enforcement only. They want a comprehensive reform package that provides a pathway to citizenship and legalization and enforcement. As someone who comes from a border State, and particularly Texas, I can assure you that there is no divide amongst many Members on the needs for security and protection at the border. It was our State that experienced the viciousness and the seriousness of the Victoria deaths. Out of that particular tragedy I authored alien smuggling legislation which I am proud to say was included in the 9/11 legislation passed almost a year ago.

We are very serious about border security, but this underlying bill does not speak to border security. What it does do is it provides the enormous burden of unfunded mandates and it is impracticable. It cannot work.

What it does, Mr. Speaker, and you will hear us say this over and over again today, it criminalizes 11 million individuals, as the number seems to be of undocumented individuals, in this country. That means that they may be here, taxpayers, children in school, recognizing that they may have come to this particular place undocumented. But it criminalizes them by their very presence. That means they have to be mandatorily put in jail. Whether you are an elderly person, whether you are a child, you have to be mandatorily put in jail.

The so-called ''employer verification program'' was a pilot program. There is

no guarantee in this bill for full funding for that, nor is there a guarantee that the data base is secure enough that the employers can rely upon it. I believe employers should verify who they are employing, but they cannot do it with a system that is fractured and is not funded the way it should be funded.

This bill requires a lot of work and the work is that we must combine comprehensive immigration reform. We must also address the question very quickly, Mr. Speaker, of giving the right equipment to border patrol agents. None of that is in there: night goggles, computers, helicopters, power boats.

In the Homeland Security Committee, Mr. THOMPSON of Mississippi, the ranking member, and myself offered an amendment that would equip the border patrol agents as they should be. You ask one American, Do you want your border patrol agents to have the right uniforms, the right ID, and the right equipment? They cannot function without helicopters, power boats, night goggles, computers and other technology to help them secure the border, nor can they work without doubling or tripling the number of border patrol agents. That is why this bill is fractured.

So I conclude by simply saying, respond to what America is asking us to do: comprehensive immigration reform, earned access to legalization and, as well strong, strong enforcement.

Mr. GINGREY. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DREIER), the distinguished chairman of the Rules Committee.

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

Mr. DREIER. Mr. Speaker, I thank my good friend for yielding, and I thank him for the work he has done on this and a wide range of other very important issues.

We have by virtue of calling up this rule begun the debate on what is clearly one of the most contentious, challenging, and difficult issues that we will face as an institution. We know that this is a volatile issue, but it is one that does need to be addressed.

This has really come to the forefront since September 11 of 2001, a renewed focus on something that is critically important for any nation, and that is the security of its borders. But in light of what we went through on September 11 and in light of the fact that we are in the midst of the global war on terror, there is a renewed understanding of how great the threat is to us.

We have just this week passed the renewal of the USA PATRIOT Act which is an important step in dealing with that. We have been able to put into place by virtue of seeing our friend from New York (Mr. KING) here, that he ably chairs the Committee on Homeland Security, a Department of Homeland Security. We have made major modifications in the way we deal with the security of our borders. And yet we continue to have a very serious problem with the security of our borders.

The thing that is very, very troubling for many of us is the prospect of seeing this debate degenerate into something that it should not be. I believe that we need to have a full recognition of the rights of every human being. I believe that it is absolutely essential for us to realize that 98 percent of the people who enter this country illegally enter here with one goal and one goal only, and that is to feed their families, to make a better life for themselves, to see their economic standing improve.

In light of that, Mr. Speaker, it is my hope that we can deal with the issue of the demand side on this question of border security and immigration reform in an important way. Much of what we are going to be doing in considering this legislation is focused on the supply side, trying to put a fence at the areas that are most dangerous. I am joining my colleague from California, Mr. HUNTER, and several others, Mr. ROYCE. I know Mr. GINGREY will be supportive of our amendment, to focus as we have along the 14-mile stretch from the Pacific Ocean to the Otay Mesa at San Diego. We will be having an amendment that will deal with that.

It is important that we do other things to focus on the supply side, but it is also equally important for us to focus on the demand side, the magnet that draws people into this country illegally. And it is also important for us to recognize, Mr. Speaker, that there is an economic demand that exists in the United States of America for a workforce. That is why as we proceed with this debate, I hope that we can recognize the dignity of everyone involved while doing all that we can to secure our borders and stem the flow of illegal immigration, in fact, bring an end to illegal immigration.

That is our goal. Our goal is to see an end to this kind of illegal action that has taken place. It is my sense that beginning with border security, which is what this measure that we are going to be considering does, it starts with that process.

□ 1200

I happen to think that as we look towards moving this legislation to the President's desk, it should include comprehensive reform.

Sitting on the front row here is my very good friend, the gentleman from Arizona (Mr. KOLBE), who is in his last term here. He, unfortunately, has chosen to retire, but one of the issues that he has championed is the recognition that an economic demand that exists in the United States of America is addressed. That is why I happen to concur that a responsible, non-amnesty-granting, temporary worker program is the right thing to do.

I believe it is in our national security interest. Why? We regularly hear, Mr. Speaker, about the 11 million people who are in this country illegally. We know that we have not seen a terrorist from Mexico in the United States, and that is something that I think is important for us to underscore again and again and again so the people do not engage in the demonization of Mexico and Mexicans, but I think it is important for us to realize that there is the threat that a terrorist could, in fact, be among the 11 million people who are in this country illegally.

That is why a responsible, non-amnesty-granting, temporary worker program allows people to come from the shadows, and it allows them to become part of society without making them American citizens but, in fact, focusing on the need for their work and the need for our security.

So, Mr. Speaker, as this debate proceeds, I hope very much that we are able to recognize the importance of security of our borders, recognize the importance of ending the problems of illegal immigration. We all have story after story, and I can tell my colleagues, coming from southern California, we have tremendous problems that have been inflicted, whether it is dealing with Mexican nationals who have reportedly killed law enforcement agents like Deputy Sheriff David March 3 months ago and fled into the country of Mexico, or dealing with the onerous responsibility of providing services to people who are here illegally and then, of course, other crime, and then, as I said a moment ago, the threat of terrorism. We need to deal with these issues.

But let us do the first step by focusing on border security, and then as we move ahead with this legislation, look comprehensively at the need to address this very, very challenging question.

Mr. HASTINGS of Florida. Mr. Speaker, would the Chair be kind enough to advise both sides as to the remaining time?

The SPEAKER pro tempore (Mr. ADERHOLT). The gentleman from Florida (Mr. HASTINGS) has 24 minutes remaining. The gentleman from Georgia (Mr. GINGREY) has 13½ minutes remaining.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong opposition to this restrictive rule and the underlying legislation which is nothing more than a xenophobic attack on immigrants who were in search of a better way of life for them and their children.

The United States has long been a shining example of inclusion and diversity. Even in some of our darkest days of intolerance, we have always managed to rise above our differences and fuel the flame beneath the world's melting pot. By resolving these differences, we have cultivated a strong Nation of citizens from around the world.

That is why I find it so troubling that some here today are determined

to extinguish that flame with so-called immigration reform that does little to address current immigration challenges or make our borders safer.

Even worse is the manner by which this legislation is being brought to the floor today. Under the rule, part A, a meager 15 of the 130 amendments that were offered in the Rules Committee are actually made in order. That means that 115 amendments, 115 ideas, 115 voices are all shut out from debate under this rule, and you multiply that by their constituents.

Included in these 115 blocked amendments is an amendment offered by my good friend from south Florida (Mr. MEEK) which sought to remedy some of the double standard immigration practices that apply to Haitian immigrants. Also blocked from consideration under the rule are the Sanchez-Conyers substitute and the President's very own guest worker visa program offered by Representatives KOLBE, BERMAN, FLAKE and GUTIERREZ.

I heard the chairman a moment ago say that we should have this guest worker program. Well, he did not put it in this rule, and all we had to do was do that to at least give some credibility to that argument. I was confused as I heard him. I did not know whose side he was on.

Clearly, the autocracy in this Republican-controlled body has reached an all-time high when a Republican President cannot get a vote on his own proposal.

I offered an amendment to the rule this morning at 7 a.m., barely 3 hours ago, that would have made the Kolbe-Berman amendment in order, but Republicans on the Rules Committee, except one, rejected my amendment and blocked this amendment from being considered by the House.

I understand that the House leadership has told many in the majority that it intends to consider the President's proposal on the floor sometime before the House recesses this week. If that is, in fact, the case then why did the chairman of the Rules Committee specifically tell his assembled Republican colleagues this morning to vote against making the President's proposal in order?

Perhaps it is because the majority do not want to consider what they cannot defeat or perhaps they have zero intention of ever considering the Kolbe-Berman amendment.

Whatever the reason, Mr. Speaker, if I had a dollar for every time the Republican leadership promised a Member something and failed to keep that promise since 1995, well, I would be a Republican. Words are cheap until they are backed up with action, and if anybody thinks that this part A is getting ready to have the necessary appropriations to undertake the meager measures on border security, then I have a bridge in Mr. NADLER's general area that I would like to sell them.

Our immigration laws are in dire need of revision. Everybody in this House knows, Mr. Speaker, that our immigration laws are broken. The current system is rife with double standards, quota limit, wet foot-dry foot, air foot-boat foot, student visas, just to name a few.

The bill before us today does absolutely nothing to address these shortcomings in the law. Instead, it is a harsh set of laws that favor heavy-handed enforcement in the guise of protection.

Mr. Speaker, my south Florida-based district staff, as I am speaking, work every single day, and today as I speak there are immigrants lined up throughout the halls of the office that I am privileged to serve, lined sometimes as many as 30 or 40 people deep snake through the hallways of that office. Some came here legally. Others arrived illegally. Regardless, all of them share the same American dream with one another and all of us. Our rich and diverse cultural backgrounds are our strength.

The underlying legislation, however, mocks that diversity and creates a system under which simply applying for citizenship would be risky. Arbitrary factors could deny naturalization on the basis of whether an alien is a person of good, moral character.

If this bill becomes law, anyone who has ever had an illegal presence in the United States will be arrested, convicted of a felony and jailed. Even those who seek asylum from honor killings, human trafficking, and forced prostitution would immediately be branded as felons and thrown into American jails.

This wide net of prosecution is also cast upon American citizens accused of helping, hiring or transporting potential immigrants. We have a wonderful and rich history of churches and philanthropic groups who serve as a lifeline for newly arrived immigrants who diligently seek legal status.

Business owners could also be fined and penalized for not verifying the citizenship of every worker through a new system of stringent checks that is an unfunded mandate at best. These checks would require approximately 7 million American employers to screen almost 140 million workers. These are the people who do not believe in big government.

We owe it to all who live here, whether born on this soil or not, the chance to contribute in a fair and meaningful way that protects our safety, provides for our prosperity and values our distinction.

Let me go back and say that there are people in this country, there are elected officials in this country whose parentage may very well have been brought here under certain circumstances, forced here under others, came here of their own volition, and likely were here illegally. Many of those persons are some of the stellar citizens in our respective communities. I look no further south than my district and can tell you the significant number of Cuban Americans and Haitian Americans that all of us ought be proud they are here and Jamaican Americans, the whole Caribbean basin, many from South America, everybody ain't in this category of 11 million people who we are getting ready to felonize.

We need look no further than our own families to appreciate the richness and diversity of this country. Most of us here today in this House are no more than two to three generations away from an ancestor who traveled to America by boat, plane or even on foot or were brought here by others to work for nothing. Many came at great risk and sacrifice. Thousands died on the way here. They journeyed here not for a free ride but for a better way of life, not for a handout but for a hand up.

I went a few months ago to the Statue of Liberty, and I had my grandson with me. We stood and we looked and he began to understand what it meant more and more. He is 11 years old, and I could see the pride as he thought of his many friends that he goes to school with that come from other countries and his understanding the need for tolerance that that great symbol signifies for this Nation.

As a nation of immigrants, it is beyond irresponsible to address this issue with such closed minds. It is time for us to undertake comprehensive illegal reform, and I urge my colleagues to reject this restrictive rule and the underlying legislation.

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

Mr. GINGREY. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, the gentleman from Florida is well aware that we will be having another rule and additional amendments made in order under that rule. Many of the ones that he mentioned hopefully will have that opportunity to be made in order and to be discussed.

I want to point out also that the give and take between the Democrats and the Republicans on the Rules Committee brought to the attention this potential problem of criminalizing existing illegal aliens, and we will have a manager's amendment in the next rule that corrects that.

Mr. Speaker, I yield 2½ minutes to the gentleman from Florida (Mr. KELLER), a member of the Judiciary Committee.

Mr. KELLER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, the number one issue my constituents raise with me at town hall meetings is the need to strengthen our border security by cracking down on illegal immigration. Why? Our current immigration system is broken, and the American people expect us to secure our borders.

We have 11 million illegal aliens in the United States. Illegal aliens continue to enter the U.S. from the Mexican border at the rate of 8,000 per day. Last year, our border patrol agents arrested 1.2 million illegal aliens attempting to enter the United States.

Significantly, 155,000 arrests of illegal immigrants were from countries other than Mexico. They included illegal immigrants from Iran, Iraq, Afghanistan.

This poses a very serious national security problem according to the testimony of CIA Director Porter Goss before the Senate Armed Services Committee on March 17 of this year.

Our law enforcement authorities believe that the mass movement of illegal aliens across the porous Mexican-U.S. border offers the perfect cover for terrorists seeking to enter the U.S., especially since tighter controls have been imposed to airports.

□ 1215

For example, when we go to the airport, our names are checked against the terrorist watch list. We have to produce a photo ID, we remove our shoes, we walk through a metal detector, and we send our briefcase and luggage through an x-ray machine to check if there are any weapons or explosive devices. Of course, this does not happen to 8,000 illegal aliens who enter the U.S. every day from the Mexican border. There are no terrorist background checks, no photo ID checks, no shoe removal, no metal detectors, and no x-ray machines for bombs or weapons.

In addition to threatening our national security, illegal immigration places a crushing burden on the American taxpayers who end up getting stuck with a tab for over $45 billion a year for the health care and education of illegal aliens.

Mr. Speaker, we must get serious about strengthening our border by cracking down on illegal immigration. Good fences make good neighbors, but that is only a start. We need to build more fences, hire more border patrol agents, use unmanned aerial drones to enforce the border, authorize our local sheriffs to enforce our immigration laws, and hold our employers accountable for knowingly hiring illegal workers. This bill is a step in the right direction. I urge my colleagues to take positive action today to secure our borders. Vote ''yes'' on the rule and vote ''yes'' on H.R. 4437.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 3½ minutes to the gentlewoman from California (Ms. MATSUI).

(Ms. MATSUI asked and was given permission to revise and extend her remarks.)

Ms. MATSUI. Mr. Speaker, I thank the gentleman from Florida for yielding me this time.

Mr. Speaker, today the House will debate legislation attempting to address immigration in our country, the challenges of which are extremely complex. Unfortunately, this legislation focuses entirely on border security and cracking down on illegal immigration. It fails to truly address the underlying issue of why people risk long boat rides in cargo containers, open rafts, extreme temperatures crossing deserts and risking death to come to the United States. This legislation overlooks the multifaceted nature of immigration and sadly ignores the fact the immigration system is broken.

Individuals waiting years to receive a visa is not an uncommon occurrence, nor is it rare for someone who came to the United States legally for work or to study to wait years at a time to bring their spouses, children, and loved ones to this country to join them.

What we cannot forget is that these are real people. My grandparents were immigrants. So many people from California, Florida, North Carolina, Texas, New York, I could go on and on, are immigrants. We should take a breath and hold for a moment before we rush this. What we do to address our broken immigration system must be thoughtful.

Like many of our districts, my hometown of Sacramento has an immigrant population, and in Sacramento that population includes many from Russia and the former Soviet Union. I am currently helping some of my constituents to bring their 13-year-old son back to the United States. Seven years ago, this constituent legally came to our country. This past June, the family traveled to Russia for vacation and on return was shocked to learn that their son's eligibility had been canceled. Their son was barred from reentering this country with his parents. We are working as fast as we can to correct what seems to be a mistake and reunite this family. Until then, this young boy must remain in Russia.

As a mother and grandmother, I cannot fathom what this family must be going through, nor can I understand how we have not reformed a system that would allow this separation. We must not put families in a situation where they feel they must make a decision to enter legally or illegally or separate their families. We must reform our immigration system to end backlogs and to help reunite families.

As I said before, this is a multifaceted issue of which family unification is only one component. There are an estimated 11 million undocumented immigrants in the United States. They came here illegally in search of a better opportunity, to work on farms and restaurants, hotels, and hundreds of other service jobs. Whether we like it or not, they are part of our economy and fill a needed gap in our labor force.

That is why the chamber of commerce, the business community, the immigrant community, and the President all support a guest worker program. That is the only way to end the incentive to enter the United States illegally to find work, and bring out of shadows the illegal immigrants already here.

This legislation, however, ignores these issues. That is not to say it is without some needed provisions. I support increasing the number of border patrol agents and port inspectors as well as adding radiation detection equipment at all of our maritime ports. However, on the whole, it is filled with ill-considered provisions. What makes this worse is that there is no reason why we need to rush this through in the last days of the session.

It is clear there are many questions surrounding this legislation. The action we take on immigration will reverberate across the country and affect people's lives. We need to know its full implications before we proceed. It is not clear that we need to do this now. The American people deserve clarity now.

I urge my colleagues to vote against this rule.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to my physician colleague from Florida (Mr. WELDON).

Mr. WELDON of Florida. Mr. Speaker, I rise in support of this rule and strong support of the underlying bill. As was previously stated on the debate on the rule on the pension bill, let us not make the perfect enemy of the good. This is not a good bill; it is a very good bill. It is a step in the right direction. Yes, we do need to do more.

I have been saying for years there is no greater disconnect between the will of the American people and the inside-the-Beltway environment than on this issue of border security and illegal immigration, and we are finally taking a strong step in the right direction here.

I want to address one of the most important features in this issue, and that is the fundamental issue of security, of securing our borders. The American people know that coming across the border are some people, and the FBI Director has testified to this effect in the committee that I serve on, there are some people who are not economic immigrants. They are coming from countries other than Mexico, Middle Eastern countries; they are here to do us harm. So it is desperately important we secure our borders.

This bill gets at one of the most important things that I think we need to address, and that is employer sanctions. I want to share with my colleagues a story. My brother-in-law installs air-conditioning systems on construction sites in New York, and he told me the story of how on one Monday morning he saw a new man on that construction site and he asked the gentleman to explain to him in his broken English when he came to the United States. He said that he had come on Saturday. He had come across the American border and he had gone to a safe house in the Southwest, gotten a plane ticket, flew to New York specifically for a job that was waiting for him there.

We need to put a stop to this, and we need stronger sanctions against employers. We need better enforcement of our existing laws. This is a national security issue. We desperately need to pass this bill, and we need to do more to end this way of illegal immigration and secure our borders.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 2

minutes to my classmate and good friend from New York (Mr. NADLER).

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

Mr. NADLER. Mr. Speaker, what an underhanded, sneaky rule and bill this is. The Social Security Act has a provision that prohibits, that prohibits the use of Social Security trust funds for changing the Social Security cards. This bill repeals that provision. CBO estimates the cost that could be incurred there by between 5 and $10 billion to be looted out of the Social Security and Medicare trust funds by that provision of this bill.

Now, I offered an amendment to restore this provision, to repeal the repeal. Mr. THOMAS ran into the Rules Committee at midnight last night with his own amendment, because they saw the damage this could do. And his own amendment ostensibly repeals this, but it does not. The Thomas amendment only applies to the Social Security trust fund, but allows the looting of the Medicare trust fund. It allows monies from all trust funds, including Social Security, to carry out section 707 of the bill, a smaller expenditure, but a major expenditure.

The Thomas amendment limits the prohibition against raiding the trust funds to title VII of the current bill. My amendment prohibits the use of these monies for any costs incurred in developing and implementing any change in Social Security cards. The Thomas amendment leaves open the possibility of future legislation looting all the trust funds.

Why will we not simply restore the provision, as my amendment would, that this bill would take out? Why are we opening up the Social Security and Medicare and disability and unemployment insurance trust funds to be looted for these purposes? Mr. THOMAS's amendment undoes a little of the damage, but it leaves wide loopholes. Wide.

Does anybody know that in the immigration bill we are debating is permission to take $5 billion to $10 billion out of Social Security and Medicare and unemployment and disability? Is that what we want to do?

I urge the Rules Committee, if it wants to make sure this is honestly done, make my amendment in order, not just Mr. THOMAS's amendment, which is self-executed in this rule, although only brought to the Rules Committee at midnight last night. Make my amendment in order so we can stop the looting of the Social Security, disability unemployment, and Medicare trust funds.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. KOLBE).

Mr. KOLBE. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in strong opposition to this rule and the underlying bill, H.R. 4437.

This is not a theoretical exercise for me. No congressional district in the United States suffers more from the degradations of illegal immigration than mine. For years now, we have had the largest number of apprehensions in the country. In fact, more people cross the border illegally in the border-patrolled Tucson sector than all, all of the other border States combined. The strain on law enforcement, on education, on health care, and on social services is severe. It is real and it hurts.

No, Mr. Speaker, in my part of the country we know what illegal immigration means. So I will listen today with a mixture of anger and amusement to all the things said here today by the experts who, for more than a decade, have paid no attention to the complaints and cries of alarm to those of us along the border.

Unfortunately, the bill before us today does nothing to solve the real problems of immigration. In fact, it is worse than nothing. It is worse than nothing because it tries to fool the public. It pulls the wool over their eyes. It pretends we are doing something to secure our border, when in fact we are doing nothing except throwing words and money at the problem.

Anyone who really cares about a solution to our immigration woes knows that border enforcement is one prong of a three-part solution. The first is enforcement, border enforcement and employer enforcement. Second, you have to have some means of allowing those who want to work and are willing to work come into the United States legally to work on a temporary basis. And, third, you have to deal with the 10, 11, 12 million people illegally in this country now.

Now, that is the reality. But the bill brought before us today is an amnesty bill. That is our dark little secret, the unspoken truth that no one wants to talk about.

Why do I say that? Because if you are really for enforcement, you have to get those 11 million people out of the country. We have to round them up, apprehend them, and ship them back home. But this bill does not do that. It ignores the problem.

The committee knows that. The leadership knows that. We are going down this path, continuing this charade, continuing to lie to the American people, continuing to pretend we are doing something to prevent illegal immigration.

The real question, Mr. Speaker, is when will this body have a serious dialogue about immigration issues? When will we engage each other and the American people on this difficult problem? We can only hope someday soon. But not today, Mr. Speaker. Not today. Not with this bill. Not with this rule.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. HAYWORTH).

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

Mr. HAYWORTH. Mr. Speaker, I thank my colleague across the aisle from Florida for yielding me this time. I rise in part because I disagree with the previous speaker in the well on many points dealing with the immigration question and border security. But I rise to oppose the rule precisely because of our disagreements.

I rise in reluctance, but these are the circumstances in which we confront this. Here we are rushing toward the Christmas holiday break and at the last nanosecond of the 11th hour, we are going to debate this important question. The American people deserve more.

No, there will not be unanimity on this question. Illegal immigration threatens our sovereignty, our security, and our reverence for the rule of law. It discriminates against American workers, particularly those who struggle to survive at the lowest rung of the economic ladder.

□ 1230

It also locks illegal aliens into a permanent underclass to be exploited and discarded. It demands that we give serious deliberative attention to the question of illegal immigration on our economy, on the health care system, our public school system and our criminal justice system. Because it is so important, we need more time to deliberate and debate and make the right choices. Vote no on the rule.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, there is a no-spin zone in my district called Radams. As a family-owned agriculture supply store, this is a place where normally 40 to 50 farmers and growers meet every morning before the sun comes up to talk about the issues of the day. I was there last Friday, and the mood was not a happy one because we all learned the day before the Judiciary Committee had marked up this immigration bill, and I do not think there was a single hearing on that bill.

I am one that does not believe you can do a broad, bipartisan comprehensive immigration bill without including provisions related to guest workers. My district is a microcosm of the country. That means I have agriculture. In fact, I have a ton of fruit and vegetable growers, and they rely on good, migrant labor to harvest their crops, starting with asparagus in the spring, going through apples in the fall. None of those family operators, none of them, can survive without migrant or seasonal workers. Many have between 50 and 150 workers. Yet in this legislation there are no provisions, none, that will help my growers keep a viable workforce in order to pick their crops.

Whenever I raise this issue, this shortcoming in this bill, I am told the Senate will deal with it. They will save it. They will take it up.

Mr. Speaker, why are we punting on the issues? Amendments were submitted to deal with this, but they were rejected by the Rules Committee. That

means if this rule passes, there will be no debate, let alone a vote on whether these provisions should be included. I think that is wrong, and I would urge my colleagues to vote no on this rule so amendments can be considered. This is too important an issue to gag this debate. Let us have a real debate, a constructive debate that will actually do something about the problem of illegal immigration.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2½ minutes to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

Listen to Mr. KOLBE, Mr. UPTON and Mr. HAYWORTH. This rule will bring to the floor a bill which is an insult to the intelligence of the American people and an insult to the intelligence of this body. We can have all kinds of debates; guest worker, no guest worker; birthright citizenship, no birthright citizenship; fence, no fence. These are legitimate arguments to have. But a bill that the Speaker of the House, the chairman of the Rules Committee and the chairman of the Judiciary Committee know cannot solve the crisis of illegal immigration, they know from the start, that they bring up and ask this body to pass in order to tell the American people they are doing something about a problem they know cannot be solved by the bill they are presenting is insulting the intelligence and trying to con the American people. This rule should be rejected for that reason.

In this bill is an employer-eligibility system which is a critical component of a comprehensive approach to dealing with illegal immigration. How are you ever going to impose effectively an employer-verification system where every person who is hired and every person who is now working has to be verified by the Social Security Administration when you have 11 million people in this country, almost all of whom are working except for the children, almost all of whom are working in undocumented fashion for an employer, the heart of the perishable fruit and vegetable industry, the heart of a number of other industries in this country, and expect that system to pass. This is a con.

There are only two things going on. Mr. J.D. HAYWORTH is right: Either they expect the Senate to add the program for adjustment of status and guest workers and bring it back to the floor to the squeals of many of the people on the other side of the aisle, or they intend never to see this bill again but say for the next elections that they are solving a problem or trying to solve a problem that they know intellectually and personally and have said over and over and over again in conversations and in the press will not solve the problem.

Vote no on the rule. Reject this con, put together a proposal that solves the crisis in illegal immigration, that does something about the national security issues that illegal immigration threatens, that does something about the humanitarian tragedy that now exists, that recognizes the crisis and that provides the solution that the American people are entitled to.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Speaker, I rise today in support of this rule as well as the underlying bill. This legislation is absolutely long overdue, and it is time we enact some very pragmatic and useful methods to prevent noncitizens from moving freely back and forth across our borders.

Quite frankly, the American people have lost their sense of humor when it comes to illegal immigration. They are demanding action, and it is no secret that our borders are porous. Every day, countless individuals are entering our country illegally and advantaging themselves of government services at taxpayer expense, and they take the jobs that otherwise could go to American citizens as well as those immigrants who came here legally, who abided by our laws.

It is time that we put these practices to an end. It is time that we as Americans take more responsibility in the fight against illegal immigration.

One of the most important provisions in this bill ends the ludicrous practice of catch and release with detained illegal aliens. Upon passage of this bill, anyone caught in this country illegally will be detained until further judicial action can be taken. It is unfathomable that this has not been the procedure since day one, but I am pleased that we are finally going to put an end to that.

Another key feature of this bill is the increased cooperation between Federal authorities and local law enforcement. This bill will reimburse sheriffs on the southern border for immigration enforcement and treat any individuals in their custody as Federal detainees. I hope this is the beginning and not the end of immigration reform. And let us keep in mind that while we are having this national debate today, that because our laws currently require us to count noncitizens for the purposes of the apportionment of congressional seats, that a number of Members of this House represent districts where fully 30 to 40 percent of their constituents are illegal aliens or noncitizens. So perversely, illegal aliens will be well represented in the U.S. Congress on the vote today to secure our border and to crack down on illegal aliens, and it is my hope that the issue of congressional representation for American citizens can also be dealt with as we move forward in this process so the full voice of the American people can be heard and that American citizens do not continue to have their vote disenfranchised. I support the rule and the underlying bill.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. ZOE LOFGREN).

Ms. ZOE LOFGREN of California. Mr. Speaker, every country has a right to control its borders to regulate who enters, and that includes the United States of America. Several speakers have mentioned that this obligation or right has been elevated since 9/11, and I think we all acknowledge that is true. Unfortunately, the administration has completely dropped the ball when it comes to regulation of those entering the United States without authorization.

I want to talk about just one item, which is the citation and release of individuals who are apprehended, who then promise to appear for their proceedings and then promptly disappear. The failure-to-appear rate appears to be in excess of 80 percent.

We have heard psychologists say that the definition of insanity is doing the same thing over and over again and expecting a different result. If so, the administration has lost its mind because this citation release program has not resulted in individuals appearing as promised.

Does this bill do anything about that, about the hundreds of thousands of individuals who are in America who made a promise to appear? Unfortunately, no, it does not.

Now, I am a member of the Homeland Security Committee and the House Judiciary Committee, and I have gone through this bill in some detail. There are some things that have absolutely nothing to do with unlawful immigration.

Section 404 of the act is something I want to mention because it is going to be important to a lot of Americans. This provision provides that the Secretary may deny admission to any person from countries that unreasonably delay or deny repatriation of citizens whom we have ordered deported. That is not about unlawful immigration; it is about people who are legal residents of the United States, husbands and wives of American citizens, who can be denied admission to the United States even though they are legal because the country they were born in has done something wrong. This is the new Chinese exclusion act which we repealed.

Mr. GINGREY. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Speaker, I just want to echo some of the sentiments of some of the earlier speakers, particularly Mr. KOLBE from Arizona. We have to have comprehensive reform, and until we do, we are ignoring the elephant in the middle of the room, and that is the 11 million or so illegals who are here at present.

This is called an enforcement bill, but it does nothing to enforce the law and the interior. It says that if you are employing an illegal, you have up to 6 years to check their status; 6 years for that person to stay in the shadows, driving without a license, driving without insurance. That is not enforcement.

We have to have comprehensive reform that deals with border security, a temporary worker program and also dealing effectively with those who are here illegally at present. I hope if we do this bill that we move quickly on to more comprehensive legislation that will do all we need to do.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. DOGGETT), my good friend and classmate.

Mr. DOGGETT. Mr. Speaker, all Americans have an interest in securing our borders, but this bill is neither genuine security nor fairness. It threatens American businesses, agriculture, and it certainly threatens to destroy border commerce and punish hardworking border citizens.

This is just the latest in a series of bad bills that appeal to the worst fears and prejudices of xenophobes rather than advancing meaningful immigration reform. It is a cynical bill because it is not comprehensive. There is no one-dimensional solution looking solely at law enforcement that can succeed. There is no wall that can be built high enough to solve this problem.

Over a century ago, my own great grandfather came from Sweden to Louisiana to chop sugar cane. He came for the same reason that many people come to this country today: to take on the most difficult jobs in order to have a better life. Until we address that economic concern with a meaningful guest worker program, we will not address immigration today.

To the extent that the border is inadequately patrolled, this is a direct result not of the lack of a law, but a lack of will by the Bush administration in its mismanagement of the Border Patrol. Last year, this Congress approved 2,000 additional Border Patrol agents, and President Bush responded by saying we only need 210 of those 2,000 Border Patrol agents for the entire country. In September, even our Texas Republican colleagues demanded that President Bush ''stop raiding our Texas Border Patrol'' and called the reassignment of agents to Arizona an ''outrageous action [that] is crippling border security in Texas.'' Today, instead of Border Patrol agents, the Republicans say we need to punish church workers who live their faith by assisting persons in need without first checking their visas.

The kind of measure we are offered is not new. It is part of a sad and recurring theme in American history. In the 19th century, it was the work of the Know-Nothing Party. Today, there are some in this Republican leadership who want to make the Republican Party the Know-Nothing Party of the 21st century.

Mr. GINGREY. Mr. Speaker, I reserve the balance of my time for the purpose of closing.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I include for the RECORD a letter from the U.S. Chamber of Commerce.

U.S. CHAMBER OF COMMERCE,
*Washington, DC, December 15, 2005.*

MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES: As you prepare to debate the rule on H.R. 4437, the ''Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005,'' the U.S. Chamber of Commerce opposes this legislation due to its adverse impact on employers, and asks that you reject House Resolution 610. The process that led to the development of this legislation and its consideration on the floor has been seriously flawed. The Chamber remains strongly opposed to this legislation.

We have been urging Congress to fix our broken immigration system for years, which would include securing our borders, creating an employment verification system that is fast and reliable, designing a temporary worker program that meets the future demand for workers, and reasonably addressing the legal status of the undocumented workers and their families currently in the United States. With the notable exception of border security, this bill, particularly the provisions of Title VII, would make our dysfunctional immigration system even worse.

The bill mandates that all employers of all sizes comply with a new government-run electronic/telephonic verification system to ensure that all employees are authorized to work. The concept is based on past, very limited pilot projects, and it is doubtful whether a new mandate of this breadth, applicable to over seven million employers and over 140 million employees, can realistically be implemented, particularly under this legislation's deadlines. These pilot projects were limited to approximately 3,600 employers and only new hires, while the legislation will also apply to existing employees. Further, there have been many practical, documented compliance problems under the program. While improvements have been made, the extension of this program to a much broader universe creates serious questions as to its practicality in the real world. The proposal also includes massive, in some cases uncapped, increases in penalties against employers. Paperwork violation penalties are increased 25 fold—up to $25,000 per individual.

Furthermore, the bill would now transform into a felony with jail terms what until now has been a civil violation for unauthorized presence in the United States subject to fines and deportation. This provision is directly inconsistent with the President's proposal, which recognizes the economic contributions of these workers, and that there should be a pathway for these workers to earn legal status. The debate over the proper status of these workers should have been left to the context of comprehensive reform initiatives.

The Chamber continues to support the concept of a workable verification system as part of a comprehensive reform package, but new laws that simply place more burdens on employers through worksite enforcement alone are not the answer. The Chamber has repeatedly called for legislation to: 1) provide for increased national security and control of our nation's borders; 2) create an efficient temporary worker program that allows employers to recruit immigrant workers when there is a shortage of domestic workers; and 3) provide legal status for qualified, screened undocumented migrants now in the country. As the President has stated, all three of these elements must be part of any initiative.

The Chamber has supported efforts to address these critical issues, and is dismayed that the House rule essentially forecloses any meaningful debate on these important areas. Due to the critical importance of this issue to the business community and our nation's economy, the Chamber will use the vote on this rule in our annual How They Voted rankings. Again the Chamber urges you to vote 'no' on House Resolution 610, the rule on H.R. 4437.

Sincerely,

R. BRUCE JOSTEN.

Mr. Speaker, the last paragraph of this letter states, ''The Chamber has supported efforts to address these critical issues and is dismayed that the House rule essentially forecloses any meaningful debate on these important areas. Due to the critical importance of this issue to the business community and our Nation's economy, the Chamber will use the vote on this rule in our annual How They Voted rankings. Again, the Chamber urges you to vote no on House Resolution 610, the rule on H.R. 4437.''

□ 1245

The Chamber's display is the same dismay that we have seen in a bipartisan fashion here. It is not that we do not need reform. But what is needed is comprehensive reform. And simply put, we are not reaching that with the legislation that we are making a rule on at this time. And we cannot do that, I might add, with a restrictive rule.

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

I will draw this first debate to a close by again congratulating the Committee on the Judiciary, Chairman SENSENBRENNER, as well as the Committee on Homeland Security and Chairman KING for bringing this comprehensive bill before the House today.

As I stated in my opening remarks, the problem of illegal immigration poses multiple threats and must be addressed in multiple ways, and I am pleased that this bill before us today goes a long way and is a great first step to attacking the problem, both from the supply-and-demand sides of the equation, as well as from the security side.

Mr. Speaker, through both strengthening our borders and diminishing economic incentives for illegal immigration, we stand a much better chance of truly reducing this problem in a meaningful way. And, yes, we do intend, in an expeditious manner, to address the issue of a solution for the existing 11 million illegals, most of whom are working hard to support their families.

Again, I want to encourage all of my colleagues on both sides of the aisle to support this rule so we can move forward with the initial consideration of the underlying bill.

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

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

Mr. HASTINGS of Florida. 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.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will now resume on the question of adopting House Resolution 602, which was previously postponed.

## PROVIDING FOR CONSIDERATION OF H.R. 2830, PENSION PROTECTION ACT OF 2005

The SPEAKER pro tempore. The pending business is the vote on adoption of House Resolution 602 on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

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

The vote was taken by electronic device, and there were—yeas 226, nays 199, not voting 8, as follows:

[Roll No. 633]

YEAS—226

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Cuellar
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Osborne
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—199

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Berkley
Boucher
Davis (FL)
Diaz-Balart, M.
Fitzpatrick (PA)
Fossella
Hyde
McHugh

□ 1313

Ms. VELÁZQUEZ and Mr. BARROW changed their vote from ''yea'' to ''nay.''

Messrs. GOHMERT, KIRK, LEACH and JONES of North Carolina changed their vote from ''nay'' to ''yea.''

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.

□ 1315

## PENSION PROTECTION ACT OF 2005

Mr. BOEHNER. Madam Speaker, pursuant to House Resolution 602, I call up the bill (H.R. 2830) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mrs. CAPITO). Pursuant to House Resolution 602, the bill is considered read.

The text of the bill is as follows:

H.R. 2830

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

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Pension Protection Act of 2005''.

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

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 101. Minimum funding standards.
Sec. 102. Funding rules for single-employer defined benefit pension plans.
Sec. 103. Limitations on distributions and benefit accruals under single-employer plans.
Sec. 104. Technical and conforming amendments.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 111. Minimum funding standards.
Sec. 112. Funding rules for single-employer defined benefit pension plans.
Sec. 113. Limitations on distributions and benefit accruals under single-employer plans.
Sec. 114. Technical and conforming amendments.

Subtitle C—Other provisions

Sec. 121. Modification of transition rule to pension funding requirements.
Sec. 122. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status.

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 201. Funding rules for multiemployer defined benefit plans.
Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.

Sec. 203. Measures to forestall insolvency of multiemployer plans.
Sec. 204. Withdrawal liability reforms.
Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.
Subtitle B—Amendments to Internal Revenue Code of 1986
Sec. 211. Funding rules for multiemployer defined benefit plans.
Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.
TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS
Sec. 301. Interest rate assumption for determination of lump sum distributions.
Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.
TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS
Sec. 401. Increases in PBGC premiums.
TITLE V—DISCLOSURE
Sec. 501. Defined benefit plan funding notices.
Sec. 502. Additional disclosure requirements.
Sec. 503. Notice to participants and beneficiaries of section 4010 filings with the PBGC.
TITLE VI—INVESTMENT ADVICE
Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.
Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.
TITLE VII—DEDUCTION LIMITATIONS
Sec. 701. Increase in deduction limits.
Sec. 702. Updating deduction rules for combination of plans.

## TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

### Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

**SEC. 101. MINIMUM FUNDING STANDARDS.**

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 306 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1085a) are repealed.

(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

''MINIMUM FUNDING STANDARDS

''SEC. 302. (a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

''(1) IN GENERAL.—A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 for the plan for the plan year,

''(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(i)) shall be paid by any employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

''(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer), and

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraphs (B) and (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

''(B) EFFECTS OF WAIVER.—If a waiver is granted under subparagraph (A) for any plan year—

''(i) in the case of a single-employer plan, the minimum required contribution under section 303 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(j), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any waived portion of the minimum funding standard for any preceding plan year.

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

''(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

''(I) the shortfall amortization charge (within the meaning of section 303(c)(1)) for the plan year, and

''(II) the aggregate total of shortfall amortization installments determined for succeeding plan years under section 303(c)(2),

is less than $1,000,000.

''(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan

year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

''(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and each affected party (as defined in section 4001(a)(21)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(7) CROSS REFERENCE.—For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(c) of such Code.

''(d) MISCELLANEOUS RULES.—

''(1) CHANGE IN METHOD OR YEAR.—If the funding method, the valuation date, or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary of the Treasury.

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d)) is unavailable or inadequate.

''(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.''.

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the items relating to sections 302 through 306 and inserting the following new item:

''Sec. 302. Minimum funding standards.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

**SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 101 of this Act) is amended further by inserting after section 302 the following new section.

''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

''SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—

''(1) IN GENERAL.—For purposes of section 302(a)(2)(A), except as otherwise provided in this subsection, the minimum required contribution with respect to a plan for a plan year is the target normal cost of the plan for the plan year.

''(2) SHORTFALL AMORTIZATION CHARGE.—In any case in which the value of plan assets (determined without regard to subsection (e)(1)) of the plan for the plan year which are held by the plan immediately before the valuation date is less than the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the sum of the amount determined under paragraph (1) plus a shortfall amortization charge for such plan year determined under subsection (c).

''(3) CREDIT FOR EXCESS ASSETS.—In any case in which the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date exceed the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the amount determined under paragraph (1), reduced by such excess.

''(4) PRE-FUNDING BALANCE.—In the case of any plan year in which—

''(A) the ratio (expressed as a percentage) which—

''(i) the value of plan assets (determined without regard to subsection (e)(1)(B)) for the preceding plan year, bears to

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (g)(1)),

is at least 80 percent, and

''(B) the plan sponsor elects (in such form and manner as shall be prescribed in regulations of the Secretary of the Treasury) to credit against the minimum required contribution for the current plan year all or a portion of the funding standard carryover balance and the pre-funding balance (to the extent provided in subsection (h)) for the preceding plan year (not in excess of such minimum required contribution),

the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor.

''(b) TARGET NORMAL COST.—For purposes of this section, subject to subsection (g)(2), the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. If any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base.

''(B) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under subparagraph (A) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for such plan year.

''(3) SHORTFALL AMORTIZATION BASE.—The shortfall amortization base of a plan for a plan year is the excess (if any) of—

''(A) the funding shortfall of such plan for such plan year, over

''(B) the present value (determined using the effective interest rate of the plan for the plan year) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year.

''(4) FUNDING SHORTFALL.—For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

''(A) the funding target of the plan for the plan year, over

''(B) the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date.

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization base for all preceding plan years shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (g)(1), the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year, bears to

''(B) the funding target of the plan for the plan year (determined without regard to subsection (g)(1)).

''(e) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) VALUE OF PLAN ASSETS.—For purposes of this section (other than paragraph (4) and subsections (a)(2) and (h)(3)), the term 'value of plan assets' means the excess of the value of plan assets (determined without regard to this paragraph) over the sum of—

''(A) the pre-funding balance of the plan maintained under subsection (h)(1), and

''(B) the funding standard carryover balance of the plan maintained under subsection (h)(2).

''(2) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

''(3) VALUATION DATE.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(4) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets (determined without regard to paragraph (1)) shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the current plan year and the 2 preceding plan years, and

''(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

''(5) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2006 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the preceding plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

''(6) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued during such plan year (after those taken into account under subparagraph (A)) shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(f) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1) would result in an amount equal to the funding target of the plan for such plan year.

''(B) APPLICATION TO FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an averaging methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which made and all succeeding plan years unless revoked with the consent of the Secretary of the Treasury.

''(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 205(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, and third segment rates for a plan with respect to any month shall be equal to the sum of—

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2006 and 66⅔ percent for plan years beginning in 2007.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—The mortality tables used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, as published by the Society of American Actuaries, as in effect on the date of the enactment of the Pension Protection Act of

2005 and as revised from time to time under subparagraph (B).

''(B) PERIODIC REVISION.—The Secretary of the Treasury shall (at least every 10 years) make revisions in any tables in effect under this paragraph to reflect the actual experience of pension plans and projected trends in such experience.

''(C) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2005) shall be phased in ratably over the first period of 5 plan years beginning in or after 2006 so as to be fully effective for the fifth plan year.

''(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a single-employer plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

''(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

''(g) SPECIAL RULES FOR AT-RISK PLANS.—

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (f), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (f), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

''(i) the present value of all benefits which are expected to accrue under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(ii) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(B) MINIMUM AMOUNT.—In no event shall the target normal cost of a plan determined under this paragraph be less than the target normal cost of such plan as determined without regard to this paragraph.

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COST.—

''(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(h) PRE-FUNDING AND FUNDING STANDARD CARRYOVER BALANCES.—

''(1) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan which is a single-employer plan shall maintain a pre-funding balance for purposes of this subsection. Such balance shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (3).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2006, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

''(C) DECREASES.—As of the valuation date for each plan year after 2006, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the pre-funding balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(D) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero—

''(i) no amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution, and

''(ii) no election may be made under subparagraph (C)(ii).

''(E) NO USE OF BALANCE TO REDUCE MINIMUM REQUIRED CONTRIBUTION IF USED TO AVOID SHORTFALL AMORTIZATION.—The amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution only if the plan sponsor has elected to apply subsection (a)(2) to the plan for such plan year by substituting 'subsection (e)(1)(B)' for 'subsection (e)(1)'.

''(2) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan to which this paragraph applies shall maintain a funding standard carryover balance for purposes of this subsection. Such balance shall consist of a beginning balance determined under subparagraph (C), decreased to the extent provided in subparagraph (D), and adjusted further as provided in paragraph (3).

''(B) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph applies to any plan which—

''(i) is a single-employer plan subject to this part,

''(ii) was in effect for a plan year beginning in 2005, and

''(iii) had a positive balance in the funding standard account under section 302(b) as in effect for such plan year and determined as of the end of such plan year.

''(C) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in subparagraph (B)(iii).

''(D) DECREASES.—As of the valuation date for each plan year after 2006, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the funding standard carryover balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(3) ADJUSTMENTS.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date of the plan (before applying any increase or decrease under paragraph (1) or (2)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance of the plan so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (e)(4), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation

date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(4) ELECTIONS.—Except as otherwise provided in this subsection, any election made under this subsection shall be made at such time and in such form and manner as the Secretary of the Treasury may provide.

''(5) COORDINATION WITH WAIVERS.—For purposes of this subsection, the term 'minimum required contribution' means for any plan year the minimum required contribution for such plan year determined without regard to this subsection and by taking into account any waiver under section 302(c) and any waiver amortization charge under subsection (j) for such plan year.

''(i) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

''(2) INTEREST.—Any payment required under paragraph (1) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at the effective rate of interest for the plan for such plan year.

''(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

''(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full, then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—

''(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), over

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

| ''In the case of the following required installment: | The due date is: |
|---|---|
| 1st | April 15 |
| 2nd | July 15 |
| 3rd | October 15 |
| 4th | January 15 of the following year |

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

''(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (e)(3)(B) if '100' were substituted for '500' therein) which—

''(i) is required to pay installments under paragraph (3) for a plan year, and

''(ii) has a liquidity shortfall for any quarter during such plan year.

''(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

''(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

''(F) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

''(j) WAIVER AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The minimum required contribution for any plan year under subsection (a) shall be increased by the amount of the waiver amortization charge (if any) for such plan year.

''(2) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for such plan year and each of the 4 preceding plan years.

''(3) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (2), the plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(4) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under paragraph (2) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for the preceding plan year.

''(5) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the excess (if any) of—

''(A) the portion of the minimum required contribution of such plan waived under section 302(c) for such plan year, over

''(B) the aggregate total of the waiver amortization installments, for such plan year and the 3 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 4 plan years preceding such plan year.

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of a plan covered under section 4021 of this Act and to which this subsection applies (as provided under paragraph (2)), if—

''(A) any person fails to make a contribution payment required by section 302 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

''(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (i), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 303.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of such Act (as amended by section 101) is amended by inserting after the item relating to section 302 the following new item:

''Sec. 303. Minimum funding standards for single-employer defined benefit pension plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

**SEC. 103. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

''(g) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

''(1) IN GENERAL.—No pension plan which is a single-employer plan may provide benefits which are payable upon the occurrence of—

''(A) a plant shutdown, or

''(B) any other unpredictable contingent event.

''(2) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

''(A) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(B) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

(1) IN GENERAL.—Section 206 of such Act (as amended by subsection (a)) is amended further by adding at the end the following new subsection:

''(h) FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—

''(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(A) IN GENERAL.—No amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(i) less than 80 percent, or

''(ii) would be less than 80 percent taking into account such amendment.

''(B) EXEMPTION.—Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution equal to—

''(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the amendment, and

''(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e)).

''(3) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(4) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

''(5) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

''(C) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

''(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to

10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(6) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of paragraph (5).

''(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this subsection, the term 'funding target attainment percentage' has the meaning provided such term under section 303(d)(2).''.

(2) NOTICE REQUIREMENT.—

(A) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended—

(i) by redesignating subsection (j) as subsection (k); and

(ii) by inserting after subsection (i) the following new subsection:

''(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction described in section 206(h)(2) or at such other time as may be deterimined by the Secretary.''.

(B) PENALTY.—Section 502(c)(1)(A) of such Act (29 U.S.C. 1132(c)(1)(A)) is amended by striking ''section 606'' and all that follows through ''101(f)'' and inserting ''section 606, 101(e)(1), 101(f), or 101(j)''.

(c) SPECIAL RULE FOR PLAN AMENDMENTS.—A plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(6) of the Internal Revenue Code of 1986 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of the amendments made by this section.

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after 2006.

(3) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

**SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) SECURITY REQUIRED FOR PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—Section 307 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085b) is amended—

(1) in subsection (a)(1), by striking ''current liability under the plan'' and inserting ''the funding target of the plan'';

(2) in subsection (a)(2), by striking ''funded current liability percentage'' and inserting ''funding target attainment percentage'', and by striking ''unfunded current liability'' and inserting ''unfunded liabilities'';

(3) in subsection (c)(1)(A), by striking ''funded current liability percentage'' and inserting ''funding target attainment percentage'', and by ''unfunded current liability'' and inserting ''unfunded liabilities'';

(4) in subsection (c)(1)(B), by striking ''current liability'' and inserting ''funding target'';

(5) in subsection (d), by striking ''funded current liability percentage'' each place it appears and inserting ''funding target attainment percentage''; and

(6) in subsection (f), by striking ''the terms'' and all that follows and inserting the following: ''the terms 'funding target' and 'funding target attainment percentage' shall have the meanings given such terms by sections 303(d) and 303(g)(4), respectively, and the term 'unfunded liabilities' means, with respect to any plan year, the excess (if any) of the funding target of the plan over the value of the plan's assets determined under section 303(e)(4).''

(b) MISCELLANEOUS AMENDMENTS.—Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking ''section 302(e)'' and inserting ''section 303(i)'';

(2) in section 101(f)(2)(B), by striking clause (i) and inserting the following:

''(i) a statement as to whether—

''(I) in the case of a single-employer plan, the plan's funding target attainment percentage (as defined in section 303(g)(4)), or

''(II) in the case of a multiemployer plan, the plan's funded current liability percentage (as defined in section 305(e)(4)),

is at least 100 percent (and, if note, the actual percentage);'';

(3) in section 103(d)(8)(B), by striking ''the requirements of section 302(c)(3)'' and inserting ''the applicable requirements of sections 303(f) and 304(c)(3)'';

(4) in section 103(d), by striking paragraph (11) and inserting the following:

''(11) If the current value of the assets of the plan is less than 70 percent of—

''(A) in the case of a single-employer plan, the funding target (as defined in section 303(d)) of the plan, or

''(B) in the case of a multiemployer plan, the current liability (as defined in section 304(c)(6)(C)) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).'';

(5) in section 203(a)(3)(C), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(6) in section 204(g)(1), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(7) in section 204(i)(2)(B), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(8) in section 204(i)(3), by striking ''funded current liability percentage (within the meaning of section 302(d)(8) of this Act)'' and inserting ''funding target attainment percentage (as defined in section 303(g)(4))'';

(9) in section 204(i)(4), by striking ''section 302(c)(11)(A), without regard to section 302(c)(11)(B)'' and inserting ''section 302(b)(1), without regard to section 302(b)(2)'';

(10) in section 206(e)(1), by striking ''subject to the additional funding requirements of section 302(d)'' and inserting ''in at-risk status under section 303(g)'', and by striking ''section 302(e)(5)'' and inserting ''section 303(i)(4)(E)(i)'';

(11) in section 206(e)(3), by striking ''section 302(e) by reason of paragraph (5)(A) thereof'' and inserting ''section 303(i)(3) by reason of section 303(i)(4)(A)''; and

(12) in sections 101(e)(3), 403(c)(1), and 408(b)(13), by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Protection Act of 2005''.

(c) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—Section 207 of such Act (29 U.S.C. 1057) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

## Subtitle B—Amendments to Internal Revenue Code of 1986

**SEC. 111. MINIMUM FUNDING STANDARDS.**

(a) IN GENERAL.—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

**''SEC. 412. MINIMUM FUNDING STANDARDS.**

''(a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

''(1) IN GENERAL.—A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

''(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(i)) shall be paid by any employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

''(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or

under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer), and

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraphs (B) and (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

''(B) EFFECTS OF WAIVER.—If a waiver is granted under subparagraph (A) for any plan year—

''(i) in the case of a single-employer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(j), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any amortization payment required to be made for such plan year with respect to any amortization described in subparagraph (B) of any waived portion of the minimum funding standard for any preceding plan year.

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement and Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of such Act), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement and Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

''(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

''(I) the shortfall amortization charge (within the meaning of section 303(c)(1)) for the plan year, and

''(II) the aggregate total of shortfall amortization installments determined for succeeding plan years under section 303(c)(2),

is less than $1,000,000.

''(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

''(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

''(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(d) MISCELLANEOUS RULES.—

''(1) CHANGE IN METHOD OR YEAR.—If the funding method, the valuation date, or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

''(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

''(4) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this paragraph if—

''(A) the plan is funded exclusively by the purchase of individual insurance contracts,

''(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

''(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

''(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

''(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

''(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

**SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

(a) IN GENERAL.—Subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended by adding at the end the following new part:

**''PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS**

**''SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

''(a) MINIMUM REQUIRED CONTRIBUTION.—

''(1) IN GENERAL.—For purposes of section 412(a)(2)(A), except as otherwise provided in this subsection, the minimum required contribution with respect to a plan for a plan year is the target normal cost of the plan for the plan year.

''(2) SHORTFALL AMORTIZATION CHARGE.—In any case in which the value of plan assets (determined without regard to subsection (e)(1)) of the plan for the plan year which are held by the plan immediately before the valuation date is less than the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the sum of the amount determined under paragraph (1) plus a shortfall amortization charge for such plan year determined under subsection (c).

''(3) CREDIT FOR EXCESS ASSETS.—In any case in which the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date exceed the funding target of the plan for the plan year, the minimum required contribution with respect to the plan for the plan year is the amount determined under paragraph (1), reduced by such excess.

''(4) PRE-FUNDING BALANCE.—In the case of any plan year in which—

''(A) the ratio (expressed as a percentage) which—

''(i) the value of plan assets (determined without regard to subsection (e)(1)(B)) for the preceding plan year, bears to

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (g)(1)),

is at least 80 percent, and

''(B) the plan sponsor elects (in such form and manner as shall be prescribed in regulations of the Secretary) to credit against the minimum required contribution for the current plan year all or a portion of the funding standard carryover balance and the pre-funding balance (to the extent provided in subsection (h)) for the preceding plan year (not in excess of such minimum required contribution),

the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor.

''(b) TARGET NORMAL COST.—For purposes of this section, subject to subsection (g)(2), the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. If any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—

''(A) IN GENERAL.—For purposes of paragraph (1), the plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base.

''(B) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under subparagraph (A) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for such plan year.

''(3) SHORTFALL AMORTIZATION BASE.—The shortfall amortization base of a plan for a plan year is the excess (if any) of—

''(A) the funding shortfall of such plan for such plan year, over

''(B) the present value (determined using the effective interest rate of the plan for the plan year) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year.

''(4) FUNDING SHORTFALL.—For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

''(A) the funding target of the plan for the plan year, over

''(B) the value of plan assets of the plan for the plan year which are held by the plan immediately before the valuation date.

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization base for all preceding plan years shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (g)(1), the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year, bears to

''(B) the funding target of the plan for the plan year (determined without regard to subsection (g)(1)).

''(e) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) VALUE OF PLAN ASSETS.—For purposes of this section (other than paragraph (4) and subsections (a)(2) and (h)(3)), the term 'value of plan assets' means the excess of the value of plan assets (determined without regard to this paragraph) over the sum of—

''(A) the pre-funding balance of the plan maintained under subsection (h)(1), and

''(B) the funding standard carryover balance of the plan maintained under subsection (h)(2).

''(2) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

''(3) VALUATION DATE.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(4) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets (determined without regard to paragraph (1)) shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the current plan year and the 2 preceding plan years, and

''(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

''(5) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2006 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the preceding plan year for the period beginning when such payment was

made and ending on the valuation date of the plan.

''(6) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued during such plan year (after those taken into account under subparagraph (A)) shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(f) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1) would result in an amount equal to the funding target of the plan for such plan year.

''(B) APPLICATION TO FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an averaging methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which made and all succeeding plan years unless revoked with the consent of the Secretary.

''(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(A)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, and third segment rates for a plan with respect to any month shall be equal to the sum of—

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2006 and 66⅔ percent for plan years beginning in 2007.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—The mortality tables used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, as published by the Society of American Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).

''(B) PERIODIC REVISION.—The Secretary shall (at least every 10 years) make revisions in any tables in effect under this paragraph to reflect the actual experience of pension plans and projected trends in such experience.

''(C) TRANSITION RULE.—Under regulations of the Secretary, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 412(d)(7)(C)(ii) (as in effect for plan years beginning in 2005) shall be phased in ratably over the first period of 5 plan years beginning in or after 2006 so as to be fully effective for the fifth plan year.

''(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a single-employer plan to which this paragraph applies may be changed without the approval of the Secretary.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement and Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

''(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

''(g) SPECIAL RULES FOR AT-RISK PLANS.—

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (f), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (f), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

''(i) the present value of all benefits which are expected to accrue under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(ii) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(B) MINIMUM AMOUNT.—In no event shall the target normal cost of a plan determined under this paragraph be less than the target normal cost of such plan as determined without regard to this paragraph.

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COST.—

''(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(h) PRE-FUNDING AND FUNDING STANDARD CARRYOVER BALANCES.—

''(1) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan which is a single-employer plan shall maintain a pre-funding balance for purposes of this subsection. Such balance shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (3).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2006, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

''(C) DECREASES.—As of the valuation date for each plan year after 2006, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the pre-funding balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(D) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero—

''(i) no amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution, and

''(ii) no election may be made under subparagraph (C)(ii).

''(E) NO USE OF BALANCE TO REDUCE MINIMUM REQUIRED CONTRIBUTION IF USED TO AVOID SHORTFALL AMORTIZATION.—The amount of the pre-funding balance of such plan may be credited under subsection (a)(4) in reducing the minimum required contribution only if the plan sponsor has elected to apply subsection (a)(2) to the plan for such plan year by substituting 'subsection (e)(1)(B)' for 'subsection (e)(1)'.

''(2) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—The plan sponsor of a pension plan to which this paragraph applies shall maintain a funding standard carryover balance for purposes of this subsection. Such balance shall consist of a beginning balance determined under subparagraph (C), decreased to the extent provided in subparagraph (D), and adjusted further as provided in paragraph (3).

''(B) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph applies to any plan which—

''(i) is a single-employer plan subject to this part,

''(ii) was in effect for a plan year beginning in 2005, and

''(iii) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

''(C) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in subparagraph (B)(iii).

''(D) DECREASES.—As of the valuation date for each plan year after 2006, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount credited under subsection (a)(4) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) the amount elected by the plan sponsor as a reduction in the funding standard carryover balance (for purposes of the determination under subsection (e)(1) and any other purpose under this section).

''(3) ADJUSTMENTS.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date of the plan (before applying any increase or decrease under paragraph (1) or (2)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance of the plan so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (e)(4), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(4) ELECTIONS.—Except as otherwise provided in this subsection, any election made under this subsection shall be made at such time and in such form and manner as the Secretary may provide.

''(5) COORDINATION WITH WAIVERS.—For purposes of this subsection, the term 'minimum required contribution' means for any plan year the minimum required contribution for such plan year determined without regard to this subsection and by taking into account any waiver under section 412(c) and any waiver amortization charge under subsection (j) for such plan year.

''(i) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

''(2) INTEREST.—Any payment required under paragraph (1) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at the effective rate of interest for the plan for such plan year.

''(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

''(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full, then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—

''(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), over

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

| ''In the case of the following required installment: | The due date is: |
|---|---|
| 1st | April 15 |
| 2nd | July 15 |
| 3rd | October 15 |
| 4th | January 15 of the following year |

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

''(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (e)(3)(B) if '100' were substituted for '500' therein) which—

''(i) is required to pay installments under paragraph (3) for a plan year, and

''(ii) has a liquidity shortfall for any quarter during such plan year.

''(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

''(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

''(F) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

''(j) WAIVER AMORTIZATION CHARGE.—

''(1) IN GENERAL.—The minimum required contribution for any plan year under subsection (a) shall be increased by the amount of the waiver amortization charge (if any) for such plan year.

''(2) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for such plan year and each of the 4 preceding plan years.

''(3) WAIVER AMORTIZATION INSTALLMENT.—For purposes of paragraph (2), the plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with such plan year. The annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(4) COMPUTATION ASSUMPTIONS.—The determination of any annual installment under paragraph (2) for any plan year shall be made as of the valuation date for such plan year, using the effective rate of interest for the plan for the preceding plan year.

''(5) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the excess (if any) of—

''(A) the portion of the minimum required contribution of such plan waived under section 412(c) for such plan year, over

''(B) the aggregate total of the waiver amortization installments, for such plan year and the 3 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 4 plan years preceding such plan year.

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of a plan covered under section 4021 of the Employee Retirement and Income Security Act of 1974 and to which this subsection applies (as provided under paragraph (2)), if—

''(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

''(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement and Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (i), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified

transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

**SEC. 113. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended—

(1) by striking the heading and inserting the following:

**''PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

''Subpart A. Minimum funding standards for pension plans.

''Subpart B. Benefit limitations under single-employer plans.

**''Subpart A—Minimum Funding Standards for Pension Plans**

''Sec. 430. Minimum funding standards for single-employer defined benefit pension plans.'',

and

(2) by adding at the end the following new subpart:

**''Subpart B—Benefit Limitations Under Single-employer Plans**

''Sec. 436. Prohibition of shutdown benefits and other unpredictable contingent event benefits.

**''SEC. 436. PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS.**

''(a) IN GENERAL.—No pension plan which is a single-employer plan may provide benefits which are payable upon the occurrence of—

''(1) a plant shutdown, or

''(2) any other unpredictable contingent event.

''(b) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

''(1) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(2) an event which is reasonably and reliably predictable (as determined by the Secretary).''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

(1) IN GENERAL.—Subpart B of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following:

**''SEC. 437. BENEFIT LIMIATIONS ON UNDERFUNDED PLANS.**

''(a) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(1) IN GENERAL.—No amendment to a defined benefit plan (other than a multiemployer plan) which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(A) less than 80 percent, or

''(B) would be less than 80 percent taking into account such amendment.

''(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution equal to—

''(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

''(B) in the case of subparagraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(b) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e) of the Employee Retirement and Income Security Act of 1974).

''(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(d) NEW PLANS.—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under subsections (a), (b), or (c) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(2) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of subsections (a), (b), and (c), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

''(3) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(A) a benefit limitation under subsections (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

''(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(f) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under subsection (b) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under subsection (c) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

''(g) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this section, the term 'funding target attainment percentage' has the meaning provided such term under section 430(d)(2).''.

(2) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by adding at the end the following new item:

''Sec. 437. Benefit limitations on underfunded plans.''.

(c) SPECIAL RULE FOR PLAN AMENDMENTS.—A plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(6) of the Internal Revenue Code of 1986 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of the amendments made by this section.

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after 2006.

(3) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

**SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

(1) Section 401(a)(29) of the Internal Revenue Code of 1986 is amended to read as follows:

''(29) BENEFIT LIMITATIONS ON PLANS IN AT-RISK STATUS.—In the case of a defined benefit

plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of sections 436 and 437.''.

(2) Section 401(a)(32) of such Code is amended—

(A) in subparagraph (A), by striking ''412(m)(5)'' each place it appears and inserting ''section 430(i)(4)'', and

(B) in subparagraph (C), by striking ''section 412(m)'' and inserting ''section 430(i)''.

(3) Section 401(a) is amended by striking paragraph (33) and by redesignating paragraph (34) as paragraph (33).

(b) VESTING RULES.—Section 411 of such Code is amended—

(1) by striking ''section 412(c)(8)'' in subsection (a)(3)(C) and inserting ''section 412(d)(2)'',

(2) in subsection (b)(1)(F)—

(A) by striking ''paragraphs (2) and (3) of section 412(i)'' in clause (ii) and inserting ''subparagraphs (B) and (C) of section 412(d)(4)'', and

(B) by striking ''paragraphs (4), (5), and (6) of section 412(i)'' and inserting ''subparagraphs (D), (E), and (F) of section 412(d)(4)'', and

(3) by striking ''section 412(c)(8)'' in subsection (d)(6)(A) and inserting ''section 412(e)(3)''.

(c) MERGERS AND CONSOLIDATIONS OF PLANS.—Subclause (I) of section 414(l)(2)(B)(i) of such Code is amended to read as follows:

''(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the target liability amount and target normal cost determined under section 430 in the case of any other plan), over''.

(d) TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.—

(1) Section 420(e)(2) of such Code is amended to read as follows:

''(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

''(A) the lesser of—

''(i) the fair market value of the plan's assets (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(e)(1)), or

''(ii) the value of plan assets as determined under section 430(e)(4) after reduction under section 430(e)(1), over

''(B) 125 percent of the sum of the target liability amount and the target normal cost determined under section 430 for such plan year.''.

(2) Section 420(e)(4) of such Code is amended to read as follows:

''(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(e) EXCISE TAXES.—

(1) IN GENERAL.—Subsections (a) and (b) of section 4971 of such Code are amended to read as follows:

''(a) INITIAL TAX.—If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

''(1) in the case of a single-employer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

''(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

''(b) ADDITIONAL TAX.—If—

''(1) a tax is imposed under subsection (a)(1) on any unpaid required minimum contribution and such amount remains unpaid as of the close of the taxable period, or

''(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.''.

(2) Section 4971(c) of such Code is amended—

(A) by striking ''the last two sentences of section 412(a)'' in paragraph (1) and inserting ''section 431'', and

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

''(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(i)(1)) for the plan year.

''(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 430 for the plan year.''.

(3) Section 4971(e)(1) of such Code is amended by striking ''section 412(b)(3)(A)'' and inserting ''section 412(a)(1)(A)''.

(4) Section 4971(f)(1) of such Code is amended—

(A) by striking ''section 412(m)(5)'' and inserting ''section 430(i)(4)'', and

(B) by striking ''section 412(m)'' and inserting ''section 430(i)''.

(5) Section 4972(c)(7) of such Code is amended by striking ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)'' and inserting ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))''.

(f) REPORTING REQUIREMENTS.—Section 6059(b) of such Code is amended—

(1) by striking ''the accumulated funding deficiency (as defined in section 412(a))'' in paragraph (2) and inserting ''the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431,'', and

(2) by striking paragraph (3)(B) and inserting:

''(B) the requirements for reasonable actuarial assumptions under section 430(f)(1) or 431(c)(3), whichever are applicable, have been complied with.''.

### Subtitle C—Other Provisions

#### SEC. 121. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

(a) IN GENERAL.—In the case of a plan that—

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after 2005.

(b) MODIFIED RULES.—The rules described in this subsection are as follows:

(1) For purposes of section 430(i)(3) of the Internal Revenue Code of 1986 and section 303(i)(3) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act, and

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act,

the mortality table shall be the mortality table used by the plan.

(c) CONFORMING AMENDMENT.—

(1) Section 769 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

(2) The amendment made this subsection shall apply to plan years beginning after 2005.

#### SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—In the case of a plan to which section 412 applies, if—

''(A) during any period in which any defined benefit plan of an employer is in an at-risk status (as defined in section 412(g)(3)), assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer, or

''(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors.''.

(b) CONFORMING AMENDMENTS.—Paragraphs (4) and (5) of section 409A(b) of such Code, as redesignated by subsection (a) of this subsection, are each amended by striking ''paragraph (1) or (2)'' each place it appears and inserting ''paragraph (1), (2), or (3)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

## TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

### Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

#### SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 102) is amended further by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of this section), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of this section).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of this section), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2006.—In the case of any amount amortized under section 302(b) (as in effect before the date of the enactment of Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2006, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

''(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

''(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

''(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of this section) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary of the Treasury.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which

are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of paragraph (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (D).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(D) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(5) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(E) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) AUTOMATIC EXTENSION.—The Secretary of the Treasury shall, upon application and subject to the requirements of paragraph (4), extend the period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of the plan for a period of time not in excess of 5 years.

''(2) EXTENSION FOR CAUSE.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) INTEREST RATE.—The interest rate applicable for any plan year under any arrangement entered into by the Secretary of the Treasury in connection with an extension granted under this subsection shall be the greater of—

''(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

''(B) the rate of interest used under the plan for determining costs.

''(4) REQUIRED NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan and to the Pension Benefit Guaranty Corporation.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

''(e) RESTRICTION ON PLAN AMENDMENTS.—

''(1) IN GENERAL.—No amendment of a multiemployer plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 302(c) or an extension of time under subsection (d) is in effect with respect to the plan, or if a plan amendment described in section 302(d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

''(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(B) only repeals an amendment described in section 302(d)(2), or

''(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by section 102 of this Act) is amended further by inserting after the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

**SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended further by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary of shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as set forth in the actuarial statement prepared for the preceding plan year under section 103(d).

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) employer and employee contributions projected for the current and succeeding plan years under the terms of such collective bargaining agreements (assuming the continued application of such terms indefinitely to such plan years), but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

''(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the actuary makes a contrary certification.

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status for a plan year under paragraph (1), is presumed to be in critical status under paragraph (3), or is deemed to be in critical status under subsection (b)(7), the plan sponsor shall, not later than 30 days after the date of the certification, presumption, or deeming, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

''(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (c)—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) REDUCTION IN UNFUNDED CURRENT LIABILITY.—A percentage decrease in the plan's unfunded current liability from the amount for the first plan year of the funding improvement period to the amount for the last plan year of the funding improvement period, of at least 33⅓ percent.

''(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

''(I) employs at least 5 percent of the active participants, or

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

''(A) RESTRICTIONS ON LUMP SUM DISTRIBUTIONS AND SIMILAR DISTRIBUTIONS.—The multiemployer plan may not be amended so as to provide additional forms of benefits.

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which—

''(I) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(II) only repeals an amendment described in section 302(d)(2), or

''(III) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (a)(1), the plan shall be in critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in critical status under subsection (a)(1) or is presumed to be in critical status under subsection (a)(3), or the first day of the plan year in the case of a plan that is deemed to be in critical status under subsection (b)(7).

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

''(A) the plan is in endangered status for the plan year and the requirements of subsection (b)(1) are not met with respect to the plan for such plan year, or

''(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

Any multiemployer plan which is in critical status under subparagraph (A) or (B) for a plan year shall be treated as in critical status also for the succeeding plan year.

''(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, taking into account any extension of amortization periods under section 304(e).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years.

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during either of the following 3 plan years.

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and

consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status,

''(ii) measures, agreed to by the bargaining parties, to provide funding relief, or

''(iii) reasonable measures to forestall possible insolvency (within the meaning of section 4245) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this section is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of the certification under subsection (a) that the plan is in critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law and the rate of future benefit accruals did not exceed 1 percent per plan year.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the joint request of all bargaining parties, each of whom—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) DEFAULT SCHEDULE.—In any case in which the bargaining parties, as of 240 days after the later of the date of the certification under subsection (a) or the first day the plan is in critical status under subsection (a)(3) or (b)(7), have not agreed to at least one of the proposed schedules, the plan sponsor shall amend the plan to implement the schedule required by subparagraph (A)(ii).

''(D) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(E) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (6) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 or a partial withdrawal by the employer under section 4205.

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

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) CURRENT LIABILITY.—The term 'current liability' has the meaning provided such term in section 304(c)(6)(C).

''(3) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means the excess (if any) of—

''(A) the current liability of the plan, over

''(B) the value of the plan's assets determined under section 304(c)(2).

''(4) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(5) UNFUNDED VESTED BENEFITS.—The term 'unfunded vested benefits' has the meaning provided in section 4241(b)(9).

''(6) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 304(a).

''(7) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(8) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(9) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(10) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended further by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2005.

**SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2005.

**SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY IN THE EVENT OF CERTAIN SALES OF EMPLOYER ASSETS TO UNRELATED PARTIES.—

(1) IN GENERAL.—Section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 4225.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) REPEAL OF LIMITATION TO 20 ANNUAL PAYMENTS.—

(1) IN GENERAL.—Section 4219(c)(1) of such Act (29 U.S.C. 1399(c)(1)) is amended by striking subparagraph (B).

(2) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to withdrawals occurring on or after January 1, 2006.

(c) PARTIAL WITHDRAWALS BY MEANS OF OUTSOURCING.—

(1) IN GENERAL.—Section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended—

(A) by striking ''or'' at the end of clause (i);

(B) by striking ''ceased.'' at the end of clause (ii) and inserting ''ceased, or''; and

(C) by adding at the end the following new clause:

''(iii) an employer continues to perform work of the type for which contributions are made under the plan by means of services of individuals who are not employees of such employer covered by such plan.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work performed on or after January 1, 2006.

(d) REPEAL OF SPECIAL RULE FOR LONG AND SHORT HAUL TRUCKING INDUSTRY.—

(1) IN GENERAL.—Subsection (d) of section 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to cessations to have obligations to contribute to multiemployer plans and cessations of covered operations under such plans occurring on or after January 1, 2006.

(e) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

**SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO PROCEDURES APPLICABLE TO DISPUTES INVOLVING WITHDRAWAL LIABILITY.**

(a) IN GENERAL.—Section 4221(f)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(f)(1)) is amended—

(1) in subparagraph (A) by inserting ''and'' after ''plan,'', and

(2) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

''(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subtitle,''.

(b) SMALL EMPLOYER.—Paragraph (2) of section 4221(f) of such Act is amended by adding at the end the following new subparagraph:

''(C) SMALL EMPLOYER.—For purposes of paragraph (1)(B)—

''(i) IN GENERAL.—The term 'small employer' means any employer who (as of immediately before the transaction referred to in paragraph (1)(B)) employs not more than 250 employees.

''(ii) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.''.

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 4221(f)(2) of such Act is amended by striking ''Notwithstanding'' and inserting ''In the case of a transaction occurring before January 1, 1999, and at least 5 years before the date of the complete or partial withdrawal, notwithstanding''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 on or after the date of the enactment of this Act.

## Subtitle B—Amendments to Internal Revenue Code of 1986

**SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (added by section 112 of this Act) is amended by adding at the end the following new section:

**''SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

''(a) IN GENERAL.—For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 418B.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of this section), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of this section).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of this section), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2006.—In the case of any amount amortized under section 412(b) (as in effect before the date of the enactment of Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2006, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

''(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such

date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

''(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

''(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of the Employee Retirement Income Security Act of 1974 or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of this section) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of paragraph (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (D).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities

occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(D) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(5) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(E) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(C) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) AUTOMATIC EXTENSION.—The Secretary shall, upon application and subject to the requirements of paragraph (4), extend the period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of the plan for a period of time not in excess of 5 years.

''(2) EXTENSION FOR CAUSE.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) INTEREST RATE.—The interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of—

''(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

''(B) the rate of interest used under the plan for determining costs.

''(4) REQUIRED NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan and to the Pension Benefit Guaranty Corporation.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

''(e) RESTRICTION ON PLAN AMENDMENTS.—

''(1) IN GENERAL.—No amendment of a multiemployer plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 412(c) or an extension of time under subsection (d) is in effect with respect to the plan, or if a plan amendment described in section 412(d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

''(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(B) only repeals an amendment described in section 412(d)(2), or

''(C) is required as a condition of qualification under part I of subchapter D, of chapter 1.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 418(b)(2) of such Code is amended—

(A) by striking ''section 412(b)(2)'' in subparagraph (A) and inserting ''section 431(b)(2)'', and

(B) by striking ''section 412(b)(3)(B)'' in subparagraph (B) and inserting ''section 431(b)(3)(B)''.

(2) Section 418B of such Code is amended—

(A) by striking ''section 412(b)(2)(A) or (B)'' in subsection (d)(1)(B) and inserting ''section 431(b)(2)(A) or (B)'',

(B) by striking ''section 412(c)(8)'' in subsection (e) and inserting ''section 412(g)(2)'', and

(C) by striking ''section 412(c)(3)'' in subsection (g) and inserting ''section 431(c)(3)''.

(3) Section 418D(a)(2) of such Code is amended—

(A) by striking ''section 412(c)(8)'' and inserting ''section 412(g)(2)'', and

(B) by striking ''section 412(c)(10)'' and inserting ''section 431(c)(8)''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding after the item relating to section 430 the following new item:

''Sec. 431. Minimum funding standards for multiemployer plans.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

**SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 431 the following new section:

**''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

''(a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary of shall certify to the Secretary whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as set forth in the actuarial statement prepared for the preceding plan year under section 6058.

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and

succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) employer and employee contributions projected for the current and succeeding plan years under the terms of such collective bargaining agreements (assuming the continued application of such terms indefinitely to such plan years), but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

''(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the actuary makes a contrary certification.

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status for a plan year under paragraph (1), is presumed to be in critical status under paragraph (3), or is deemed to be in critical status under subsection (b)(7), the plan sponsor shall, not later than 30 days after the date of the certification, presumption, or deeming, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

''(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (c)—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year under section 431 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) REDUCTION IN UNFUNDED CURRENT LIABILITY.—A percentage decrease in the plan's unfunded current liability from the amount for the first plan year of the funding improvement period to the amount for the last plan year of the funding improvement period, of at least 33⅓ percent.

''(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement and Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

''(I) employs at least 5 percent of the active participants, or

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

''(A) RESTRICTIONS ON LUMP SUM DISTRIBUTIONS AND SIMILAR DISTRIBUTIONS.—The multiemployer plan may not be amended so as to provide additional forms of benefits.

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which—

''(I) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(II) only repeals an amendment described in section 430(d)(2), or

''(III) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (a)(1), the plan shall be in critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor shall, in accordance with this subsection, amend the plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in critical status under subsection (a)(1) or is presumed to be in critical status under subsection (a)(3), or the first day of the plan year in the case of a plan that is deemed to be in critical status under subsection (b)(7).

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

''(A) the plan is in endangered status for the plan year and the requirements of subsection (b)(1) are not met with respect to the plan for such plan year, or

''(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

Any multiemployer plan which is in critical status under subparagraph (A) or (B) for a plan year shall be treated as in critical status also for the succeeding plan year.

''(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years.

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during either of the following 3 plan years.

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status,

''(ii) measures, agreed to by the bargaining parties, to provide funding relief, or

''(iii) reasonable measures to forestall possible insolvency (within the meaning of section 418E) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this section is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3) of the Employee Retirement and Income Security Act of 1974.

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of the certification under subsection (a) that the plan is in critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law and the rate of future benefit accruals did not exceed 1 percent per plan year.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the joint request of all bargaining parties, each of whom—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) DEFAULT SCHEDULE.—In any case in which the bargaining parties, as of 240 days after the later of the date of the certification under subsection (a) or the first day the plan is in critical status under subsection (a)(3) or (b)(7), have not agreed to at least one of the proposed schedules, the plan sponsor shall amend the plan to implement the schedule required by subparagraph (A)(ii).

''(D) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(E) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (6) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement and Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

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

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) CURRENT LIABILITY.—The term 'current liability' has the meaning provided such term in section 431(c)(6)(C).

''(3) UNFUNDED CURRENT LIABILITY.—The term 'unfunded current liability' means the excess (if any) of—

''(A) the current liability of the plan, over

''(B) the value of the plan's assets determined under section 431(c)(2).

''(4) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(5) UNFUNDED VESTED BENEFITS.—The term 'unfunded vested benefits' has the meaning provided in section 418(b)(7).

''(6) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 431(a).

''(7) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(8) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(9) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

''(10) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).''.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

''Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

## TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS

### SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subparagraph (B) of section 205(g)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as follows:

''(B) For purposes of subparagraph (A)—

''(i) The term 'applicable mortality table' means the mortality table specified for the plan year under section 303(f)(3).

''(ii) The term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(f)(2)(B).

''(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(f)(2)(C) if—

''(I) section 303(f)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields', and

''(II) the applicable percentage under section 303(f)(2)(G) were determined in accordance with the following table:

| "In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2006 | 20 percent |
| 2007 | 40 percent |
| 2008 | 60 percent |
| 2009 | 80 percent.''. |

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 is amended by striking clause (ii) and inserting the following:

''(ii) APPLICABLE MORTALITY TABLE.—For purposes of clause (i), the term 'applicable mortality table' means the mortality table specified for the plan under section 430(f)(3).

''(iii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(f)(2)(B).

''(iv) ADJUSTED FIRST, SECOND, AND THIRD SEGMENT RATES.—For purposes of clause (iii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(f)(2)(C) if—

''(I) section 430(f)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields', and

''(II) the applicable percentage under section 430(f)(2)(G) were determined in accordance with the following table:

| "In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2006 | 20 percent |
| 2007 | 40 percent |
| 2008 | 60 percent |
| 2009 | 80 percent.''. |

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

### SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

(a) IN GENERAL.—Clause (ii) of section 415(b)(2)(E) of the Internal Revenue Code of 1986 is amended to read as follows:

''(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greater of—

''(I) 5.5 percent,

''(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

''(III) the rate specified under the plan.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions made in years beginning after 2005.

## TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

### SEC. 401. INCREASES IN PBGC PREMIUMS.

(a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) by striking clause (i) of subparagraph (A) and inserting the following:

''(i) in the case of a single-employer plan—

''(I) for plan years beginning after December 31, 1990, and before January 1, 2008, an amount equal to the sum of $19, and

''(II) for plan years beginning after December 31, 2007, an amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;''; and

(2) by adding at the end the following new subparagraph:

''(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $30 or the adjusted amount determined under clause (ii).

''(ii) The adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year before the calendar year in which the plan year begins, to

''(II) the national average wage index (as so defined) for 2006,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

''(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2007 and before 2012—

''(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

| "If the plan year begins in: | The amount is: |
|---|---|
| 2008 | $21.20 |
| 2009 | $23.40 |
| 2010 | $25.60 |
| 2011 | $27.80; or |

''(II) if the plan's funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

| "If the plan year begins in: | The amount is: |
|---|---|
| 2008 | $22.67 |
| 2009 | $26.33 |
| 2010 or 2011 | the amount provided under clause (i) |

''(iv) For purposes of this subparagraph, the term 'funding target attainment percentage' has the meaning provided such term in section 303(d)(2).''.

(b) RISK-BASED PREMIUMS.—

(1) IN GENERAL.—Section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(A) in clause (ii), by striking ''$9.00'' and inserting ''the greater of $9.00 or the adjusted amount determined under clause (iii)'';

(B) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(C) by inserting after clause (ii) the following new clause:

''(iii) The adjusted amount determined under this clause is the product derived by multiplying $9.00 by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year before the calendar year in which the plan year begins, to

''(II) the national average wage index (as so defined) for 2006,

with such product, if not a multiple of $1.00, being rounded to the next higher multiple of $1.00 where such product is a multiple of $0.50 but not of $1.00, and to the nearest multiple of $1.00 in any other case.''.

(2) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act (as amended by paragraph (1)) is amended further—

(A) by striking clause (iv) and inserting the following:

''(iv)(I) For purposes of clause (ii), except as provided in subclause (II) or (III), the term

'unfunded benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and determined without regard to section 303(e)(1), and only vested benefits were taken into account.

''(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(f)(2)(C) if section 303(f)(2)(D)(i) were applied by substituting 'the yields' for 'the 3-year weighted average of yields', as applicable under rules similar to the rules under section 303(f)(2)(B).''; and

(B) by striking clause (iv).

(3) EFFECTIVE DATES.—

(A) The amendments made by paragraph (1) shall apply with respect to premiums for plan years after 2007.

(B) The amendments made by paragraph (2) shall apply with respect to plan years beginning after 2005.

## TITLE V—DISCLOSURE

### SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.

(a) APPLICATION OF PLAN FUNDING NOTICE REQUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) is amended—

(1) in the heading, by striking ''MULTIEMPLOYER'';

(2) in paragraph (1), by striking ''which is a multiemployer plan''; and

(3) in paragraph (2)(B)(iii), by inserting after ''plan'' the following: '', and a summary of the rules governing termination of single-employer plans under subtitle C of title IV''.

(b) INCLUSION OF STATEMENT OF THE RATIO OF INACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) is amended—

(1) in clause (iii)(II) (added by subsection (a)(3) of this section), by striking ''and'' at the end;

(2) in clause (iv), by striking ''apply.'' and inserting ''apply; and''; and

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

''(v) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

''(I) the number of participants who are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

''(II) the number of participants who are in covered service under the plan.''.

(c) COMPARISON OF MONTHLY AVERAGE OF VALUE OF PLAN ASSETS TO PROJECTED CURRENT LIABILITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) (as amended by the preceding provisions of this section) is amended further—

(1) by striking clause (ii) and inserting the following:

''(ii) a statement of a reasonable estimate of—

''(I) the value of the plan's assets for the plan year to which the notice relates,

''(II) projected liabilities of the plan for the plan year to which the notice relates, and

''(III) the ratio of the estimated amount determined under subclause (I) to the estimated amount determined under subclause (II);''; and

(2) by adding at the end (after and below clause (v)) the following:

''For purposes of determining a plan's projected liabilities for a plan year under clause (ii)(II), such projected liabilities shall be determined by projecting forward in a reasonable manner to the end of the plan year the liabilities of the plan to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on such liabilities, including any plan amendments in effect for the plan year.''.

(d) STATEMENT OF PLAN'S FUNDING POLICY AND METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

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

(2) in clause (v), by striking the period and inserting ''; and''; and

(3) by inserting after clause (v) the following new clause:

''(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates.''.

(e) NOTICE OF FUNDING IMPROVEMENT PLAN OR REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER PLAN.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

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

(2) in clause (vi), by striking the period and inserting ''; and''; and

(3) by inserting after clause (vi) the following new clause:

''(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.''.

(f) NOTICE PROVIDED TO ALTERNATE PAYEES.—Section 101(f)(1) of such Act (29 U.S.C. 1021(f)(1)) is amended by adding at the end the following new sentence: ''For purposes of this paragraph, the term 'beneficiary' includes an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)) receiving benefits under the plan.''.

(g) NOTICE DUE 90 DAYS AFTER PLAN'S VALUATION DATE.—Section 101(f)(3) of such Act (29 U.S.C. 1021(f)(3)) is amended by striking ''two months after the deadline (including extensions) for filing the annual report for the plan year'' and inserting ''90 days after the end of the plan year''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

### SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS.—Section 103 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(1) in subsection (a)(1)(B), by striking ''subsections (d) and (e)'' and inserting ''subsections (d), (e), and (f)''; and

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

''(f)(1) With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

''(A)(i) The ratio of the number of inactive participants under the plan as of the end of such plan year to the number of active participants as of the end of such plan year.

''(ii) For purposes of clause (i)—

''(I) the term 'active participant' means an individual who is in covered service under the plan, and

''(II) the term 'inactive participant' means an individual who is not in covered service under the plan who is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(B) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries borne by 2 or more pension plans as of immediately before such plan year, the funded ratio of each of such 2 or more pension plans as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

''(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage which—

''(i) the value of the plan's assets is of

''(ii) the liabilities to participants and beneficiaries under the plan.

''(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

''(A) The number of employers obligated to contribute to the plan as of the end of such plan year.

''(B) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.''.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

''(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and asset distributions under the plan.''.

(c) SUMMARY ANNUAL REPORT FILED WITHIN 15 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended—

(1) by striking ''Within 210 days after the close of the fiscal year,'' and inserting ''Within 15 business days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan''; and

(2) by striking ''the latest'' and inserting ''such''.

(d) INFORMATION MADE AVAILABLE TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(A) by redesignating subsection (j) as subsection (k); and

(B) by inserting after subsection (i) the following new subsection:

''(j) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

''(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or beneficiary or any employer having an obligation to contribute to the plan, who so requests in writing—

''(A) a copy of any actuary report received by the plan for any plan year which has been in receipt by the plan for at least 30 days, and

''(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt by the plan for at least 30 days.

''(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

''(A) shall be provided to the requesting participant, beneficiary, or employer within

30 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by inserting ''or 101(j)'' after ''101(f)(1)''.

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(j)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1) of this subsection) not later than 90 days after the date of the enactment of this Act.

(e) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (e) of this section) is amended further—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

''(k) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

''(1) IN GENERAL.—The plan sponsor or administrator shall furnish to any employer who has an obligation to contribute under the plan and who so requests in writing notice of—

''(A) the amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

''(B) the average increase, per participant under the plan, in accrued liabilities under the plan as of the end of such plan year to participants under such plan on whose behalf no employer contributions are payable (or their beneficiaries), which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

''(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

''(A) shall be provided to the requesting employer within 180 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 503. NOTICE TO PARTICIPANTS AND BENEFICIARIES OF SECTION 4010 FILINGS WITH THE PBGC.**

(a) IN GENERAL.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

''(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

''(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

''(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

''(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

''(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

''(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

''(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(a)(2).

''(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

''(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

''(D) AGGREGATE FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

''(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

''(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(h)(3).

''(3) COMPLIANCE.—

''(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

''(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

## TITLE VI—INVESTMENT ADVICE

**SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may

consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.

**SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(1) in paragraph (14), by striking ''or'' at the end;

(2) in paragraph (15), by striking the period at the end and inserting ''; or''; and

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

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''.

(b) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit

associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2006.

## TITLE VII—DEDUCTION LIMITATIONS

### SEC. 701. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan'' after ''section 501(a),'', and

(2) by inserting at the end the following new subsection:

''(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—For purposes of subsection (a)(1)(A)—

''(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

''(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

''(A) the greater of—

''(i) the sum of—

''(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430(e), plus

''(II) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or

''(ii) in the case of a plan that is not in an at-risk status (as determined under 430(g)), the sum of—

''(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(e) (with regard to section 430(g)), plus

''(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(b) (with regard to section 430(g)), over

''(B) the value of the plan assets (determined under section 430(e) as of the valuation date of the plan).

''(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.''.

(b) INCREASE IN DEDUCTION LIMIT FOR MULTIEMPLOYER PLANS.—Section 404(a)(1)(D) of such Code is amended to read as follows:

''(D) AMOUNT DETERMINED ON BASIS OF UNFUNDED CURRENT LIABILITY.—

''(i) IN GENERAL.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

''(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term 'unfunded current liability' means the excess (if any) of—

''(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

''(II) the value of the plan's assets determined under section 431(c)(2).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The last sentence of section 404(a)(1)(A) of such Code is amended by striking ''section 412'' each place it appears and inserting ''section 431''.

(2) Section 404(a)(1)(B) of such Code is amended—

(A) by striking ''In the case of a plan'' and inserting ''In the case of a multiemployer plan'',

(B) by striking ''section 412(c)(7)'' each place it appears and inserting ''section 431(c)(6)'',

(C) by striking ''section 412(c)(7)(B)'' and inserting ''section 431(c)(6)(A)(ii)'',

(D) by striking ''section 412(c)(7)(A)'' and inserting ''section 431(c)(6)(A)(i)'', and

(E) by striking ''section 412'' and inserting ''section 431''.

(3) Section 404(a)(1) of such Code is amended by striking subparagraph (F).

(4) Section 404(a)(7) of such Code is amended—

(A) in subparagraph (A)(ii), by striking ''for the plan year'' and all that follows and inserting ''which are multiemployer plans for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year.'',

(B) by striking ''section 412(l)'' in the last sentence of subparagraph (A) and inserting ''paragraph (1)(D)(ii)'', and

(C) by striking subparagraph (D) and inserting:

''(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(d)(3) shall be treated as a defined benefit plan.''.

(5) Section 404A(g)(3)(A) of such Code is amended by striking ''paragraphs (3) and (7) of section 412(c)'' and inserting ''sections 430(d)(1) and 431(c) (3) and (6)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after 2005.

**SEC. 702. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.**

(a) IN GENERAL.—Subparagraph (C) of section 404(a)(7) (relating to limitation on deductions where combination of defined contribution plan and defined benefit plan) is amended by adding after clause (ii) the following new clause:

''(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''.

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

''(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2005.

The SPEAKER pro tempore. In lieu of the amendments recommended by the Committees on Education and the Workforce and Ways and Means printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 109–346 is adopted.

The text of the amendment in the nature of a substitute is as follows:

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

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Pension Protection Act of 2005''.

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

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 101. Minimum funding standards.
Sec. 102. Funding rules for single-employer defined benefit pension plans.
Sec. 103. Benefit limitations under single-employer plans.
Sec. 104. Technical and conforming amendments.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 111. Minimum funding standards.
Sec. 112. Funding rules for single-employer defined benefit pension plans.
Sec. 113. Benefit limitations under single-employer plans.
Sec. 114. Technical and conforming amendments.

Subtitle C—Other Provisions

Sec. 121. Modification of transition rule to pension funding requirements.
Sec. 122. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status.

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 201. Funding rules for multiemployer defined benefit plans.
Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.
Sec. 203. Measures to forestall insolvency of multiemployer plans.
Sec. 204. Withdrawal liability reforms.
Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Subtitle B—Amendments to Internal Revenue Code of 1986

Sec. 211. Funding rules for multiemployer defined benefit plans.
Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.
Sec. 213. Measures to forestall insolvency of multiemployer plans.

TITLE III—OTHER PROVISIONS

Sec. 301. Interest rate for 2006 funding requirements.
Sec. 302. Interest rate assumption for determination of lump sum distributions.
Sec. 303. Interest rate assumption for applying benefit limitations to lump sum distributions.
Sec. 304. Distributions during working retirement.
Sec. 305. Other amendments relating to prohibited transactions.
Sec. 306. Correction period for certain transactions involving securities and commodities.
Sec. 307. Recovery by reimbursement or subrogation with respect to provided benefits.
Sec. 308. Exercise of control over plan assets in connection with qualified changes in investment options.
Sec. 309. Clarification of fiduciary rules.
Sec. 310. Government Accountability Office pension funding report.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notices.
Sec. 502. Additional disclosure requirements.
Sec. 503. Section 4010 filings with the PBGC.

TITLE VI—INVESTMENT ADVICE

Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.
Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.

TITLE VII—BENEFIT ACCRUAL STANDARDS

Sec. 701. Benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS
Sec. 801. Increase in deduction limits.
Sec. 802. Updating deduction rules for combination of plans.
TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS
Sec. 901. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.
Sec. 902. Saver's credit.
Sec. 903. Increasing participation through automatic contribution arrangements.
Sec. 904. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.
Sec. 905. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
Sec. 906. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans.
Sec. 907. Direct payment of tax refunds to individual retirement plans.
Sec. 908. IRA eligibility for the disabled.
Sec. 909. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY
Sec. 1001. Treatment of annuity and life insurance contracts with a long-term care insurance feature.
Sec. 1002. Disposition of unused health and dependent care benefits in cafeteria plans and flexible spending arrangements.
Sec. 1003. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.
TITLE XI—GENERAL PROVISIONS
Sec. 1101. Provisions relating to plan amendments.

## TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

### Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

**SEC. 101. MINIMUM FUNDING STANDARDS.**

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 308 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1086) are repealed.

(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

''MINIMUM FUNDING STANDARDS

''SEC. 302. (a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

''(1) IN GENERAL.—A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 for the plan for the plan year,

''(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(j)) shall be paid by the employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

''(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

''(B) EFFECTS OF WAIVER.—If a waiver is granted under subparagraph (A) for any plan year—

''(i) in the case of a single-employer plan, the minimum required contribution under section 303 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(e), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

''(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

''(I) the aggregate unpaid minimum required contribution for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2),

is less than $1,000,000.

''(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

''(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 303 for the plan year which is not paid on or before the due date (as determined under section 303(j)(1)) for the plan year.

''(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 for the plan year.

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

''(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if such Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to to each affected party (as defined in section 4001(a)(21)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(7) RESTRICTION ON PLAN AMENDMENTS.—

''(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(B) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

''(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(ii) only repeals an amendment described in subsection (d)(2), or

''(iii) is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

''(8) CROSS REFERENCE.—For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(c) of such Code.

''(d) MISCELLANEOUS RULES.—

''(1) CHANGE IN METHOD OR YEAR.—If the funding method, the valuation date, or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary of the Treasury.

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d)) is unavailable or inadequate.

''(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.''.

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the items relating to sections 302 through 308 and inserting the following new item:

''Sec. 302. Minimum funding standards.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2006.

**SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 101 of this Act) is amended further by inserting after section 302 the following new section:

''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

''SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 302(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a single-employer plan—

''(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

''(A) the target normal cost of the plan for the plan year,

''(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

''(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

''(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

''(3) in any other case, the target normal cost of the plan for the plan year.

''(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(3) SHORTFALL AMORTIZATION BASE.—For purposes of this section, the shortfall amortization base of a plan for a plan year is the excess (if any) of—

''(A) the funding shortfall of such plan for such plan year, over

''(B) the sum of—

''(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

''(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

''(4) FUNDING SHORTFALL.—For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

''(A) the funding target of the plan for the plan year, over

''(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

''(5) EXEMPTION FROM NEW SHORTFALL AMORTIZATION BASE.—

''(A) IN GENERAL.—In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

''(B) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of the plan for the plan year, the applicable percentage of such funding target determined under the following table:

| ``In the case of a plan year beginning in calendar year: | The applicable percentage is: |
|---|---|
| 2007 | 92 percent |
| 2008 | 94 percent |
| 2009 | 96 percent |
| 2010 | 98 percent. |

''(ii) LIMITATION.—Clause (i) shall not apply with respect to any plan year after 2007 unless the ratio (expressed as a percentage) which—

''(I) the value of plan assets for each preceding plan year after 2006 (as reduced under subsection (f)(4)(A)), bears to

''(II) the funding target of the plan for such preceding plan year (determined without regard to subsection (i)(1)),

is not less than the applicable percentage with respect to such preceding plan determined under clause (i).

''(iii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term 'non-deficit reduction plan' means any plan—

''(I) to which this part (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2006, and

''(II) to which section 302(d) (as so in effect) did not apply for such plan year.

''(6) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

''(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

''(e) WAIVER AMORTIZATION CHARGE.—

''(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

''(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c).

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

''(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

''(1) ELECTION TO MAINTAIN BALANCES.—

''(A) PRE-FUNDING BALANCE.—The plan sponsor of a single-employer plan may elect to maintain a pre-funding balance.

''(B) FUNDING STANDARD CARRYOVER BALANCE.—

''(i) IN GENERAL.—In the case of a single-employer plan described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

''(ii) PLANS MAINTAINING FUNDING STANDARD ACCOUNT IN 2006.—A plan is described in this clause if the plan—

''(I) was in effect for a plan year beginning in 2006, and

''(II) had a positive balance in the funding standard account under section 302(b) as in effect for such plan year and determined as of the end of such plan year.

''(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

''(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

''(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

''(C) may be reduced at any time, pursuant to an election under paragraph (5).

''(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 302(c).

''(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

''(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

''(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent.

''(4) EFFECT OF BALANCES ON AMOUNTS TREATED AS VALUE OF PLAN ASSETS.—In the case of any plan maintaining a pre-funding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

''(A) APPLICABILITY OF SHORTFALL AMORTIZATION BASE.—For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

''(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

''(ii) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS WITH PBGC.—For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term 'specified balance' means the pre-funding balance or the funding standard carryover balance, as the case may be.

''(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

''(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in

reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

''(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

''(6) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

''(C) DECREASES.—As of the valuation date for each plan year after 2007, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(7) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

''(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

''(C) DECREASES.—As of the valuation date for each plan year after 2007, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(8) ADJUSTMENTS TO BALANCES.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary of the Treasury.

''(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

''(2) VALUATION DATE.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 36-month period ending with the month which includes the valuation date, and

''(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

''(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the current plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

''(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

''(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of

such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary of the Treasury.

''(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 205(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2007 or 2008, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

''(iii) NEW PLANS INELIGIBLE.—Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table using Scale AA published by the Society of Actuaries (as in effect on the date of the enactment of the Pension Protection Act of 2005), projected as of the plan's valuation date.

''(B) SUBSTITUTE MORTALITY TABLE.—

''(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary of the Treasury for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

''(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary of the Treasury determines that—

''(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

''(II) such table is significantly different from the table described in subparagraph (A).

''(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless such Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

''(C) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in present value resulting from the difference in the assumptions as set forth in the mortality table specified in subparagraph (A) and the assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

''(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the plan is a single-employer plan to which title IV applies,

''(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

''(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

''(i) SPECIAL RULES FOR AT-RISK PLANS.—

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (h), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

''(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

''(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

''(2) INTEREST.—Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

''(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

''(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full, then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—

''(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), over

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

| 'In the case of the following required installment: | The due date is: |
|---|---|
| 1st | April 15 |
| 2nd | July 15 |
| 3rd | October 15 |
| 4th | January 15 of the following year |

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

''(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (f)(2)(B) if '100' were substituted for '500' therein) which—

''(i) is required to pay installments under paragraph (3) for a plan year, and

''(ii) has a liquidity shortfall for any quarter during such plan year.

''(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

''(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

''(F) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of a plan to which this subsection applies (as provided under paragraph (2)), if—

''(A) any person fails to make a contribution payment required by section 302 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

''(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with

respect to a lien imposed by subsection (a) and the amount with respect to such lien.

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 303.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of such Act (as amended by section 101) is amended by inserting after the item relating to section 302 the following new item:

''Sec. 303. Minimum funding standards for single-employer defined benefit pension plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

**SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

''(g) FUNDING-BASED LIMITATION ON SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

''(1) IN GENERAL.—No defined benefit plan which is a single-employer plan may provide benefits to which participants are entitled solely by reason of the occurrence of a plant shutdown or any other unpredictable contingent event occurring during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year—

''(A) is less than 80 percent, or

''(B) would be less than 80 percent taking into account such occurrence.

''(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303) equal to—

''(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the occurrence referred to in paragraph (1), and

''(B) in the case of paragraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

Rules similar to the rules of subsection (h)(6) shall apply for purposes of this paragraph.

''(3) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

''(A) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(B) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

''(4) NEW PLANS.—Paragraph (1) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(5) DEEMED REDUCTION OF FUNDING BALANCES.—A rule similar to the rule of subsection (h)(8) shall apply for purposes of this subsection.''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

(1) IN GENERAL.—Section 206 of such Act (as amended by subsection (a)) is amended further by adding at the end the following new subsection:

''(h) FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—

''(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(A) IN GENERAL.—No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(i) less than 80 percent, or

''(ii) would be less than 80 percent taking into account such amendment.

For purposes of this subparagraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as effected by plan amendment.

''(B) EXEMPTION.—Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303) equal to—

''(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the amendment, and

''(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

''(A) IN GENERAL.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e)).

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

''(3) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(4) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(5) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such subsections, to be the valuation date of the plan for the current plan year.

''(C) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

''(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(6) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of a payment described in paragraph (2)(A) or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence

shall not apply to a prohibition or cessation required by reason of paragraph (5).

''(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'funding target attainment percentage' means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

''(i) the value of plan assets for the plan year (as determined under section 303(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 303(f)), bears to

''(ii) the funding target of the plan for the plan year (as determined under section 303(d)(1), but without regard to section 303(i)(1)).

''(B) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—

''(i) IN GENERAL.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance), subparagraph (A) shall be applied without regard to such reduction.

''(ii) TRANSITION RULE.—Clause (i) shall be applied to plan years beginning after 2006 and before 2011 by substituting for '100 percent' the applicable percentage determined in accordance with the following table:

| ''In the case of a plan year beginning in calendar year: | The applicable percentage is: |
|---|---|
| 2007 | 92 percent |
| 2008 | 94 percent |
| 2009 | 96 percent |
| 2010 | 98 percent. |

''(iii) LIMITATION.—Clause (ii) shall not apply with respect to any plan year after 2007 unless the funding target attainment percentage (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance) of the plan for each preceding plan year after 2006 was not less than the applicable percentage with respect to such preceding plan year determined under clause (ii).

''(8) DEEMED REDUCTION OF FUNDING BALANCES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers—

''(A) IN GENERAL.—In any case in which a benefit limitation under paragraph (1), (2), or (3) would (but for this paragraph and determined without regard to paragraph (1)(B)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this Act as having made an election under section 303(f)(5) to reduce the balance of the pre-funding balance and the funding standard carryover balance for the plan year (in a manner consistent with the requirements of section 303(f)(5)(B)) by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

''(B) EXCEPTION FOR INSUFFICIENT FUNDING BALANCES.—Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.''.

(2) NOTICE REQUIREMENT.—

(A) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended—

(i) by redesignating subsection (j) as subsection (k); and

(ii) by inserting after subsection (i) the following new subsection:

''(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a defined benefit plan which is a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction described in section 206(h)(2) or at such other time as may be determined by the Secretary.''.

(B) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking ''section 302(b)(7)(F)(vi)'' and inserting ''sections 101(j) and 302(b)(7)(F)(vi)''.

(c) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after 2006.

(3) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

(d) SPECIAL RULE FOR 2007.—For purposes of applying paragraph (5) of section 206(h) of such Act (as added by this section) to current plan years (within the meaning of such paragraph) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the funding target attainment percentage of the plan for the preceding year. For purposes of the preceding sentence, the term ''modified funded current liability percentage'' means the funded current liability percentage (as defined in section 302(l)(8) of such Act), reduced as described in subparagraph (E) thereof in the case of a plan with a funded current liability percentage (as so defined and before such reduction) which is less than 100 percent.

**SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) MISCELLANEOUS AMENDMENTS TO TITLE I.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking ''section 302(e)'' and inserting ''section 303(j)'';

(2) in section 101(f)(2)(B), by striking clause (i) and inserting the following:

''(i) a statement as to whether—

''(I) in the case of a defined benefit plan which is a single-employer plan, the plan's funding target attainment percentage (as defined in section 303(d)(2)), or

''(II) in the case of a defined benefit plan which is a multiemployer plan, the plan's funded percentage (as defined in section 305(d)(2)),

is at least 100 percent (and, if not, the actual percentage);'';

(3) in section 103(d)(8)(B), by striking ''the requirements of section 302(c)(3)'' and inserting ''the applicable requirements of sections 303(h) and 304(c)(3)'';

(4) in section 103(d), by striking paragraph (11) and inserting the following:

''(11) If the current value of the assets of the plan is less than 70 percent of—

''(A) in the case of a defined benefit plan which is a single-employer plan, the funding target (as defined in section 303(d)(1)) of the plan, or

''(B) in the case of a defined benefit plan which is a multiemployer plan, the current liability (as defined in section 304(c)(6)(D)) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).'';

(5) in section 203(a)(3)(C), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(6) in section 204(g)(1), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(7) in section 204(i)(2)(B), by striking ''section 302(c)(8)'' and inserting ''section 302(d)(2)'';

(8) in section 204(i)(3), by striking ''funded current liability percentage (within the meaning of section 302(d)(8) of this Act)'' and inserting ''funding target attainment percentage (as defined in section 303(d)(2))'';

(9) in section 204(i)(4), by striking ''section 302(c)(11)(A), without regard to section 302(c)(11)(B)'' and inserting ''section 302(b)(1), without regard to section 302(b)(2)'';

(10) in section 206(e)(1), by striking ''section 302(d)'' and inserting ''section 303(j)(4)'', and by striking ''section 302(e)(5)'' and inserting ''section 303(j)(4)(E)(i)'';

(11) in section 206(e)(3), by striking ''section 302(e) by reason of paragraph (5)(A) thereof'' and inserting ''section 303(j)(3) by reason of section 303(j)(4)(A)''; and

(12) in sections 101(e)(3), 403(c)(1), and 408(b)(13), by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Protection Act of 2005''.

(b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—Title IV of such Act is amended—

(1) in section 4001(a)(13) (29 U.S.C. 1301(a)(13)), by striking ''302(c)(11)(A)'' and inserting ''302(b)(1)'', by striking ''412(c)(11)(A)'' and inserting ''412(b)(1)'', by striking ''302(c)(11)(B)'' and inserting ''302(b)(2)'', and by striking ''412(c)(11)(B)'' and inserting ''412(b)(2)'';

(2) in section 4003(e)(1) (29 U.S.C. 1303(e)(1)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(3) in section 4010(b)(2) (29 U.S.C. 1310(b)(2)), by striking ''302(f)(1)(A) and (B)'' and inserting ''303(k)(1)(A) and (B)'', and by striking ''412(n)(1)(A) and (B)'' and inserting ''430(k)(1)(A) and (B)'';

(4) in section 4011(b) (29 U.S.C. 1311(b)), by striking ''to which'' and all that follows and inserting ''for any plan year for which the plan's funding target attainment percentage (as defined in section 303(d)(2)) is at least 90 percent.'';

(5) in section 4062(c)(1) (29 U.S.C. 1362(c)(1)), by striking paragraphs (1), (2), and (3) and inserting the following:

''(1)(A) in the case of a single-employer plan, the sum of the shortfall amortization charge (within the meaning of section 303(c)(1) of this Act and 430(c)(1) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 303(c)(2) of this Act and section 430(c)(2) of such Code (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 302(c) of this Act and section 412(c) of such Code which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), or

''(B) in the case of a multiemployer plan, the outstanding balance of the accumulated funding deficiencies (within the meaning of section 304(a)(2) of this Act and section 431(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 302(c) of this Act or section 412(c) of such Code and for extensions of the amortization period under section 304(d) of this Act or section 431(d) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

''(2)(A) in the case of a single-employer plan, the sum of the waiver amortization charge (within the meaning of section 303(e)(1) of this Act and 430(j)(2) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 303(e)(2) of this Act and section 430(j)(3) of such Code, or

''(B) in the case of a multiemployer plan, the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 412(c) of such Code (if any), and

''(3) in the case of a multiemployer plan, the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304(d) of this Act or section 431(d) of such Code (if any);'';

(6) in section 4071 (29 U.S.C. 1371), by striking ''302(f)(4)'' and inserting ''303(k)(4)'';

(7) in section 4243(a)(1)(B) (29 U.S.C. 1423(a)(1)(B)), by striking ''302(a)'' and inserting ''304(a)'', and, in clause (i), by striking ''302(a)'' and inserting ''304(a)'';

(8) in section 4243(f)(1) (29 U.S.C. 1423(f)(1)), by striking ''303(a)'' and inserting ''302(c)'';

(9) in section 4243(f)(2) (29 U.S.C. 1423(f)(2)), by striking ''303(c)'' and inserting ''302(c)(3)''; and

(10) in section 4243(g) (29 U.S.C. 1423(g)), by striking ''302(c)(3)'' and inserting ''304(c)(3)''.

(c) AMENDMENTS TO REORGANIZATION PLAN NO. 4 OF 1978.—Section 106(b)(ii) of Reorganization Plan No. 4 of 1978 (ratified and affirmed as law by Public Law 98–532 (98 Stat. 2705)) is amended by striking ''302(c)(8)'' and inserting ''302(d)(2)'', by striking ''304(a) and (b)(2)(A)'' and inserting ''304(d)(1), (d)(2), and (e)(2)(A)'', and by striking ''412(c)(8), (e), and (f)(2)(A)'' and inserting ''412(d)(2) and 431(d)(1), (d)(2), and (e)(2)(A)''.

(d) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—

(1) IN GENERAL.—Section 207 of such Act (29 U.S.C. 1057) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 207.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2006.

## Subtitle B—Amendments to Internal Revenue Code of 1986

### SEC. 111. MINIMUM FUNDING STANDARDS.

(a) NEW MINIMUM FUNDING STANDARDS.—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

### ''SEC. 412. MINIMUM FUNDING STANDARDS.

''(a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

''(1) IN GENERAL.—A plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

''(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

''(A) in the case of a defined benefit plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

''(B) in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

''(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

''(b) LIABILITY FOR CONTRIBUTIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j)) shall be paid by the employer responsible for making contributions to or under the plan.

''(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a defined benefit plan which is not a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

''(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

''(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

''(A) IN GENERAL.—If—

''(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

''(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

''(B) EFFECTS OF WAIVER.—If a waiver is granted under subparagraph (A) for any plan year—

''(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and

''(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

''(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

''(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

''(A) the employer is operating at an economic loss,

''(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

''(C) the sales and profits of the industry concerned are depressed or declining, and

''(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

''(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section and part III of this subchapter, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

''(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

''(A) SECURITY MAY BE REQUIRED.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

''(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

''(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

''(i) provide the Pension Benefit Guaranty Corporation with—

''(I) notice of the completed application for any waiver or modification, and

''(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

''(ii) consider—

''(I) any comments of the Corporation under clause (i)(II), and

''(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

''(C) EXCEPTION FOR CERTAIN WAIVERS.—

''(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

''(I) the aggregate unpaid minimum required contribution (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, and

''(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than $1,000,000.

''(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

''(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

''(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

''(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

''(i) with respect to such employer, and

''(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

''(6) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

''(7) RESTRICTION ON PLAN AMENDMENTS.—

''(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

''(B) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

''(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

''(ii) only repeals an amendment described in subsection (d)(2), or

''(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1.

''(d) MISCELLANEOUS RULES.—

''(1) CHANGE IN METHOD OR YEAR.—If the funding method, the valuation date, or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

''(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

''(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

''(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

''(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

''(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

''(e) PLANS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section applies to a plan if, for any plan year beginning after December 31, 2006—

''(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

''(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

''(2) EXCEPTIONS.—This section shall not apply to—

''(A) any profit-sharing or stock bonus plan,

''(B) any insurance contract plan described in paragraph (3),

''(C) any governmental plan (within the meaning of section 414(d)),

''(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

''(E) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

''(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

''(3) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this paragraph if—

''(A) the plan is funded exclusively by the purchase of individual insurance contracts,

''(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

''(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

''(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

''(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

''(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

(a) IN GENERAL.—Subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended by adding at the end the following new part:

**"PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS**

**"SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

''(a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

''(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

''(A) the target normal cost of the plan for the plan year,

''(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

''(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

''(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

''(3) in any other case, the target normal cost of the plan for the plan year.

''(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

''(c) SHORTFALL AMORTIZATION CHARGE.—

''(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

''(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(3) SHORTFALL AMORTIZATION BASE.—For purposes of this section, the shortfall amortization base of a plan for a plan year is the excess (if any) of—

''(A) the funding shortfall of such plan for such plan year, over

''(B) the sum of—

''(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

''(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

''(4) FUNDING SHORTFALL.—For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

''(A) the funding target of the plan for the plan year, over

''(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

''(5) EXEMPTION FROM NEW SHORTFALL AMORTIZATION BASE.—

''(A) IN GENERAL.—In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

''(B) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting, for the funding target of the plan for the plan year, the applicable percentage of such funding target determined under the following table:

| ''In the case of a plan year beginning in calendar year: | The applicable percentage is: |
|---|---|
| 2007 | 92 percent |
| 2008 | 94 percent |
| 2009 | 96 percent |
| 2010 | 98 percent. |

''(ii) LIMITATION.—Clause (i) shall not apply with respect to any plan year after 2007 unless the ratio (expressed as a percentage) which—

''(I) the value of plan assets for each preceding plan year after 2006 (as reduced under subsection (f)(4)(A)), bears to

''(II) the funding target of the plan for such preceding plan year (determined without regard to subsection (i)(1)),

is not less than the applicable percentage with respect to such preceding plan determined under clause (i).

''(iii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term 'non-deficit reduction plan' means any plan—

''(I) to which this part (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2006, and

''(II) to which section 412(d) (as so in effect) did not apply for such plan year.

''(6) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

''(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

''(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

''(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

''(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

''(e) WAIVER AMORTIZATION CHARGE.—

''(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

''(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

''(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

''(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

''(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

''(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

''(1) ELECTION TO MAINTAIN BALANCES.—

''(A) PRE-FUNDING BALANCE.—The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a pre-funding balance.

''(B) FUNDING STANDARD CARRYOVER BALANCE.—

''(i) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

''(ii) PLANS MAINTAINING FUNDING STANDARD ACCOUNT IN 2006.—A plan is described in this clause if the plan—

''(I) was in effect for a plan year beginning in 2006, and

''(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

''(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

''(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

''(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

''(C) may be reduced at any time, pursuant to an election under paragraph (5).

''(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

''(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

''(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

''(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

''(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent.

''(4) EFFECT OF BALANCES ON AMOUNTS TREATED AS VALUE OF PLAN ASSETS.—In the case of any plan maintaining a pre-funding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

''(A) APPLICABILITY OF SHORTFALL AMORTIZATION BASE.—For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

''(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(i) IN GENERAL.—For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

''(ii) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS WITH PBGC.—For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term 'specified balance' means the pre-funding balance or the funding standard carryover balance, as the case may be.

''(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

''(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

''(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

''(6) PRE-FUNDING BALANCE.—

''(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

''(B) INCREASES.—As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

''(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

''(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

''(C) DECREASES.—As of the valuation date for each plan year after 2007, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(7) FUNDING STANDARD CARRYOVER BALANCE.—

''(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

''(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

''(C) DECREASES.—As of the valuation date for each plan year after 2007, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

''(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

''(ii) any reduction in such balance elected under paragraph (5).

''(8) ADJUSTMENTS TO BALANCES.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

''(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

''(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

''(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

''(2) VALUATION DATE.—For purposes of this section—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

''(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

''(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

''(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

''(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

''(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

''(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 36-month period ending with the month which includes the valuation date, and

''(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent

or greater than 110 percent of the fair market value of such assets at such time.

''(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

''(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

''(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the current plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

''(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

''(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

''(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

''(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

''(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(2) INTEREST RATES.—

''(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

''(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

''(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

''(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

''(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

''(C) SEGMENT RATES.—For purposes of this paragraph—

''(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

''(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

''(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

''(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

''(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

''(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

''(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(D)(i) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2007 or 2008, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

''(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

''(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2007 and 66⅔ percent for plan years beginning in 2008.

''(iii) NEW PLANS INELIGIBLE.—Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

''(3) MORTALITY TABLE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table using Scale AA published by the Society of Actuaries (as in effect on the date of the enactment of the Pension Protection Act of 2005), projected as of the plan's valuation date.

''(B) SUBSTITUTE MORTALITY TABLE.—

''(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

''(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary determines that—

''(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

''(II) such table is significantly different from the table described in subparagraph (A).

''(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

''(C) TRANSITION RULE.—Under regulations of the Secretary, any difference in present value resulting from the difference in the assumptions as set forth in the mortality table specified in subparagraph (A) and the assumptions as set forth in the mortality table described in section 412(l)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

''(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

''(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

''(B) any difference in the present value of such future benefit payments resulting from

the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

''(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

''(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

''(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

''(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

''(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

''(i) SPECIAL RULES FOR AT-RISK PLANS.—

''(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

''(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

''(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (h), the supplemental actuarial assumptions described in subparagraph (B), plus

''(ii) a loading factor determined under subparagraph (C).

''(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

''(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

''(i) $700, times the number of participants in the plan, plus

''(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

''(2) TARGET NORMAL COST OF AT-RISK PLANS.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

''(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

''(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

''(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

''(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

''(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

''(i) the amount determined under this section without regard to this subsection, plus

''(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

''(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

''(i) 20 percent, by

''(ii) the number of plan years during the period described in subparagraph (A).

''(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

''(2) INTEREST.—Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

''(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

''(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full, then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—

''(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), over

''(ii) the effective rate of interest for the plan for the plan year.

''(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

''(i) AMOUNT.—The amount of the underpayment shall be the excess of—

''(I) the required installment, over

''(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

''(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

''(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

''(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

''(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

''(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

| ''In the case of the following required installment: | The due date is: |
|---|---|
| 1st | April 15 |
| 2nd | July 15 |
| 3rd | October 15 |
| 4th | January 15 of the following year |

''(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

''(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

''(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

''(I) 90 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the plan year under this section, or

''(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

''(E) FISCAL YEARS AND SHORT YEARS.—

''(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

''(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

''(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

''(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

''(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (f)(2)(B) if '100' were substituted for '500' therein) which—

''(i) is required to pay installments under paragraph (3) for a plan year, and

''(ii) has a liquidity shortfall for any quarter during such plan year.

''(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

''(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

''(E) DEFINITIONS.—For purposes of this subparagraph:

''(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

''(I) the base amount with respect to such quarter, over

''(II) the value (as of such last day) of the plan's liquid assets.

''(ii) BASE AMOUNT.—

''(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

''(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

''(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

''(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

''(I) the plan's funding target attainment percentage for the plan year, and

''(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

''(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

''(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

''(F) REGULATIONS.—The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

''(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

''(1) IN GENERAL.—In the case of a plan to which this subsection applies, if—

''(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

''(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

''(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

''(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

''(4) NOTICE OF FAILURE; LIEN.—

''(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

''(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

''(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

''(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

''(6) DEFINITIONS.—For purposes of this subsection—

''(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

''(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430.

''(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

''(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

**SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended—

(A) by striking the heading and inserting the following:

**''PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

''Subpart A. Minimum funding standards for pension plans.

''Subpart B. Benefit limitations under single-employer plans.

**''Subpart A—Minimum Funding Standards for Pension Plans**

''Sec. 430. Minimum funding standards for single-employer defined benefit pension plans.'', and

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

**''Subpart B—Benefit Limitations Under Single-employer Plans**

''Sec. 436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.

**''SEC. 436. FUNDING-BASED LIMITATION ON SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.**

''(a) IN GENERAL.—No defined benefit plan (other than a multiemployer plan) may provide benefits to which participants are entitled solely by reason of the occurrence of a plant shutdown or any other unpredictable contingent event occurring during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year—

''(1) is less than 80 percent, or

''(2) would be less than 80 percent taking into account such occurrence.

''(b) EXEMPTION.—Subsection (a) shall cease to apply with respect to any plan year, effective as of the first date of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

''(1) in the case of subsection (a)(1), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in subsection (a), and

''(2) in the case of subsection (a)(2), the amount sufficient to result in a funding target attainment percentage of 80 percent.

Rules similar to the rules of section 437(f) shall apply for purposes of this subsection.

''(c) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this section, the term 'unpredictable contingent event' means an event other than—

''(1) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

''(2) an event which is reasonably and reliably predictable (as determined by the Secretary).

''(d) NEW PLANS.—Subsection (a) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(e) DEEMED REDUCTION OF FUNDING BALANCES.—A rule similar to the rule of section 437(h) shall apply for purposes of this section.''.

(2) CLERICAL AMENDMENT.—The table of parts for suchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''PART III_RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS''.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

(1) IN GENERAL.—Subpart B of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following:

**''SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

''(a) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

''(1) IN GENERAL.—No amendment to a defined benefit plan (other than a multiemployer plan) which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

''(A) less than 80 percent, or

''(B) would be less than 80 percent taking into account such amendment.

For purposes of this paragraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as effected by plan amendment.

''(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

''(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

''(B) in the case of paragraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

''(b) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

''(1) IN GENERAL.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any payment described in section 401(a)(32)(B).

''(2) EXCEPTION.—Paragraph (1) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

''(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

''(d) NEW PLANS.—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

''(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

''(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under subsection (a), (b), or (c) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

''(2) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of subsections (a), (b), and (c), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such subsections, to be the valuation date of the plan for the current plan year.

''(3) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

''(A) a benefit limitation under subsection (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

''(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

''(f) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under subsection (b) of a payment described in subsection (b)(1) or a cessation of benefit accruals under subsection (c) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

''(g) FUNDING TARGET ATTAINMENT PERCENTAGE.—

''(1) IN GENERAL.—For purposes of this section, the term 'funding target attainment percentage' means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

''(A) the value of plan assets for the plan year (as determined under section 430(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 430(f)), bears to

''(B) the funding target of the plan for the plan year (as determined under section 430(d)(1), but without regard to section 430(i)(1)).

''(2) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—

''(A) IN GENERAL.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under paragraph (1)(A) for the pre-funding balance and the funding standard carryover balance), paragraph (1) shall be applied without regard to such reduction.

''(B) TRANSITION RULE.—Subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting for '100 percent' the applicable percentage determined in accordance with the following table:

| ''In the case of a plan year beginning in calendar year: | The applicable percentage is: |
|---|---|
| 2007 | 92 percent |
| 2008 | 94 percent |
| 2009 | 96 percent |
| 2010 | 98 percent. |

''(C) LIMITATION.—Subparagraph (B) shall not apply with respect to any plan year after 2007 unless the funding target attainment percentage (determined without regard to this paragraph and without regard to the reduction under paragraph (1)(A) for the pre-funding balance and the funding standard carryover balance) of the plan for each preceding plan year after 2006 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

''(h) DEEMED REDUCTION OF FUNDING BALANCES.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers—

''(1) IN GENERAL.—In any case in which a benefit limitation under subsection (a), (b), or (c) would (but for this subsection and determined without regard to subsection (a)(2)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 430(f)(5) to reduce the balance of the pre-funding balance and the funding standard carryover balance for the plan year (in a manner consistent with the requirements of section 430(f)(5)(B)) by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

''(2) EXCEPTION FOR INSUFFICIENT FUNDING BALANCES.—Paragraph (1) shall not apply with respect to a benefit limitation for any plan year if the application of paragraph (1)

would not result in the benefit limitation not applying for such plan year.''.

(2) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by adding at the end the following new item:

''Sec. 437. Funding-based limits on benefits and benefit accruals under single-employer plans.''.

(c) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after December 31, 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after December 31, 2006.

(3) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

(d) SPECIAL RULE FOR 2007.—For purposes of applying subsection (e) of section 437 of such Code (as added by this section) to current plan years (within the meaning of such subsection) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the funding target attainment percentage of the plan for the preceding year. For purposes of the preceding sentence, the term ''modified funded current liability percentage'' means the funded current liability percentage (as defined in section 412(l)(8) of such Code), reduced as described in subparagraph (E) thereof in the case of a plan with a funded current liability percentage (as so defined and before such reduction) which is less than 100 percent.

**SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

(1) Section 401(a)(29) of the Internal Revenue Code of 1986 is amended to read as follows:

''(29) BENEFIT LIMITATIONS ON PLANS IN AT-RISK STATUS.—In the case of a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of sections 436 and 437.''.

(2) Section 401(a)(32) of such Code is amended—

(A) in subparagraph (A), by striking ''412(m)(5)'' each place it appears and inserting ''430(j)(4)'', and

(B) in subparagraph (C), by striking ''section 412(m) by reason of paragraph (5)(A) thereof'' and inserting ''section 430(j)(3) by reason of section 430(j)(4)(A)''.

(3) Section 401(a)(33) of such Code is amended—

(A) in subparagraph (B)(i), by striking ''funded current liability percentage (as defined in section 412(l)(8))'' and inserting ''funding target attainment percentage (as defined in section 430(d)(2))'',

(B) in subparagraph (B)(iii), by striking ''subsection 412(c)(8)'' and inserting ''section 412(d)(2)'', and

(C) in subparagraph (D), by striking ''section 412(c)(11) (without regard to subparagraph (B) thereof)'' and inserting ''section 412(b) (without regard to paragraph (2) thereof)''.

(b) VESTING RULES.—Section 411 of such Code is amended—

(1) by striking ''section 412(c)(8)'' in subsection (a)(3)(C) and inserting ''section 412(d)(2)'',

(2) in subsection (b)(1)(F)—

(A) by striking ''paragraphs (2) and (3) of section 412(i)'' in clause (ii) and inserting ''subparagraphs (B) and (C) of section 412(e)(3)'', and

(B) by striking ''paragraphs (4), (5), and (6) of section 412(i)'' and inserting ''subparagraphs (D), (E), and (F) of section 412(e)(3)'', and

(3) by striking ''section 412(c)(8)'' in subsection (d)(6)(A) and inserting ''section 412(d)(2)''.

(c) MERGERS AND CONSOLIDATIONS OF PLANS.—Subclause (I) of section 414(l)(2)(B)(i) of such Code is amended to read as follows:

''(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the target liability amount and target normal cost determined under section 430 in the case of any other plan), over''.

(d) TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.—

(1) Section 420(e)(2) of such Code is amended to read as follows:

''(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

''(A) the lesser of—

''(i) the fair market value of the plan's assets (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(f)), or

''(ii) the value of plan assets as determined under section 430(g)(3) (reduced by the prefunding balance and the funding standard carryover balance, as determined under section 430(f)), over

''(B) 125 percent of the sum of the target liability amount and the target normal cost determined under section 430 for such plan year.''.

(2) Section 420(e)(4) of such Code is amended to read as follows:

''(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.''.

(e) EXCISE TAXES.—

(1) IN GENERAL.—Subsections (a) and (b) of section 4971 of such Code are amended to read as follows:

''(a) INITIAL TAX.—If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—

''(1) in the case of a defined benefit plan which is not a multiemployer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

''(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

''(b) ADDITIONAL TAX.—If—

''(1) a tax is imposed under subsection (a)(1) on any unpaid required minimum contribution and such amount remains unpaid as of the close of the taxable period, or

''(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.''.

(2) Section 4971(c) of such Code is amended—

(A) by striking ''the last two sentences of section 412(a)'' in paragraph (1) and inserting ''section 431'', and

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

''(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

''(A) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

''(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years in the order in which such contributions became due and then to the minimum required contribution under section 430 for the plan year.''.

(3) Section 4971(e)(1) of such Code is amended by striking ''section 412(b)(3)(A)'' and inserting ''section 412(a)(2)''.

(4) Section 4971(f)(1) of such Code is amended—

(A) by striking ''section 412(m)(5)'' and inserting ''section 430(j)(4)'', and

(B) by striking ''section 412(m)'' and inserting ''section 430(j)(3)''.

(5) Section 4972(c)(7) of such Code is amended by striking ''except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)'' and inserting ''except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))''.

(f) REPORTING REQUIREMENTS.—Section 6059(b) of such Code is amended—

(1) by striking ''the accumulated funding deficiency (as defined in section 412(a))'' in paragraph (2) and inserting ''the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431,'', and

(2) by striking paragraph (3)(B) and inserting:

''(B) the requirements for reasonable actuarial assumptions under section 430(h)(1) or 431(c)(3), whichever are applicable, have been complied with,''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2006.

**Subtitle C—Other Provisions**

**SEC. 121. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.**

(a) IN GENERAL.—In the case of a plan that—

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that

was in 1996 within the controlled group of the plan sponsor); and

(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2006.

(b) MODIFIED RULES.—The rules described in this subsection are as follows:

(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act, and

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act,

the mortality table shall be the mortality table used by the plan.

(3) Section 430(c)(5)(B) of such Code and section 303(c)(5)(B) of such Act (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting ''2012'' for ''2011'' therein and by substituting for the table therein the following:

| In the case of a plan year beginning in calendar year: | The applicable percentage is: |
|---|---|
| 2007 | 90 percent |
| 2008 | 92 percent |
| 2009 | 94 percent |
| 2010 | 96 percent |
| 2011 | 98 percent. |

(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act, such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.

(d) SPECIAL RULE FOR 2006.—

(1) IN GENERAL.—Section 769(c)(3) of the Retirement Protection Act of 1994, as added by section 201 of the Pension Funding Equity Act of 2004, is amended by striking ''and 2005'' and inserting '', 2005, and 2006''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to plan years beginning after December 31, 2005.

(e) CONFORMING AMENDMENT.—

(1) Section 769 of the Retirement Protection Act of 1994 is amended by striking subsection (c).

(2) The amendment made by paragraph (1) shall take effect on December 31, 2006, and shall apply to plan years beginning after such date.

**SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.**

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—If—

''(A) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status (as defined in section 430(i)(3)), assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

''(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Subparagraph (A) shall not apply with respect to any assets which are so set aside before the defined benefit plan is in at-risk status.''.

(b) CONFORMING AMENDMENTS.—Paragraphs (4) and (5) of section 409A(b) of such Code, as redesignated by subsection (a) of this subsection, are each amended by striking ''paragraph (1) or (2)'' each place it appears and inserting ''paragraph (1), (2), or (3)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

(d) SPECIAL RULE FOR 2006.—For purposes of determining if a plan is in at-risk status (within the meaning of section 409A of such Code, as added by this section) for any plan year beginning in 2006, such section shall be applied by substituting the plan's modified funded current liability percentage for the plan's funding target attainment percentage. For purposes of the preceding sentence, the term ''modified funded current liability percentage'' means the funded current liability percentage (as defined in section 412(l)(8) of such Code), reduced as described in subparagraph (E) thereof.

## TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

### Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

**SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 102) is amended further by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULES FOR CERTAIN PRE-2007 AMORTIZATIONS.—

''(A) IN GENERAL.—In the case of any amount amortized under section 302(b) (as in

effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(B) INTEREST RATE.—For purposes of amortizations under section 302(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), in the case of any waiver under section 303 (as so in effect) or extension under section 304 (as so in effect) with respect to which application has been made before June 30, 2005, the interest rate under section 303(a)(2) (as so in effect) or section 304(a) (as so in effect), as the case may be, shall apply.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose,

''(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose,

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises, and

''(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

''(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this section—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 302 in such manner as is determined by the Secretary of the Treasury.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

''(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

''(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

''(B) the rate of interest used under the plan for determining costs.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary of the Treasury for a period of time (not in excess of 5 years) if it is demonstrated to such Secretary that—

''(A) absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years,

''(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

''(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures.

''(2) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if such Secretary determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if such Secretary determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 301 of such Act (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by section 102 of this Act) is amended further by inserting after

the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended further by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d).

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

''(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

''(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a)—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan's funded percentage such that—

''(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

''(II) ⅔ of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

''(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

''(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(ii) In the case of a plan in which the funded percentage of a plan for the plan year is more than 70 percent but less than 80 percent, and—

''(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

''(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

''(I) employs at least 5 percent of the active participants, or

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution

structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

''(A) RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.—In any case in which the present value of a participant's accrued benefit under the plan exceeds $5,000, such benefit may not be distributed as an immediate distribution or in any other accelerated form.

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

''(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

''(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

''(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 304(d).

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

''(ii) reasonable measures to forestall possible insolvency (within the meaning of section 4245) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

A rehabilitation must provide annual standards for meeting the requirements of such rehabilitation plan.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

''(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below the lower of—

''(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the plan year in which the plan enters critical status, or

''(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

''(F) PROTECTION OF RESTORED RATES OF ACCRUAL.—

''(i) IN GENERAL.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below any restored accrual rate.

''(ii) RESTORED ACCRUAL RATE.—For purposes of clause (i), the term 'restored accrual rate' means a rate of benefit accruals which was reduced and subsequently restored before entry of the plan into critical status.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) SPECIAL RULES.—

''(A) AUTOMATIC EMPLOYER SURCHARGE.—

''(i) 5 PERCENT AND 10 PERCENT SURCHARGE.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be obligated to pay to the plan a surcharge equal to 5 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes).

''(ii) ENFORCEMENT OF SURCHARGE.—The surcharges under clause (i) shall be due and payable on the same schedule as the contributions on which they are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.

''(iii) SURCHARGE TO TERMINATE UPON CBA RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement, beginning on the date on which that agreement is renegotiated to include—

''(I) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

''(II) otherwise collectively bargained benefit changes.

''(iv) SURCHARGE NOT TO APPLY UNTIL EMPLOYER RECEIVES 30-DAY NOTICE.—The surcharge under this subparagraph shall not apply to an employer until 30 days after the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

''(v) SURCHARGE NOT TO GENERATE INCREASED BENEFIT ACCRUALS.—Notwithstanding any provision of a plan to the contrary, the amount of any surcharge shall not be the basis for any benefit accruals under the plan.

''(B) BENEFIT ADJUSTMENTS.—

''(i) IN GENERAL.—The trustees shall make appropriate reductions, if any, to adjustable benefits based upon the outcome of collective bargaining over the schedules provided under paragraph (5).

''(ii) RETIREE PROTECTION.—Except as provided in subparagraph (C), the trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary who was in pay status at least one year before the first day of the first plan year in which the plan enters into critical status.

''(iii) TRUSTEE FLEXIBILITY.—The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties' negotiations.

''(C) ADJUSTABLE BENEFIT DEFINED.—For purposes of this paragraph, the term 'adjustable benefit' means—

''(i) benefits, rights, and features, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

''(ii) retirement-type subsidies, early retirement benefits, and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and

''(iii) benefit increases that would not be eligible for a guarantee under section 4022A on the first day of the plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

''(D) NORMAL RETIREMENT BENEFITS PROTECTED.—Nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age which is not an adjustable benefit.

''(E) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

''(i) BENEFIT REDUCTIONS.—Any benefit reductions under this paragraph shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

''(ii) SURCHARGES.—Any surcharges under this paragraph shall be disregarded in determining an employer's withdrawal liability under section 4211, except for purposes of determining the unfunded vested benefits attributable to an employer or under a modified attributable method adopted with the approval of the Pension Benefit Guaranty Corporation under subsection (c)(5) of that section.

''(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the rehabilitation plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

''(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

''(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 or a partial withdrawal by the employer under section 4205.

''(11) SPECIAL RULE FOR PLAN AMENDMENTS.—A multiemployer plan in critical status shall not fail to meet the requirements of section 204(g) or section 411(d)(6) of the Internal Revenue Code of 1986 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of this subsection.

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

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 304(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit

under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).

''(8) ENTRY INTO CRITICAL STATUS.—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7).''.

(b) ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6) by striking ''(6), or (7)'' and inserting ''(6), (7), or (8)'';

(2) by redesignating subsection (c)(8) as subsection (c)(9); and

(3) by inserting after subsection (c)(7) the following new paragraph:

''(8) The Secretary may assess a civil penalty against—

''(A) any person of not more than $1,100 per day for each violation by such person of subsection (a)(1), (b)(1), or (c)(1) of section 305, or

''(B) any plan sponsor for failure by the plan sponsor to implement the terms of any funding improvement plan or rehabilitation plan adopted under section 305.''.

(c) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended further by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

(e) SPECIAL RULE FOR 2006.—In the case of any plan year beginning in 2006, any reference in section 305 of the Employee Retirement Income Security Act of 1974 (as added by this section) to section 304 of such Act (as added by this Act) shall be treated as a reference to the corresponding provision of the Employee Retirement Income Security Act of 1974 as in effect for plan years beginning in such year.

**SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after December 31, 2005.

**SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY IN THE EVENT OF CERTAIN SALES OF EMPLOYER ASSETS TO UNRELATED PARTIES.—

(1) IN GENERAL.—Section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 4225.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) REPEAL OF LIMITATION TO 20 ANNUAL PAYMENTS.—

(1) IN GENERAL.—Section 4219(c)(1) of such Act (29 U.S.C. 1399(c)(1)) is amended by striking subparagraph (B).

(2) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to withdrawals occurring on or after January 1, 2006.

(c) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting ''or to another party or parties'' after ''to another location''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(d) REPEAL OF SPECIAL RULE FOR LONG AND SHORT HAUL TRUCKING INDUSTRY.—

(1) IN GENERAL.—Subsection (d) of section 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to cessations to have obligations to contribute to multiemployer plans and cessations of covered operations under such plans occurring on or after January 1, 2006.

(e) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

**SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO PROCEDURES APPLICABLE TO DISPUTES INVOLVING WITHDRAWAL LIABILITY.**

(a) IN GENERAL.—Section 4221(f)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(f)(1)) is amended—

(1) in subparagraph (A) by inserting ''and'' after ''plan,'', and

(2) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

''(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subtitle,''.

(b) SMALL EMPLOYER.—Paragraph (2) of section 4221(f) of such Act is amended by adding at the end the following new subparagraph:

''(C) SMALL EMPLOYER.—For purposes of paragraph (1)(B)—

''(i) IN GENERAL.—The term 'small employer' means any employer who (as of immediately before the transaction referred to in paragraph (1)(B))—

''(I) employs not more than 500 employees, and

''(II) is required to make contributions to the plan for not more than 250 employees.

''(ii) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.''.

(c) ADDITIONAL AMENDMENTS.—

(1) Subparagraph (A) of section 4221(f)(2) of such Act (29 U.S.C. 1401(f)(2)) is amended by striking ''Notwithstanding'' and inserting ''In the case of a transaction occurring before January 1, 1999, and at least 5 years before the date of the complete or partial withdrawal, notwithstanding''.

(2) Section 4221(f)(2)(B) of such Act (29 U.S.C. 1401(f)(2)(B)) is amended—

(A) by inserting ''with respect to withdrawal liability payments'' after ''determination'' the first place it appears, and

(B) by striking ''any'' and inserting ''the''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 on or after the date of the enactment of this Act.

**Subtitle B—Amendments to Internal Revenue Code of 1986**

**SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (added by section 112 of this Act) is amended by adding at the end the following new section:

**''SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

''(a) IN GENERAL.—For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which section 412 applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 418B.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which section 412 applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 40 plan years,

''(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 15 plan years,

''(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the

meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULES FOR PRE-2007 AMORTIZATIONS.—

''(A) IN GENERAL.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(B) INTEREST RATE.—For purposes of amortizations under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), in the case of any waiver under section 412(d) (as so in effect) or extension under section 412(e) (as so in effect) with respect to which application has been made before June 30, 2005, the interest rate under section 412(d)(1)(A) (as so in effect) or section 412(e) (as so in effect), as the case may be, shall apply.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

''(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose,

''(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose,

''(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises, and

''(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

''(i) was adopted before such date, and

''(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

''(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this section—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of the Employee Retirement Income Security Act of 1974 or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

''(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

''(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

''(B) the rate of interest used under the plan for determining costs.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

''(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary for a period of time (not in excess of 5 years) if it is demonstrated to the Secretary that—

''(A) absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years,

''(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

''(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures.

''(2) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would—

''(A) result in—

''(i) a substantial risk to the voluntary continuation of the plan, or

''(ii) a substantial curtailment of pension benefit levels or employee compensation, and

''(B) be adverse to the interests of plan participants in the aggregate.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 418(b)(2) of such Code is amended—

(A) by striking ''section 412(b)(2)'' in subparagraph (A) and inserting ''section 431(b)(2)'', and

(B) by striking ''section 412(b)(3)(B)'' in subparagraph (B) and inserting ''section 431(b)(3)(B)''.

(2) Section 418B of such Code is amended—

(A) by striking ''section 412(b)(2)(A) or (B)'' in subsection (d)(1)(B) and inserting ''section 431(b)(2)(A) or (B)'',

(B) by striking ''section 412(c)(8)'' in subsection (e) and inserting ''section 412(d)(2)'', and

(C) by striking ''section 412(c)(3)'' in subsection (g) and inserting ''section 431(c)(3)''.

(3) Section 418D(a)(2) of such Code is amended—

(A) by striking ''section 412(c)(8)'' and inserting ''section 412(d)(2)'', and

(B) by striking ''section 412(c)(10)'' and inserting ''section 431(c)(8)''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding after the item relating to section 430 the following new item:

''Sec. 431. Minimum funding standards for multiemployer plans.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 431 the following new section:

**''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

''(a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

''(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974.

''(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

''(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

''(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

''(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

''(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

''(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a)—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year under section 431 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

''(3) FUNDING IMPROVEMENT PLAN.—

''(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

''(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan's funded percentage such that—

''(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

''(II) ⅔ of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

''(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

''(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

''(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

''(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(ii) In the case of a plan in which the funded percentage of a plan for the plan year is more than 70 percent but less than 80 percent, and—

''(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

''(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

''(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

''(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

''(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(B) RECOMMENDATIONS BY PLAN SPONSOR.—

''(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

''(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

''(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

''(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

''(I) employs at least 5 percent of the active participants, or

''(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

''(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

''(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

''(A) a reduction in the level of contributions for participants who are not in pay status,

''(B) a suspension of contributions with respect to any period of service, or

''(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

''(A) RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.—In any case in which the present value of a participant's accrued benefit under the plan exceeds $5,000, such benefit may not be distributed as an immediate distribution or in any other accelerated form.

''(B) PROHIBITION ON BENEFIT INCREASES.—

''(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

''(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A.

''(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

''(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the funding improvement plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

''(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

''(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

''(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

''(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

''(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(C) A plan is described in this subparagraph if—

''(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

''(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

''(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

''(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(E) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

''(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 431(d).

''(4) REHABILITATION PLAN.—

''(A) IN GENERAL.—A rehabilitation plan shall consist of—

''(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

''(ii) reasonable measures to forestall possible insolvency (within the meaning of section 418E) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

A rehabilitation must provide annual standards for meeting the requirements of such rehabilitation plan.

''(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

''(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

''(5) DEVELOPMENT OF REHABILITATION PLAN.—

''(A) PROPOSALS BY PLAN SPONSOR.—

''(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

''(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

''(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

''(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

''(i) employs at least 5 percent of the active participants, or

''(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

''(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

''(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

''(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below the lower of—

''(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the plan year in which the plan enters critical status, or

''(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

''(F) PROTECTION OF RESTORED RATES OF ACCRUAL.—

''(i) IN GENERAL.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below any restored accrual rate.

''(ii) RESTORED ACCRUAL RATE.—For purposes of clause (i), the term 'restored accrual rate' means a rate of benefit accruals which was reduced and subsequently restored before entry of the plan into critical status.

''(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

''(7) SPECIAL RULES.—

''(A) AUTOMATIC EMPLOYER SURCHARGE.—

''(i) 5 PERCENT AND 10 PERCENT SURCHARGE.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be obligated to pay to the plan a surcharge equal to 5 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes).

''(ii) ENFORCEMENT OF SURCHARGE.—The surcharges under clause (i) shall be due and payable on the same schedule as the contributions on which they are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

''(iii) SURCHARGE TO TERMINATE UPON CBA RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement, beginning on the date on which that agreement is renegotiated to include—

''(I) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

''(II) otherwise collectively bargained benefit changes.

''(iv) SURCHARGE NOT TO APPLY UNTIL EMPLOYER RECEIVES 30-DAY NOTICE.—The surcharge under this subparagraph shall not apply to an employer until 30 days after the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

''(v) SURCHARGE NOT TO GENERATE INCREASED BENEFIT ACCRUALS.—Notwithstanding any provision of a plan to the contrary, the amount of any surcharge shall not be the basis for any benefit accruals under the plan.

''(B) BENEFIT ADJUSTMENTS.—

''(i) IN GENERAL.—The trustees shall make appropriate reductions, if any, to adjustable benefits based upon the outcome of collective bargaining over the schedules provided under paragraph (5).

''(ii) RETIREE PROTECTION.—Except as provided in subparagraph (C), the trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary who was in pay status at least one year before the first day of the first plan year in which the plan enters into critical status.

''(iii) TRUSTEE FLEXIBILITY.—The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties' negotiations.

''(C) ADJUSTABLE BENEFIT DEFINED.—For purposes of this paragraph, the term 'adjustable benefit' means—

''(i) benefits, rights, and features, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

''(ii) retirement-type subsidies, early retirement benefits, and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and

''(iii) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of the plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

''(D) NORMAL RETIREMENT BENEFITS PROTECTED.—Nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age which is not an adjustable benefit.

''(E) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

''(i) BENEFIT REDUCTIONS.—Any benefit reductions under this paragraph shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

''(ii) SURCHARGES.—Any surcharges under this paragraph shall be disregarded in determining an employer's withdrawal liability under section 4211 of the Employee Retirement Income Security Act of 1974, except for purposes of determining the unfunded vested benefits attributable to an employer or under a modified attributable method adopted with the approval of the Pension Benefit

Guaranty Corporation under subsection (c)(5) of that section.

''(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

''(A) so as to be inconsistent with the rehabilitation plan, or

''(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

''(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

''(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

''(11) SPECIAL RULE FOR PLAN AMENDMENTS.—A multiemployer plan in critical status shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(6) solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of this subsection.

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

''(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

''(A) an employer who has an obligation to contribute under the plan, and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan.

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 431(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

''(8) ENTRY INTO CRITICAL STATUS.—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7).''.

(b) EXCISE TAX ON FAILURES TO ACT WITH RESPECT TO MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following:

''(g) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) SUBSTITUTION OF EXCISE TAX FOR INITIAL AND ADDITIONAL TAX.—In the case of a multiemployer plan to which section 432(c) applies for a period, subsections (a) and (b) shall not apply with respect to such period.

''(2) FAILURE TO ADOPT REHABILITATION PLAN.—

''(A) IN GENERAL.—In the case of a multiemployer plan to which section 432(c) applies, there is hereby imposed a tax on the failure of such plan to adopt a rehabilitation plan.

''(B) AMOUNT OF TAX.—The amount of the tax imposed under subparagraph (A) with respect to any plan sponsor shall be the greater of—

''(i) the amount of tax imposed under subsection (a) (determined without regard to this subsection), or

''(ii) the amount equal to $1,100 multiplied by the number of days in the period beginning on the first day of the 240-day period described in section 432(c)(1) and ending on the day on which the rehabilitation plan is adopted.

''(C) LIABILITY FOR TAX.—

''(i) IN GENERAL.—The tax imposed by subparagraph (A) shall be paid by each plan sponsor.

''(ii) PLAN SPONSOR.—For purposes of clause (i), the term 'plan sponsor' in the case of a multiemployer plan means the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

''(3) FAILURE TO COMPLY WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—In the case of a multiemployer plan to which section 432(c) applies, there is hereby imposed a tax on each failure to make a required contribution under the rehabilitation plan within the time required under such plan.

''(B) AMOUNT OF TAX.—The amount of the tax imposed by subparagraph (A) shall be, with respect to each required contribution under the rehabilitation plan, the amount equal to the excess of the amount of such required contribution over the amount contributed.

''(C) LIABILITY FOR TAX.—The tax imposed by subparagraph (A) shall be paid by the employer responsible for contributing to or under the rehabilitation plan which fails to make the contribution.

''(4) REHABILITATION PLAN.—For purposes of this subsection, the term 'rehabilitation plan' means the plan required to be adopted under section 432(c).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

''Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2005.

(e) SPECIAL RULE FOR 2006.—In the case of any plan year beginning in 2006, any reference in section 432 of the Internal Revenue Code of 1986 (as added by this section) to section 431 of such Code (as added by this Act) shall be treated as a reference to the corresponding provision of such Code as in effect for plan years beginning in such year.

**SEC. 213. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 418E(d)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years'', and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after December 31, 2005.

## TITLE III—OTHER PROVISIONS

**SEC. 301. INTEREST RATE FOR 2006 FUNDING REQUIREMENTS.**

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subclause (II) of section 302(b)(5)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(5)(B)(ii)) is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(2) CURRENT LIABILITY.—Subclause (IV) of section 302(d)(7)(C)(i) of such Act (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

(A) by striking ''or 2005'' and inserting '', 2005, or 2006'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(2) CURRENT LIABILITY.—Subclause (IV) of section 412(l)(7)(C)(i) of such Code is amended—

(A) by striking ''or 2005'' and inserting '', 2005, or 2006'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, AND 2006''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 302. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.**

(a) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Paragraph (3) of section 205(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as follows:

''(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

''(B) For purposes of subparagraph (A)—

''(i) The term 'applicable mortality table' means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under section 303(h)(3).

''(ii) The term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

''(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

''(I) section 303(h)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields',

''(II) section 303(h)(2)(G)(i)(II) were applied by substituting 'section 205(g)(3)(A)(ii)(II)' for 'section 302(b)(5)(B)(ii)(II)', and

''(III) the applicable percentage under section 303(h)(2)(G) were determined in accordance with the following table:

| ``In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2007 | 20 percent |
| 2008 | 40 percent |
| 2009 | 60 percent |
| 2010 | 80 percent.''. |

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (3) of section 417(e) of the Internal Revenue Code of 1986 is amended to read as follows:

''(3) DETERMINATION OF PRESENT VALUE.—

''(A) IN GENERAL.—For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

''(B) APPLICABLE MORTALITY TABLE.—For purposes of subparagraph (A), the term 'applicable mortality table' means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3).

''(C) APPLICABLE INTEREST RATE.—For purposes of subparagraph (A), the term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

''(D) APPLICABLE SEGMENT RATES.—For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) if—

''(i) section 430(h)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields',

''(ii) section 430(h)(2)(G)(i)(II) were applied by substituting 'section 417(e)(3)(A)(ii)(II)' for 'section 412(b)(5)(B)(ii)(II)', and

''(iii) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

| ``In the case of plan years beginning in: | The applicable percentage is: |
|---|---|
| 2007 | 20 percent |
| 2008 | 40 percent |
| 2009 | 60 percent |
| 2010 | 80 percent.''. |

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

**SEC. 303. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.**

(a) IN GENERAL.—Clause (ii) of section 415(b)(2)(E) of the Internal Revenue Code of 1986 is amended to read as follows:

''(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greater of—

''(I) 5.5 percent,

''(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

''(III) the rate specified under the plan.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions made in years beginning after December 31, 2005.

**SEC. 304. DISTRIBUTIONS DURING WORKING RETIREMENT.**

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Subparagraph (A) of section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following new sentence: ''A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.''.

(b) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (34) the following new paragraph:

''(35) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because a distribution is made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 2005.

**SEC. 305. OTHER AMENDMENTS RELATING TO PROHIBITED TRANSACTIONS.**

(a) DEFINITION OF AMOUNT INVOLVED.—Section 502(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(i)) is amended to read as follows:

''(i)(1) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. Except as provided in paragraph (2), the amount of such penalty may not exceed 5 percent of the amount involved in each such transaction for each year or part thereof during which the prohibited transaction continues.

''(2) If the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

''(3) For purposes of paragraph (1)—

''(A) Except as provided in subparagraphs (C) and (D), the term 'amount involved' means, with respect to a prohibited transaction, the greater of—

''(i) the amount of money and the fair market value of the other property given, or

''(ii) the amount of money and the fair market value of the other property received.

''(B) For purposes of subparagraph (A), fair market value shall be determined as of the date on which the prohibited transaction occurs, except that in the case described in paragraph (2) fair market value shall be the highest fair market value during the period between the date of the transaction and the date of correction.

''(C) In the case of services described in subsection (b)(2) or (c)(2) of section 408, the term 'amount involved' means only the amount of excess compensation.

''(D) In the case of principal transactions prohibited under section 406(a) involving securities or commodities, the term 'amount involved' means only the amount received by the disqualified person in excess of the amount such person would have received in an arm's length transaction with an unrelated party as of the same date.

''(E) For the purposes of this paragraph—

''(i) the term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof), and

''(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).''.

(b) EXEMPTION FOR BLOCK TRADING.—

(1) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by section 601, is further amended by adding at the end the following new paragraph:

''(15)(A) Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary described in section 3(21)(A)(ii)) with respect to a plan if—

''(i) the transaction involves a block trade,

''(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade, and

''(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

''(B) For purposes of this paragraph, the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.''.

(2) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(A) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions) is amended by striking ''or'' at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting '', or'', and by adding at the end the following new paragraph:

''(17) any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary described in subsection (e)(3)(B)) with respect to a plan if—

''(A) the transaction involves a block trade,

''(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade, and

''(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

''(D) For purposes of this paragraph, the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.''.

(B) SPECIAL RULE RELATING TO BLOCK TRADE.—Subsection (f) of section 4975 of such Code (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) BLOCK TRADE.—For purposes of subsection (d)(17), the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.''.

(c) BONDING RELIEF.— Section 412(a) of such Act (29 U.S.C. 1112(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3);

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

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

''(2) no bond shall be required of an entity which is subject to regulation as a broker or a dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or an entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including requirements imposed by a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)), or any affiliate with respect to which the broker or dealer agrees to be liable to the same extent as if they held the assets directly.''.

(d) EXEMPTION FOR ELECTRONIC COMMUNICATION NETWORK.—

(1) IN GENERAL.—Section 408(b) of such Act (as amended by subsection (b)) is further amended by adding at the end the following:

''(16) Any transaction involving the purchase or sale of securities, or other property (as determined in regulations of the Secretary) between a plan and a fiduciary or a party in interest if—

''(A) the transaction is executed through an exchange, electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

''(i) the applicable Federal regulating entity, or

''(ii) such other applicable governmental regulating agency as the Secretary may determine appropriate in the case of any fiduciary or party in interest or class of fiduciaries or parties in interest or any transaction or class of transactions,

''(B) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

''(C) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system,

''(D) the price and compensation associated with the purchase and sale are not greater than an arm's length transaction with an unrelated party,

''(E) if the fiduciary or party in interest has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized under the plan for transactions described in this paragraph, and

''(F) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), the plan administrator is provided written notice of the execution of such transaction through such system or venue.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 30 days after the date of the enactment of this Act.

(e) CONFORMING ERISA'S PROHIBITED TRANSACTION PROVISION TO FERSA.—Section 408(b) of such Act (29 U.S.C. 1106), as amended by subsection (d), is further amended by adding at the end the following new paragraph:

''(17)(A) transactions described in subparagraphs (A), (B), and (D) of section 406(a)(1) between a plan and a party that is a party in interest (under section 3(14)) solely by reason of providing services, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration.

''(B) For purposes of this paragraph, the term 'adequate consideration' means—

''(i) in the case of a security for which there is a generally recognized market—

''(I) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

''(II) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

''(ii) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary.''.

(f) RELIEF FOR FOREIGN EXCHANGE TRANSACTIONS.— Section 408(b) of such Act (as amended by the preceding provisions of this section) is further amended by adding at the end the following new paragraph:

''(18) Any foreign exchange transactions, between a bank or broker-dealer, or any affiliate of either thereof, and a plan with respect to which the bank or broker-dealer, or any affiliate, is a trustee, custodian, fiduciary, or other party in interest, if—

''(A) the transaction is in connection with the purchase or sale of securities,

''(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or the broker-dealer (or any affiliate thereof) in comparable arm's-length foreign exchange transactions involving unrelated parties, and

''(C) the exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction may not deviate by more than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency.''.

(g) DEFINITION OF PLAN ASSET VEHICLE.— Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

''(42) the term 'plan assets' means plan assets as defined by such regulations as the Secretary may prescribe, except that under such regulations the assets of any entity shall not be treated as plan assets if, immediately after the most recent acquisition of any equity interest in the entity, less than 50 percent of the total value of each class of equity interest in the entity is held by employee benefit plan investors. For purposes of determinations pursuant to this paragraph, the value of any equity interest owned by a person (other than such an employee benefit plan) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded for purposes of calculating the 50 percent threshold. An entity shall be considered to hold plan assets only to the extent of the percentage of the equity interest owned by benefit plan investors. For purposes of this paragraph, the term 'benefit plan investor' means an employee benefit plan subject to this part and any plan to which section 4975 of the Internal Revenue Code of 1986 applies.''.

**SEC. 306. CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.**

(a) AMENDMENT OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)), as amended by sections 304 and 601, is further amended by adding at the end the following new paragraph:

''(19)(A) Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

''(B) Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

''(C) In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any transaction if, at the time the transaction occurs, such fiduciary or party in interest (or other person) knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

''(D) For purposes of this paragraph, the term 'correction period' means, in connection with a fiduciary or party in interest (or other person knowingly participating in the transaction), the 14-day period beginning on the date on which such fiduciary or party in interest (or other person) discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

''(E) For purposes of this paragraph—

''(i) The term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof).

''(ii) The term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).

''(iii) The term 'correct' means, with respect to a transaction—

''(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

''(II) to restore to the plan or affected account any profits made through the use of assets of the plan.''.

(b) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions), as amended by this Act, is amended by striking ''or'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting '', or'', and by adding at the end the following new paragraph:

''(18) except as provided in subsection (f)(9), a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the

transaction is corrected before the end of the correction period.''.

(2) SPECIAL RULES RELATING TO CORRECTION PERIOD.—Subsection (f) of section 4975 of such Code (relating to other definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(9) CORRECTION PERIOD.—

''(A) IN GENERAL.—For purposes of subsection (d)(18), the term 'correction period' means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(18)) constitute a prohibited transaction.

''(B) EXCEPTIONS.—

''(i) EMPLOYER SECURITIES.—Subsection (d)(18) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

''(ii) KNOWING PROHIBITED TRANSACTION.—In the case of any disqualified person, subsection (d)(18) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a prohibited transaction.

''(C) ABATEMENT OF TAX WHERE THERE IS A CORRECTION.—If a transaction is not treated as a prohibited transaction by reason of subsection (d)(18), then no tax under subsection (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

''(D) DEFINITIONS.—For purposes of this paragraph and subsection (d)(18)—

''(i) SECURITY.—The term 'security' has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof).

''(ii) COMMODITY.—The term 'commodity' has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof).

''(iii) CORRECT.—The term 'correct' means, with respect to a transaction—

''(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

''(II) to restore to the plan or affected account any profits made through the use of assets of the plan.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act constitutes a prohibited transaction.

**SEC. 307. RECOVERY BY REIMBURSEMENT OR SUBROGATION WITH RESPECT TO PROVIDED BENEFITS.**

(a) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)) is amended by adding, after and below paragraph (9), the following new sentence:

''Actions described under paragraph (3) include an action by a fiduciary for recovery of amounts on behalf of the plan enforcing terms of the plan that provide a right of recovery by reimbursement or subrogation with respect to benefits provided to or for a participant or beneficiary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2006.

**SEC. 308. EXERCISE OF CONTROL OVER PLAN ASSETS IN CONNECTION WITH QUALIFIED CHANGES IN INVESTMENT OPTIONS.**

(a) IN GENERAL.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

''(4)(A) In any case in which a qualified change in investment options occurs in connection with an individual account plan, a participant or beneficiary shall not be treated for purposes of paragraph (1) as not exercising control over the assets in his account in connection with such change if the requirements of subparagraph (C) are met in connection with such change.

''(B) For purposes of subparagraph (A), the term 'qualified change in investment options' means, in connection with an individual account plan, a change in the investment options offered to the participant or beneficiary under the terms of the plan, under which—

''(i) the participant's account is reallocated among one or more new investment options which are offered in lieu of one or more investment options offered immediately prior to the effective date of the change, and

''(ii) the characteristics of the new investment options, including characteristics relating to risk and rate of return, are, as of immediately after the change, reasonably similar to those of the existing investment options as of immediately before the change.

''(C) The requirements of this subparagraph are met in connection with a qualified change in investment options if—

''(i) at least 60 days prior to the effective date of the change, the plan administrator furnishes written notice of the change to the participants and beneficiaries, including information comparing the existing and new investment options and an explanation that, in the absence of affirmative investment instructions from the participant or beneficiary to the contrary, the account of the participant or beneficiary will be invested in the manner described in subparagraph (B),

''(ii) the participant has not provided to the plan administrator, in advance of the effective date of the change, affirmative investment instructions contrary to the change, and

''(iii) the investments under the plan of the participant or beneficiary as in effect immediately prior to the effective date of the change was the product of the exercise by such participant or beneficiary of control over the assets of the account within the meaning of paragraph (1).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to changes in investment options taking effect on or after January 1, 2006.

**SEC. 309. CLARIFICATION OF FIDUCIARY RULES.**

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall issue final regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan to a participant or beneficiary—

(1) is not subject to the safest available annuity standard under Interpretive Bulletin 95–1 (29 C.F.R. 2509.95–1), and

(2) is subject to all otherwise applicable fiduciary standards.

**SEC. 310. GOVERNMENT ACCOUNTABILITY OFFICE PENSION FUNDING REPORT.**

(a) IN GENERAL.—The Comptroller General of the Government Accountability Office shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required under subsection (a) shall include an analysis of the feasibility, advantages, and disadvantages of—

(1) requiring an employee pension benefit plan to insure a portion of such plan's total investments;

(2) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry; and

(3) amortizing a single-employer defined benefit pension plan's shortfall amortization base (referred to in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 (as amended by this Act)) over various periods of not more than 7 years.

**TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS**

**SEC. 401. INCREASES IN PBGC PREMIUMS.**

(a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) by striking clause (i) of subparagraph (A) and inserting the following:

''(i) in the case of a single-employer plan, an amount equal to—

''(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

''(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;''; and

(2) by adding at the end the following new subparagraph:

''(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $30 or the adjusted amount determined under clause (ii).

''(ii) For plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

''(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

''(II) the national average wage index (as so defined) for 2004,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

''(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2005 and before 2010—

''(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

| ''If the plan year begins in: | The amount is: |
|---|---|
| 2006 | $21.20 |
| 2007 | $23.40 |
| 2008 | $25.60 |
| 2009 | $27.80; or |

''(II) if the plan's funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection

with such current plan year in the following table:

| ``If the plan year begins in: | The amount is: |
|---|---|
| 2006 | $22.67 |
| 2007 | $26.33 |
| 2008 or 2009 | the amount provided under clause (i). |

''(iv) For purposes of this subparagraph, the term 'funding target attainment percentage' has the meaning provided such term in section 303(d)(2).''.

(b) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

''(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

''(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

''(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—If the plan is terminated under 4041(c)(2)(B)(ii) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing sponsor of the plan or a member of such sponsor's controlled group has filed or has had filed against such person a petition seeking reorganization in a case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge of such person in such case.

''(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—The term 'applicable 12-month period' means—

''(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

''(II) each of the first two 12-month periods immediately following the period described in subclause (I).

''(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged in the case described in such clause in connection with such person.

''(D) COORDINATION WITH SECTION 4007.—

''(i) Notwithstanding section 4007—

''(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

''(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

''(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.''.

(c) RISK-BASED PREMIUMS.—

(1) EXTENSION THROUGH 2006.—Section 4006(a)(3)(E)(iii)(V) of such Act is amended by striking ''January 1, 2006'' and inserting ''January 1, 2007''.

(2) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act is amended by striking clauses (iii) and (iv) and inserting the following:

''(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term 'unfunded vested benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and only vested benefits were taken into account.

''(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were applied by substituting 'the yields' for 'the 3-year weighted average of yields', as applicable under rules similar to the rules under section 303(h)(2)(B).''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) and (c)(1) shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—The amendment made by subsection (b) shall apply with respect to cases commenced under title 11, United States Code, or under any similar law of a State or political subdivision of a State after October 26, 2005.

(3) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—The amendments made by subsection (c)(2) shall take effect on December 31, 2006, and shall apply to plan years beginning after such date.

## TITLE V—DISCLOSURE

### SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.

(a) APPLICATION OF PLAN FUNDING NOTICE REQUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) is amended—

(1) in the heading, by striking ''MULTIEMPLOYER'';

(2) in paragraph (1), by striking ''which is a multiemployer plan''; and

(3) by striking paragraph (2)(B)(iii) and inserting the following:

''(iii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV, or

''(II) in the case of a multiemployer plan, a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and''.

(b) INCLUSION OF STATEMENT OF THE RATIO OF INACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) is amended—

(1) in clause (iii)(II) (added by subsection (a)(3) of this section), by striking ''and'' at the end;

(2) in clause (iv), by striking ''apply.'' and inserting ''apply; and''; and

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

''(v) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

''(I) the number of participants who are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

''(II) the number of participants who are in covered service under the plan.''.

(c) COMPARISON OF MONTHLY AVERAGE OF VALUE OF PLAN ASSETS TO PROJECTED CURRENT LIABILITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) (as amended by the preceding provisions of this section) is amended further—

(1) by striking clause (ii) and inserting the following:

''(ii) a statement of a reasonable estimate of—

''(I) the value of the plan's assets for the plan year to which the notice relates,

''(II) projected liabilities of the plan for the plan year to which the notice relates, and

''(III) the ratio of the estimated amount determined under subclause (I) to the estimated amount determined under subclause (II);''; and

(2) by adding at the end (after and below clause (v)) the following:

''For purposes of determining a plan's projected liabilities for a plan year under clause (ii)(II), such projected liabilities shall be determined by projecting forward in a reasonable manner to the end of the plan year the liabilities of the plan to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on such liabilities, including any plan amendments in effect for the plan year.''.

(d) STATEMENT OF PLAN'S FUNDING POLICY AND METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

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

(2) in clause (v), by striking the period and inserting ''; and''; and

(3) by inserting after clause (v) the following new clause:

''(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates.''.

(e) NOTICE OF FUNDING IMPROVEMENT PLAN OR REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER PLAN.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

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

(2) in clause (vi), by striking the period and inserting ''; and''; and

(3) by inserting after clause (vi) the following new clause:

''(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.''.

(f) NOTICE DUE 90 DAYS AFTER PLAN'S VALUATION DATE.—

(1) IN GENERAL.—Section 101(f)(3) of such Act (29 U.S.C. 1021(f)(3)) is amended by striking ''two months after the deadline (including extensions) for filing the annual report for the plan year'' and inserting ''90 days after the end of the plan year''.

(2) MODEL NOTICE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

### SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS.—Section 103 of the Employee

Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(1) in subsection (a)(1)(B), by striking ''subsections (d) and (e)'' and inserting ''subsections (d), (e), and (f)''; and

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

''(f)(1) With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

''(A) The ratio, as of the end of such plan year, of—

''(i) the number of participants who, as of the end of such plan year, are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

''(ii) the number of participants who are in covered service under the plan as of the end of such plan year.

''(B) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries borne by 2 or more pension plans as of immediately before such plan year, the funded ratio of each of such 2 or more pension plans as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

''(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage which—

''(i) the value of the plan's assets is of

''(ii) the liabilities to participants and beneficiaries under the plan.

''(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

''(A) The number of employers obligated to contribute to the plan as of the end of such plan year.

''(B) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.''.

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

''(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.''.

(c) FILING AFTER 285 DAYS AFTER PLAN YEAR ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of such Act (29 U.S.C. 1024(a)(1)) is amended by inserting after the first sentence the following new sentence: ''In the case of a pension plan, the Secretary may extend the deadline for filing the annual report for any plan year past 285 days after the close of the plan year only on a case by case basis and only in cases of hardship, in accordance with regulations which shall be prescribed by the Secretary.''.

(d) INTERNET DISPLAY OF INFORMATION.—Section 104(b) of such Act (29 U.S.C. 1024(b)) is amended by adding at the end the following:

''(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on a website maintained by the Secretary on the Internet and other appropriate media. Such information shall also be displayed on any website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) on the Internet, in accordance with regulations which shall be prescribed by the Secretary.''.

(e) SUMMARY ANNUAL REPORT FILED WITHIN 15 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended—

(1) by striking ''Within 210 days after the close of the fiscal year of the plan,'' and inserting ''Within 15 business days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan,''; and

(2) by striking ''the latest'' and inserting ''such''.

(f) DISCLOSURE OF PLAN ASSETS AND LIABILITIES IN SUMMARY ANNUAL REPORT.—

(1) IN GENERAL.—Section 104(b)(3) of such Act (as amended by subsection (a)) is amended further—

(A) by inserting ''(A)'' after ''(3)''; and

(B) by adding at the end the following:

''(B) The material provided pursuant to subparagraph (A) to summarize the latest annual report shall be written in a manner calculated to be understood by the average plan participant and shall set forth the total assets and liabilities of the plan for the plan year for which the latest annual report was filed and for each of the 2 preceding plan years, as reported in the annual report for each such plan year under this section.''.

(g) INFORMATION MADE AVAILABLE TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) (as amended by section 103(b)(2)(A)) is further amended—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

''(k) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

''(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or beneficiary or any employer having an obligation to contribute to the plan, who so requests in writing—

''(A) a copy of any actuarial report received by the plan for any plan year which has been in receipt by the plan for at least 30 days, and

''(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt by the plan for at least 30 days.

''(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

''(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by section 103(b)(2)(B)) is further amended by striking ''sections 101(j) and 302(b)(7)(F)(iv)'' and inserting ''sections 101(j), 101(k), and 302(b)(7)(F)(iv)''.

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(k)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1) of this subsection) not later than 90 days after the date of the enactment of this Act.

(h) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (g) of this section) is further amended—

(A) by redesignating subsection (l) as subsection (m); and

(B) by inserting after subsection (k) the following new subsection:

''(1) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

''(1) IN GENERAL.—The plan sponsor or administrator of a multiemployer plan shall furnish to any employer who has an obligation to contribute under the plan and who so requests in writing notice of—

''(A) the amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

''(B) the average increase, per participant under the plan, in accrued liabilities under the plan as of the end of such plan year to participants under such plan on whose behalf no employer contributions are payable (or their beneficiaries), which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

''(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

''(A) shall be provided to the requesting employer within 180 days after the request in a form and manner prescribed in regulations of the Secretary, and

''(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

''(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.''.

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by paragraph (1)) is further amended by striking ''sections 101(j), 101(k), and 302(b)(7)(F)(iv)'' and inserting ''sections 101(j), 101(k), 101(l), and 302(b)(7)(F)(iv)''.

(i) MODEL FORM.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model form for providing the statements, schedules, and other material required to be provided under section 104(b)(3) of the Employee

Retirement Income Security Act of 1974, as amended by this section.

(j) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.**

(a) CHANGE IN CRITERIA FOR PERSONS REQUIRED TO PROVIDE INFORMATION TO PBGC.—Section 4010(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310(b)) is amended by striking paragraph (1), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

''(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

''(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

''(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining;''.

(b) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

''(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

''(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

''(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

''(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

''(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

''(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

''(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(g)(3).

''(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

''(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

''(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

''(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

''(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

''(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(i)(3).

''(3) COMPLIANCE.—

''(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

''(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

''(4) NOTICE TO CONGRESS.—Concurrent with the provision of any notice under paragraph (1), such person shall provide such notice to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, which shall be treated as materials provided in executive session.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after December 31, 2006.

## TITLE VI—INVESTMENT ADVICE

**SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner

and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.

**SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.**

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions), as amended by this Act, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

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

''(19) any transaction described in subsection (f)(10)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(10)(B) are met in connection with the provision of the advice.''.

(b) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules), as amended by this Act, is amended by adding at the end the following new paragraph:

''(10) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(19), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(19)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the

provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(19) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(19)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2006.

## TITLE VII—BENEFIT ACCRUAL STANDARDS

### SEC. 701. BENEFIT ACCRUAL STANDARDS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) RULES RELATING TO REDUCTION IN RATE OF BENEFIT ACCRUAL.—Section 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at the end the following new clauses:

''(vii)(I) A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

''(II) For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

''(III) In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

''(IV) In determining the entire accrued benefit for purposes of this clause, such benefit may be calculated as the present value of accrued benefits projected to normal retirement age, as an account balance, or as the current value of the accumulated percentage of the employee's final average compensation.

''(viii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, under the Railroad Retirement Act of 1974, under another plan described in section 401(a) of the Internal Revenue Code of 1986 maintained by the same employer, under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof, or under such other arrangements as the Secretary of the Treasury may provide. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

''(ix) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of the Internal Revenue Code of 1986 are met.

''(x)(I) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for indexing of accrued benefits under the plan.

''(II) Except in the case of any benefit provided in the form of a variable annuity, subclause (I) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

''(III) For purposes of this clause, the term 'indexing' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.''.

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Section 203 of such Act (29 U.S.C. 1053) is amended by adding at the end the following new subsection:

''(f)(1) A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2), section 204(c) (but only in the case of a plan which does not provide for employee contributions), or section 205(g) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

''(2) The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of paragraph (1) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of paragraph (1).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) RULES RELATING TO REDUCTION IN RATE OF BENEFIT ACCRUAL.—Subparagraph (H) of section 411(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clauses:

''(vi) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

''(I) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

''(II) SIMILARLY SITUATED.—For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

''(III) DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

''(IV) ENTIRE ACCRUED BENEFIT.—In determining the entire accrued benefit for purposes of this clause, such benefit may be calculated as the present value of accrued benefits projected to normal retirement age, as an account balance, or as the current value of the accumulated percentage of the employee's final average compensation.

''(vii) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, under the Railroad Retirement Act of 1974, under another plan described in section 401(a) maintained by the same employer, under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof, or under such other arrangements as the Secretary may provide. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

''(viii) PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) are met.

''(ix) INDEXING PERMITTED.—

''(I) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for indexing of accrued benefits under the plan.

''(II) PROTECTION OF ECONOMIC VALUE.—Except in the case of any benefit provided in the form of a variable annuity, subclause (I) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

''(III) INDEXING.—For purposes of this clause, the term 'indexing' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.''.

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Subsection (a) of section 411 of such Code is amended by adding at the end the following new paragraph:

''(13) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—

''(A) IN GENERAL.—A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2), subsection (c) (but only in the case of a plan which does not provide for employee contributions), or section 417(e) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

''(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning on or after June 29, 2005.

## TITLE VIII—DEDUCTION LIMITATIONS

### SEC. 801. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan'' after ''section 501(a),'', and

(2) by inserting at the end the following new subsection:

''(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—For purposes of subsection (a)(1)(A)—

''(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

''(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

''(A) the greater of—

''(i) the sum of—

''(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430, plus

''(II) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or

''(ii) in the case of a plan that is not in an at-risk status (as determined under 430(i)), the sum of—

''(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), plus

''(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), over

''(B) the value of the plan assets (determined under section 430(g)).

''(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.''.

(b) INCREASE IN DEDUCTION LIMIT FOR MULTIEMPLOYER PLANS.—Section 404(a)(1)(D) of such Code is amended to read as follows:

''(D) MINIMUM DEDUCTION FOR MULTIEMPLOYER PLANS.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

''(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

''(ii) the value of the plan's assets determined under section 431(c)(2).''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The last sentence of section 404(a)(1)(A) of such Code is amended by striking ''section 412'' each place it appears and inserting ''section 431''.

(2) Section 404(a)(1)(B) of such Code is amended—

(A) by striking ''In the case of a plan'' and inserting ''In the case of a multiemployer plan'',

(B) by striking ''section 412(c)(7)'' each place it appears and inserting ''section 431(c)(6)'',

(C) by striking ''section 412(c)(7)(B)'' and inserting ''section 431(c)(6)(D)'',

(D) by striking ''section 412(c)(7)(A)'' and inserting ''section 431(c)(6)(A)'', and

(E) by striking ''section 412'' and inserting ''section 431''.

(3) Section 404(a)(1) of such Code is amended by striking subparagraph (F).

(4) Section 404(a)(7) of such Code is amended—

(A) in subparagraph (A)(ii), by striking ''for the plan year'' and all that follows and inserting ''which are multiemployer plans

for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year.'',

(B) by striking ''section 412(l)'' in the last sentence of subparagraph (A) and inserting ''paragraph (1)(D)(ii)'', and

(C) by striking subparagraph (D) and inserting:

''(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.''.

(5) Section 404A(g)(3)(A) of such Code is amended by striking ''paragraphs (3) and (7) of section 412(c)'' and inserting ''sections 430(h)(1) and 431(c)(3) and (6)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

**SEC. 802. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.**

(a) IN GENERAL.—Subparagraph (C) of section 404(a)(7) of the Internal Revenue Code of 1986 (relating to limitation on deductions where combination of defined contribution plan and defined benefit plan) is amended by adding after clause (ii) the following new clause:

''(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''.

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

''(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

## TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS

**SEC. 901. PENSIONS AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS OF ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 MADE PERMANENT.**

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the provisions of, and amendments made by, subtitles (A) through (F) of title VI of such Act (relating to pension and individual retirement arrangement provisions).

**SEC. 902. SAVER'S CREDIT.**

(a) PERMANENCY.—Section 25B of the Internal Revenue Code of 1986 (relating to elective deferrals and IRA contributions by certain individuals) is amended by striking subsection (h).

(b) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

(1) Section 25B of such Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

''(h) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

''(1) IN GENERAL.—So much of any overpayment under section 6401(b) as does not exceed the amount allowed as a tax credit under subsection (a) shall, at the election of the taxpayer, be paid on behalf of the individual taxpayer to an applicable retirement plan designated by the individual, except that in the case of a joint return, each spouse shall be entitled to designate an applicable retirement plan with respect to payments attributable to such spouse.

''(2) APPLICABLE RETIREMENT PLAN.—For purposes of this subsection, the term 'applicable retirement plan' means any eligible retirement plan (as defined in section 402(c)(8)(B)) that elects to accept deposits under this subsection.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 2006.

**SEC. 903. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

''(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

''(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term 'qualified automatic contribution arrangement' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

''(C) AUTOMATIC DEFERRAL.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

''(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

''(I) to not have such contributions made, or

''(II) to make elective contributions at a level specified in such affirmative election.

''(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term 'qualified percentage' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

''(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

''(II) 4 percent during the first plan year following the plan year described in subclause (I),

''(III) 5 percent during the second plan year following the plan year described in subclause (I), and

''(IV) 6 percent during any subsequent plan year.

''(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—Clause (i) shall be applied without taking into account any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause).

''(D) PARTICIPATION.—

''(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—

''(I) highly compensated employees, and

''(II) at the election of the plan administrator, employees described in subparagraph (C)(iv).

''(ii) FIRST PLAN YEAR.—An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year with respect to which such arrangement is a qualified automatic contribution arrangement (determined without regard to this subparagraph).

''(E) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

''(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

''(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

''(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

''(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

''(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

''(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

''(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

''(F) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

''(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

''(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

''(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

''(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

''(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.''.

(b) MATCHING CONTRIBUTIONS.—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

''(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

''(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

''(B) meets the requirements of paragraph (11)(B).''.

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(1) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(k)(13)'' after ''section 401(k)(12)''.

(2) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(m)(12)'' after ''section 401(m)(11)''.

(d) CORRECTIVE DISTRIBUTIONS.—

(1) IN GENERAL.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

''(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

''(1) IN GENERAL.—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee with respect to whom such contribution relates if such distribution does not exceed the erroneous automatic contribution amount and is made not later than the 1st April 15 following the close of the taxable year in which such contribution was made.

''(2) ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'erroneous automatic contribution amount' means the lesser of—

''(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount for purposes of this subsection, or

''(ii) $500.

''(B) AUTOMATIC CONTRIBUTION.—The term 'automatic contribution' means contributions which, under the terms of the plan—

''(i) the employee can elect to be made as contributions under the plan on behalf of the employee, or to the employee directly in cash, and

''(ii) which are made on behalf of the employee under the plan pursuant to a plan provision treating the employee as having elected to have the employer make such contributions on behalf of the employee until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions as a specified level.

''(3) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term 'applicable employer plan'means—

''(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

''(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b), and

''(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).

''(4) APPLICABLE PERIOD.—For purposes of this subsection, the term 'applicable period' means, with respect to any employee, the three month period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to such employee.

''(5) SPECIAL RULES.—A distribution described in paragraph (1) (subject to the limitation of paragraph (2))—

''(A) shall not be treated as a distribution for purposes of sections 401(k)(2)(B)(i), 403(b)(7), 403(b)(11), and 457(d)(1)(A), and

''(B) shall not be taken into account for purposes of section 401(k)(3).''.

(2) VESTING CONFORMING AMENDMENTS.—

(A) Section 411(a)(3)(G) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(B) The heading of section 411(a)(3)(G) of such Code is amended by inserting ''OR ERRONEOUS AUTOMATIC CONTRIBUTION'' before the period.

(C) Section 401(k)(8)(E) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(D) The heading of section 401(k)(8)(E) of such Code is amended by inserting ''OR ERRONEOUS AUTOMATIC CONTRIBUTION'' before the period.

(E) Section 203(a)(3)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended by inserting ''an erroneous automatic contribution under section 414(w) of such Code,'' after ''402(g)(2)(A) of such Code,''.

(e) CONTROL OVER PLAN ASSETS DEEMED TO HAVE BEEN EXERCISED WITH RESPECT TO DEFAULT INVESTMENT ARRANGEMENTS.—Section 404(c) of the Employee Retirement Income Security Act of 1974, as amended by section 308, is further amended by adding at the end the following new paragraph:

''(5)(A) For purposes of paragraph (1), a participant in an individual account plan shall be treated as exercising control over the assets in the account with respect to the amount of contributions made under a default investment arrangement.

''(B)(i) For purposes of this paragraph, the term 'default investment arrangement' means an arrangement—

''(I) which meets the requirements of subparagraph (C),

''(II) under which the participant is treated as having elected to have the plan sponsor exercise control over the assets in the participant's account until the participant specifically elects to exercise such control, and

''(III) under which assets described in subclause (II) are invested in accordance with regulations prescribed by the Secretary.

''(ii) The regulations prescribed pursuant to clause (i)(III) shall provide guidance on the appropriateness of certain investments for designation as default investments under the arrangement, which shall include guidance regarding—

''(I) appropriate mixes of default investments and asset classes which the Secretary considers consistent with long-term capital appreciation, and

''(II) the designation of other default investments.

''(C)(i) For purposes of subparagraph (B)(i)(I), an arrangement meets the requirements of this subparagraph for any plan year if, within a reasonable period before such plan year, the plan administrator gives to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

''(I) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

''(II) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

''(ii) A notice shall not be treated as meeting the requirements of clause (i) with respect to a participant unless—

''(I) the notice includes an explanation of the participant's right under the arrangement to specifically elect to exercise control over the assets in the participant's account,

''(II) the employee has a reasonable period of time, after receipt of the notice described in subclause (I) and before the assets are first invested, to specifically make such an election, and

''(III) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election specifically made by the employee.''.

(f) PREEMPTION OF CONFLICTING STATE REGULATION.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) is amended by adding at the end the following new subsection:

''(e)(1) Notwithstanding any other provision of this section, this title shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

''(2)(A) For purposes of this subsection, the term 'automatic contribution arrangement' means an arrangement—

''(i) which meets the requirements of paragraph (3),

''(ii) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

''(iii) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

''(iv) under which such contributions are invested in accordance with regulations prescribed by the Secretary.

''(B) The regulations prescribed pursuant to subparagraph (A)(iv) shall provide guidance on the appropriateness of certain investments for designation as default investments under the arrangement, which shall include guidance regarding appropriate mixes of default investments and asset classes which the Secretary considers consistent with long-term capital appreciation

''(3)(A) For purposes of paragraph (2)(A)(i), an arrangement meets the requirements of this paragraph for any plan year if, within a reasonable period before such plan year, the plan administrator gives to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

''(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

''(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

''(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

''(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

''(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

''(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 904. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

''(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2-years after the date of the enactment of this subparagraph.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by striking ''or'' at the end of subclause (III), by striking ''and'' at the end of subclause (IV) and inserting ''or'', and by inserting after subclause (IV) the following new subclause:

''(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and''.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

(3) Section 403(b)(11) of such Code is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) for distributions to which section 72(t)(2)(G) applies.''.

(c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

**SEC. 905. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.**

(a) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions), as amended by section 904, is amended by adding at the end the following new subsection:

''(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

''(i) IN GENERAL.—Distributions to an individual who is a qualified public safety employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

''(ii) DEFINITIONS.—For purposes of this subparagraph—

''(I) DROP BENEFIT.—The term 'DROP benefit' means a feature of a governmental plan which is a defined benefit plan and under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits (payable in the form of an annuity) that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee's accrued pension benefit based on years of service after the effective date of the DROP election.

''(II) QUALIFIED PUBLIC SAFETY EMPLOYEE.—The term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receive immediate retirement benefits.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

**SEC. 906. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEDUCTIBILITY OF CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 907. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.

**SEC. 908. IRA ELIGIBILITY FOR THE DISABLED.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 (relating to other definitions and special rules), as amended by this Act, is further amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

''(8) SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.—In the case of an individual—

''(A) who is disabled (within the meaning of section 72(m)(7)), and

''(B) who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year,

subparagraph (B) of subsection (b)(1) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 909. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.**

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

''(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

''(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

''(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

''(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.''.

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting ''and (11)'' after ''(7)''.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

## TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

### SEC. 1001. TREATMENT OF ANNUITY AND LIFE INSURANCE CONTRACTS WITH A LONG-TERM CARE INSURANCE FEATURE.

(a) EXCLUSION FROM GROSS INCOME.—Subsection (e) of section 72 of the Internal Revenue Code of 1986 (relating to amounts not received as annuities) is amended by redesignating paragraph (11) as paragraph (12) and by inserting after paragraph (10) the following new paragraph:

''(11) SPECIAL RULES FOR CERTAIN COMBINATION CONTRACTS PROVIDING LONG-TERM CARE INSURANCE.—Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

''(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

''(B) such charge shall not be includible in gross income.''.

(b) TAX-FREE EXCHANGES AMONG CERTAIN INSURANCE POLICIES.—

(1) ANNUITY CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (2) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(2) LIFE INSURANCE CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (3) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(3) EXPANSION OF TAX-FREE EXCHANGES OF LIFE INSURANCE, ENDOWMENT, AND ANNUITY CONTRACTS FOR LONG-TERM CARE CONTRACTS.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended—

(A) in paragraph (1) by striking ''contract;'' and inserting ''contract or for a qualified long-term care insurance contract;'',

(B) in paragraph (2) by striking ''contract;'' and inserting ''contract, or (C) for a qualified long-term care insurance contract;'', and

(C) in paragraph (3) by striking ''contract.'' and inserting ''contract or for a qualified long-term care insurance contract.''.

(4) TAX-FREE EXCHANGES OF QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended by striking ''or'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; or'', and by inserting after paragraph (3) the following new paragraph:

''(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.''.

(c) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Subsection (e) of section 7702B of such Code (relating to treatment of qualified long-term care insurance) is amended to read as follows:

''(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

''(1) COVERAGE TREATED AS CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.

''(2) DENIAL OF DEDUCTION UNDER SECTION 213.—No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

''(3) APPLICATION OF SECTION 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—

''(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for coverage under the qualified long-term care insurance contract made to that date under the life insurance contract, less

''(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).

''(4) PORTION DEFINED.—For purposes of this subsection, the term 'portion' means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

''(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:

''(A) A trust described in section 401(a) which is exempt from tax under section 501(a).

''(B) A contract—

''(i) purchased by a trust described in subparagraph (A),

''(ii) purchased as part of a plan described in section 403(a),

''(iii) described in section 403(b),

''(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

''(v) from an individual retirement account or an individual retirement annuity.

''(C) A contract purchased by an employer for the benefit of the employee (or the employee's spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.''.

(d) INFORMATION REPORTING.—

(1) Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

### ''SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS UNDER COMBINED ARRANGEMENTS.

''(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

''(1) the amount of the aggregate of such charges against each such contract for the calendar year,

''(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

''(3) the name, address, and TIN of the individual who is the holder of each such contract.

''(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person making the payments, and

''(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.''.

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

''Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.''.

(e) TREATMENT OF POLICY ACQUISITION EXPENSES.—Subsection (e) of section 848 of such Code (relating to classification of contracts) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT ARRANGEMENTS.—An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).''.

(f) TREATMENT AS QUALIFIED ADDITIONAL BENEFIT.—Subparagraph (A) of section 7702(f)(5) of such Code (relating to qualified additional benefits) is amended by striking ''or'' at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

''(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to exchanges occurring after December 31, 2006.

**SEC. 1002. DISPOSITION OF UNUSED HEALTH AND DEPENDENT CARE BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH AND DEPENDENT CARE BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because under such plan qualified benefits include—

''(A) a health flexible spending arrangement under which not more than $500 of unused benefits under such arrangement may be—

''(i) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(ii) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee, and

''(B) a dependent care flexible spending arrangement under which not more than $500 of unused benefits under such arrangement may be carried forward to the succeeding plan year of such dependent care flexible spending arrangement.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'dependent care flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for dependent care assistance which meets the requirements of section 129(d).

''(4) UNUSED BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement or the dependent care flexible spending arrangement, as the case may be, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

**SEC. 1003. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.**

(a) IN GENERAL.—Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new subsection:

''(l) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

''(1) IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

''(2) LIMITATION.—The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $5,000.

''(3) DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE.—

''(A) IN GENERAL.—An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

''(B) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) ELIGIBLE RETIREMENT PLAN.—For purposes of paragraph (1), the term 'eligible retirement plan' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

''(B) ELIGIBLE RETIRED PUBLIC SAFETY OFFICER.—The term 'eligible retired public safety officer' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

''(C) PUBLIC SAFETY OFFICER.—The term 'public safety officer' shall have the same meaning given such term by section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(8)(A)).

''(D) QUALIFIED HEALTH INSURANCE PREMIUMS.—The term 'qualified health insurance premiums' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

''(5) SPECIAL RULES.—For purposes of this subsection—

''(A) DIRECT PAYMENT TO INSURER REQUIRED.—Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

''(B) RELATED PLANS TREATED AS 1.—All eligible retirement plans of an employer shall be treated as a single plan.

''(6) ELECTION DESCRIBED.—

''(A) IN GENERAL.—For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

''(B) SPECIAL RULE.—A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

''(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

''(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(a) of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(2) Section 403(b) of such Code (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 2005.

## TITLE XI—GENERAL PROVISIONS

**SEC. 1101. PROVISIONS RELATING TO PLAN AMENDMENTS.**

(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2008.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting ''2010'' for ''2008''.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER), the gentleman from California (Mr. GEORGE MILLER), the gentleman from Michigan (Mr. CAMP), and the gentleman from New York (Mr. RANGEL) each will control 22½ minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. BOEHNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2830.

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

There was no objection.

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

Madam Speaker, I will put this as bluntly as I can: our Nation's pension laws are outdated and broken and placing at risk the retirement security of millions of American workers. Today, we have an opportunity to change this by voting for the most comprehensive reforms to worker pension laws in more than a generation.

The Pension Protection Act is the outcome of one of the most thorough and remarkable legislative processes I have seen during my years in the House. On June 4, 2003, the Committee on Education and the Workforce held the first of nearly a dozen hearings on traditional pension plans, and from these hearings they have covered a broad set of issues, ranging from what is broken to who it has impacted to how we should go about fixing it. And, today, we stand ready to debate and vote on the product of those 30 months of deliberations.

There are three key strengths of this bill, and I would like to highlight each of those for my colleagues. It is a balanced approach, it is comprehensive in nature, and it is a benefit to American taxpayers.

First, the bill's greatest strength is its balanced approach to the pension crisis that we face. While some are calling for suffocating pension funding rules which would place an incredible burden on employers who voluntarily offer retirement benefits, our bill makes certain not to tighten the rules so much that employers leave the defined benefit system altogether.

While others call for relaxation of pension rules, our bill ensures that employers and unions keep their promises to workers and retirees who are counting on their pension benefits. In short, our bill aims to shore up the traditional defined benefit pension system to which we and our parents have grown accustomed so our children and grandchildren might have a chance to be part of it as well.

The second major strength of the Pension Protection Act is inherently comprehensive in nature. As you can see on the chart that is next to me, the measure would ensure that pensions are fully funded to restore worker and retiree confidence; it has enhanced disclosure requirements so that workers and retirees are no longer kept in the dark about the health of their pensions; it would improve the financial condition of the Federal agency charged with ensuring some 30,000 private pension plans; it would reform outdated laws that deny workers access to professional and secure investment advice while providing even more workers with 401(k)-type plans; and it would end sweetheart deals like those we have seen at some airlines and other corporations that have terminated their plans in which executives enjoy a windfall of cash while workers and retirees are left wondering about their futures.

Incidentally, these five reforms are only the tip of the iceberg. There is much more that this bill offers to workers and retirees, far more than this chart could ever tell us.

Finally, yet another strength of this measure is its benefit to American taxpayers. Each of us remembers all too well the savings & loan bailout of more than a decade ago. By enacting the Pension Protection Act, we can be more confident that history will not repeat itself with regard to our pension system.

As you can see on this second chart, the Pension Benefit Guaranty Corporation, which ensures nearly 30,000 private worker pensions, is in dire financial condition. With some $450 billion in pension plan underfunding among financially weak companies looming on the horizon, the PBGC's debt could balloon even further than its current $23 billion.

Even though no taxpayer funds fund the Pension Benefit Guaranty Corporation, could American taxpayers be called upon to bail out the agency if its financial condition continues to deteriorate? I think so. That is why the Pension Protection Act includes responsible increases to employer-paid premiums for the first time since 1991, along with substantial reforms to place the defined benefit system on more solid ground. For taxpayers who may be left holding the bag otherwise, I think this is good news.

Madam Speaker, throughout this process I have made every effort to include my colleagues on both sides of the aisle. And even after my Democratic friends voted ''present,'' that is right, they did not vote ''no,'' they voted ''present,'' when our committee approved the bill back in June, I was hopeful that they would join us and the ever-growing coalition of labor and employer groups in support of these reforms.

However, some of my colleagues have offered nothing more than rhetoric based on quirky accounting schemes and purposely skewed modeling in an effort to characterize the Pension Protection Act in a negative manner. I expect these hollow and misleading arguments will continue today as they seek to detract from a debate which they have largely been absent from for the last 30 months. It is my sincere hope, however, that many of my Democrat colleagues will look beyond the rhetoric and support these long-overdue reforms. This bill definitely deserves bipartisan support.

Madam Speaker, the Pension Protection Act would not be before us if it were not for the work of my friend, the chairman of the Ways and Means Committee, Mr. THOMAS; the Employer-Employee Relations Subcommittee chair and vice chair, Mr. JOHNSON and Mr. KLINE; my friend from Ohio, Mr. TIBERI, a committee colleague who worked tirelessly to garner support for the bill; and all of the others on my committee and throughout the House who understand how imperative it is to reform our Nation's outdated pension laws for the benefit of workers, retirees, and taxpayers alike. I thank them for their efforts to bring this bill to the floor.

Madam Speaker, I reserve the balance of my time.

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

My colleagues, I do not know how the majority gets away with what they do. I do not think that their legislative initiatives are just for the legislation, but rather to do away with traditions that have existed under Democrat administrations.

If you have an immigration problem, lock up the immigrants and lock up the employers. If you have a health problem, then get rid of Medicaid and Medicare and let the private sector resolve the problems. If you have a prescription drug problem and you want to subsidize that and help out the older people, do not let the Federal Government do it. Give the money to the private sector; let them compete and let them do it. The Social Security system, if people have relied on their government when they get older or disabled, do not let the government be involved. Get some private accounts and let them do it.

Now we are talking about how well the economy is doing: plants are closing; people are fearful of losing their jobs; pension plans are going busted; and, really, people do not feel nearly as good as the Republicans and the President think.

Now we have a bill before us where these pension plans would be a heck of a lot better if we did nothing, rather than do the harm that we are about to do to them. The demands that are going to be made on employers to reach sometimes the increase of 240 percent in making contributions to these plans will cause many of them to drop the plan and go into bankruptcy. The whole idea of how much revenue we are going to lose, some $70 billion, is not even an issue, if at the end of the day enough sweetheart nips and tucks were given to a handful of people so that we would be assured that the days of defined benefit pensions are just about over.

Some people will have to make political choices today in terms of support of this because there are some vested interest people that need short-gain satisfaction. But at the end of the day, the same way people regret their votes for the Gulf of Tonkin Resolution, they will have to come back and ask did they do more damage than good on today. If you look at actuaries and people who have studied this, they realize that so few pensions are now protected by the PBGC, and in the future many less will be protected.

So, Madam Speaker, these bills are not brought up just to become law. Many of the bills that are coming to this floor are brought to see which people are going to vote against the title of the bill and pay a price for that at the polls, or whether some are secure enough to vote against the substance of the bill that in the long term is going to adversely affect our workers.

At this time with the House permission, I would like to turn the balance of my time over to Congressman BEN CARDIN from Maryland who has spent a lot of time on pensions and can share with the House the pitfalls that we have in this bill before the House today.

I yield the balance of my time to Congressman CARDIN.

The SPEAKER pro tempore. Without objection, the gentleman from Maryland will control the balance of the time.

There was no objection.

□ 1330

Mr. BOEHNER. Madam Speaker, I yield 4 minutes to the gentleman from Texas (Mr. SAM JOHNSON), the chairman of the Employer-Employee Subcommittee of the Education and Workforce Committee.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Madam Speaker, I have the honor of chairing a subcommittee that has jurisdiction over pension law and being an original sponsor of the Pension Protection Act. As a member of both the Committee on Education and the Workforce and the Ways and Means Committee, we have been working for the last 2 years to get a pension bill to the House floor, and I am proud to rise in strong support of the bill.

The Pension Protection Act is good and it is tough. Our bill makes companies put their money behind their promises and keep employees well informed on the health of their pension plans.

While this bill is tough, it does not go overboard with more red tape that has almost killed traditional pension plans. Even with all the red tape that currently binds up these pension plans, there still are some loopholes in current law that have allowed companies to run away from their responsibilities and dump pension promises onto the Pension Benefit Guaranty Corporation.

The PBGC says it is $23 billion in the hole, and they say that, with expected terminations, they are close to $28 billion. Our bill will tighten up pension laws so that companies making promises to employees for their retirement security actually put the money behind their promises.

It is a shame our pension laws have allowed those most directly affected, workers and retirees, to be left unaware that there may be little money behind the promises of a secure retirement. United Airlines' pilots' pension plan was only 30 percent funded when it was dumped on the government. Those pilots and their families did not know how bad the situation was, and they are the ones that are now trying to figure out how to live on one-third of what they had planned to receive.

Our bill requires a company to tell their employees if the pension plan is less than 80 percent funded. Employees will now push their bosses to put money into the plans to match the promises being made. This is a really important reform and should not be minimized.

Also, not to be underestimated is a provision that will allow for a phased retirement of older workers. The provision would allow people to continue working, but also collect their employer-based pension after the age of 62. Current rules prohibit working for the same employer while also collecting a pension today. This prohibition simply forces many people to change jobs or work for a competitor or stop working altogether. My constituents have been really happy to hear about this additional way to step lightly into retirement.

The bill also helps to modernize the pension law on cash balance pension plans. This type of pension plan represents the best chance we have at maintaining defined benefit plans in the future. Cash balance plans are a better fit than traditional plans with today's mobile workforce where employees generally do not stay with one employer for their entire career. The bill clarifies that in the future these plans are not age discriminatory. We need to provide this certainty. In fact, we should go further in providing certainty for plans regardless of when they were created, but because of litigation we cannot.

We need to get this bill through the House and on to conference with the Senate and quickly enacted early next year. The number of traditional pension plans has been declining rapidly. The companies dropping these plans are in two groups. The first group is those that do not put their money behind their pension promises and turn their liabilities over to the government. We have seen that in the steel and airline industries.

The second group is companies that are just sick of the red tape and uncertainty of our laws so they decide to stop offering plans altogether, like Verizon announced last week.

In the many hearings on pension issues we have heard over and over again that companies need predictability and stability in their plans. We need to get this bill enacted so that companies put their money behind their promises so they can plan with certainty in the long term. Support this bill.

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

Madam Speaker, the objective of this legislation should be to encourage the retention and expansion of traditional defined benefit plans. Traditional defined benefit plans generally offer a guaranteed benefit to the worker and, they are generally well managed and diversified. The passage of this bill, in my view, will set up a conference report that will come back to us that will accelerate the termination of well-funded and managed traditional defined benefit plans. And I say that for three reasons.

Three parts of this legislation will adversely affect well-funded and managed plans. First, the funding roles are more costly and more restrictive. That in and of itself will act as a disincentive for continuation of these plans.

Second, there is a failure to include relief for the airline industry, clearly putting pressure on well-funded and managed plans to pick up the costs for other industries, questioning whether they should stay and provide these plans.

Third, we continue to allow companies to go into bankruptcy in order to dump their costs onto the PBGC, once again affecting those well-funded plans that are going to be asked to pick up the tab.

For all these reasons this legislation is likely to accelerate the termination of plans that we would want to see continued. The termination of these plans will just adversely affect the funding of the PBGC, the guaranteed fund, complicating the situation and making it worse.

Madam Speaker, I want to point out that there are provisions in this legislation that are very good. The provisions dealing with the defined contribution provisions are needed and, as it was pointed out in the Ways and Means Committee, contain many of the provisions that were worked on through the Portman-Cardin process as

well as legislation presented by Mr. EMANUEL and Mr. POMEROY. It includes automatic enrollment, the split refunds where tax refunds can go partially into retirement savings, the extension of the savers credit, the ability for individuals to roll over funds and keep them in retirement funds longer.

All of those are positive aspects. However, when you look at this bill in balance, we do need to pass legislation; but on balance this legislation will cause more harm than good, and I urge my colleagues to reject the bill.

Madam Speaker, I reserve the balance of my time.

Mr. BOEHNER. Madam Speaker, I yield 2 minutes to the gentleman from California (Mr. MCKEON), the chairman of the 21st Century Competitiveness Subcommittee.

Mr. MCKEON. Madam Speaker, I rise in strong support of H.R. 2830, and I thank Chairmen BOEHNER and THOMAS and JOHNSON for their great work in getting us to this point.

This bill represents a responsible approach that will protect the retirement benefits of millions of American workers and help ensure that their pension benefits will be there when they retire.

In recent years, our important retirement security system has come under strain from the increased aging of the workforce and from dishonest employers who made promises they could not keep. Many workers and retirees have been misled into believing that they will have a secure retirement only to see their pension plan terminated due to plan underfunding.

This bill includes reforms to ensure employers more accurately measure and fund their short-term and long-term pension promises. It includes tough new funding requirements to ensure plans are adequately and consistently funded, and it provides meaningful disclosure provisions about the financial status of pension benefits.

In addition, this bill is important to protect taxpayers from a multibillion dollar bail-out of the Pension Benefit Guaranty Corporation. When the PBGC cannot pay benefit for plans where they have assumed planned liabilities, taxpayers are on the hook for the difference. In fact, in November the Pension Benefit Guaranty Corporation reported a long-term liability deficit of $22.8 billion. That is billion with a B.

The Pension Protection Act will reasonably increase employer-paid premiums to help shore up the PBGC and protect taxpayers from this potentially large liability.

This bill contains commonsense reforms that will help protect the pensions of millions of Americans; and this bill is supported by a broad array of unions, employers, and other organizations. Passage of the Pension Protection Act is important to the retirement security of millions of Americans, and it is important to help protect taxpayers from an expensive bail-out.

I strongly urge my colleagues to support this bill.

Mr. GEORGE MILLER of California. Madam Speaker, I yield myself 5 minutes.

Madam Speaker, when we are starting to deal with the pension plans that protect America's retirements, one of the things we should do is to make a decision not to do any harm. But the fact of the matter is that this bill makes things worse in many ways for many pensioners in this country and many future pensioners.

First and foremost, we created the Pension Benefit Guaranty Corporation to be there to protect some of the retiree benefits of people if pension plans went bust or the corporations went bust. We are now told that this legislation makes that problem worse.

The speaker who was just in the well said there was some $23 billion in deficit in that plan. And what we now see is a Pension Benefit Guaranty Corporation, the Congressional Budget Office tells us that this makes it at least $9 billion worse over the next decade. So while we narrow the deficit, in fact we see that we increase this agency's deficit problems.

This is an agency that can look out into the future and can see up to $100 billion of liabilities possibly coming their way. Maybe some of them will not come because of this bill, but many of them will come because of this bill, because this bill, in fact, makes it easier, makes it easier to terminate plans. It makes it easier to put plans into bankruptcy. It certainly does not make it any more difficult to put into bankruptcy as we saw with United Airlines.

So what does that mean? That means that a plan that was designed, an insurance policy that was designed for when companies went out of business, now companies can take their pension plans, the retirement nest eggs of their workers, and put them into bankruptcy, and the company can go merrily on its way. I do not choose that term lightly, ''merrily on its way,'' because after what we saw after years and decades of manipulating the pension plans of United Airlines, about not being truthful with the employees, not being truthful with the public, not being truthful with the shareholders about their liabilities, they put them into bankruptcy. Those workers had given back billions of dollars in wage concessions, retirement concessions to try to keep that airline afloat. They were not able to because they went into bankruptcy.

Yesterday, we learned that the top executives of that corporation have now petitioned the court to distribute $235 million in stock to those very same executives that ran this corporation into the ground, that they are going to get $235 million in stock. The employees who had all of the concessions, all of the cutbacks, the employees are going to be required to service, maintain, run and staff those airlines, start all over, having fallen and been cast to the floor.

That is what is wrong with this legislation. It treats those in the corporate suites entirely differently than it takes care of the workers on the shop floor or on the airlines or in the repair facilities. That is the problem with it is that we see that this plan simply does not provide the kinds of protections necessary, the kinds of protections that are necessary for those employees who have worked so terribly long for those corporations, who invested their entire lives in these corporations.

Plus the fact that it also makes it, and we are told by a number of the employer groups, this is what makes it more likely that the companies will terminate their plans, that they will freeze their plans. What does that mean? That means a lots of people who may be 50, 55 years old today, just as we found out with the cash balance plans, this makes it easier to do a cash balance, a lot of people who are working today are going to find out that they will not have a retirement nest egg that they have been planning on. They will not be able to carry out the standard of living that they were anticipating to provide for their families.

□ 1345

That is what this legislation does. It makes those kinds of decisions much easier, much easier for the companies to do that.

What does that mean? That means that America is going to end up with a poorer retired population than they had before. That means that these people are going to have less of the kind of retirement that they had anticipated because of the acceleration of the terminations, because of the acceleration of the freezing of the plans and because of the ease which you can now go and apparently the acceptability in the business community of entering bankruptcy.

We changed the personal bankruptcy laws in this Congress because we said people were using it as a convenience. It is interesting now that the corporations have decided they will use it as a convenience to redesign themselves, to reconfigure themselves, to reinvent themselves. If United Airlines is the model, the only losers will be the workers and the retirees in those corporations.

That is what this legislation does not do. It does not really speak to trying to make sure that we could do all that we can to secure the retirement of current workers and of future retirees.

I would urge my colleagues to vote against this legislation when we get to that vote and understand that we should not be making the problems of America's pensioners even worse than they are today.

Madam Speaker, we are facing a serious pension crisis that has already cost employees across the Nation billions of dollars in lost benefits—benefits they were told were iron-clad. If you calculate just the losses employees suffered in the Nation's four largest pension terminations it exceeds $6 billion in earned defined benefit promises.

Let's be clear what is happening to our retirement system—this Enron the sequel. This

is Enron 2 with a vengeance. This is a national disgrace.

This bill does absolutely nothing about companies who decide to use the Federal Government to dump and run on their promises to employees. Exploiting loopholes in our pension and bankruptcy laws, clever lawyers have turned a Federal agency that was supposed to be a last resort for companies that were closing shop, into a dumping ground for companies to ditch unwanted promises to reward investors at the expense of employees and taxpayers. So powerful is this gaping hole in our pension protections, companies can now exact major wage and benefit concession by merely threatening to terminate their pension plan.

Folks, if you want help fast forward to the new Wal-Mart economy—this is your bill. If you want to further weaken employees' hand in the battle for fair wages and benefits, this is your bill. If you want to stand by and watch as companies freeze, downgrade or drop their pension plans, this is your bill.

Last summer thousands of United Airline employees—mechanics, flight attendants, and pilots—lost billions in irreplaceable pension savings that changed their lives forever. These families—denied the courtesy of even a single hearing before the Education and Workforce Committee—participated in an online hearing Democrats sponsored. Over 1,000 participated in this unique online hearing and their powerful voices were heard.

They wrote to us about the personal and financial devastation resulting from the loss of promised benefits, and the lost opportunity to earn future benefits. Listen to Kenneth Schmidt, a long-time employee of United from Goodyear, AZ, who wrote:

Dear Congressmen,

I had worked for United for 38 years when I retired in February of 2003. My job as a mechanic was always a source of pride to me. I worked midnights for many years, with doing so I missed out on many family gatherings, holidays, etc. This was what I chose to do in life, and I did it with no complaints. But, now I am faced with large cuts to my retirement benefits. My retirement should be a time of taking it easy, traveling, and enjoying my ''Golden Years''. If this cut happens both my wife and I will be forced to reenter the work world, probably full time, if our medical insurance is also affected. This is a sad time in this country for all the workers who are relying on a pension to ease their lives, and make this time relaxing, and enjoyable. The stress that is being created by this turn in events is not healthy for anyone. Please try and help all retirees, and future retirees out of this most unfortunate set of troubles.

Guess what this bill says to Kenneth Schmidt and the millions of future Ken Schmidt's who have suffered from broken pension promises: Too bad, tough luck. You're on your own.

How can it be that tens of thousand of United Airlines employees like Ken Schmidt lose billions of dollars in promise benefits, and we do nothing? For example, we all know that United Airlines was permitted to terminate its flight attendants plans without ever having to show it was necessary to continue operating the company. The plan was terminated despite the testimony of a government hired economist who concluded the United plan was affordable and should be continued. This bill does nothing for them. The Democratic substitute—denied by the Republican leadership—would have restored the United plan until the company showed it couldn't afford it.

This bill does nothing for thousands of pilots whose benefits are cut by half or more by the Federal Government when a plan is terminated. When a plan is taken over by the PBGC after termination by its sponsor, the PBGC is required by law to impose a heavy penalty of those who retire at age 60—even airline pilots who are forced to retire at age 60 under Federal law. Our substitute fixes this injustice and allows pilots to get the same maximum PBGC benefit other workers receive.

H.R. 2830 rejects the Senate bill provisions that provide urgent relief to companies like Delta and Northwest airlines so these companies don't terminate their plans. Our Democratic substitute includes this urgently needed relief.

If you want to let the hard-earned pensions of airline employees across the Nation crumble into a heap of broken promises like United and USAirways, this is your bill.

Mr. Chairman, the sponsors of H.R. 2830 have referred to it as a ''pension reform bill.'' They say it will reform the Pension Benefits Guaranty Corporation that's already $23 billion in the red and going up. And they say it will turn around $450 billion in underfunding reported by the Nation's pension plans. In truth, this bill not only fails to tackle pension reform, it actually hastens the unraveling of the PBGC and defined benefit plans. Here is what the Congressional Budget Office says about this bill: ''H.R. 2830 would actually increase the PBGC's 10 year net costs by $9 billion, or by about 14 percent compared to with what it would be under current policy.'' The PBGC found the same—that H.R. 2830 would mean billions more red ink to its agency over current law.

How can a bill be reforming a system if it is increasing the PBGC's red ink over current law? It can't, and that's why this bill is a sham.

This bill also repeals two long-standing, bedrock protections for employees that, if permitted to pass, will haunt employees for years to come.

First, this bill overrides discrimination laws against older, existing workers for cash balance plans without any transition protections. It means that older workers will face up to what the GAO calculated would be up to a 50 percent cut in their benefits. These angry constituents will be calling the offices of Members of Congress in droves—just like thousands of IBM employees who spent years seeking to rectify deep cuts in pension benefits from a cash balance conversion. They will ask why Congress permitted companies to slash their benefits with no transition protections, no option to stay in the traditional plans, with no legal recourse. Tough luck to them, according to H.R. 2830. By contrast, the bipartisan Senate bill has significant protections for older workers, but this bill rejects them all.

This bill is also larded up with lots of special interest perks, but none as pernicious as the repeal of the longstanding prohibition on conflicted investment advice. Federal pension law has always required investment advice to employees to be on the level—free from self-interested, tainted financial advice. No more. This bill gives a sweetheart deal to investment houses by allowing them to offer conflicted investment advice to employees so long as they disclose to them that fix is in. And of course, it ignores years of mutual fund financial scandals involving padded fees and commissions, secret market timing, late trading, and more uncovered by the SEC, Elliot Spitzer, and other State attorneys general.

Here is what Arthur Levitt, former SEC chairman, says about the Boehner/Thomas investment advice provision.

. . . I have reservations when . . . advice comes from the very same mutual fund company whose products are for sale to a plans participants. One of my bedrock principles of investing is that advice should come from mutual parties with no axe to grind.

Financial journalist Jane Bryant Quinn and NY Attorney General Elliot Spitzer have also expressed strong opposition to this change.

It's amazing that we don't lift a finger for the Ken Schmidts of the world, but we pull out all the stops to reverse a 30-year bedrock protection for employees for mutual funds and investment firms' lobbyists.

By contrast, the Senate bill does not include this repeal and goes further to actually strengthen the independent advice employees receive.

This bill does nothing to ensure fair treatment between workers and executives. Under this bill, if an employer does not fund its pension plan above 80 percent, then the workers get punished by benefit limits. What's the penalty for the executives who ran the plan down between 60 percent and 80 percent? Zero? If an employer does not fund above 60 percent, the bill requires more benefits limits for workers. For executives, only a weak provision for new executive compensation, with loopholes that allow the companies to promise future golden parachutes.

This bill doesn't reform our pensions; it actually hastens the pension crisis according to two independent Federal agencies. Rather than encouraging companies to keep their defined benefit plan in place, it encourages companies to freeze, downgrade or drop their pension plans altogether. It gives the green light to companies who want to dump and run, and opens new loopholes for mutual funds to steer employees into investments that feather their own nests at the expense of employees. It overrules age discrimination laws to slash the pensions of older workers and other existing employees. And it launches new, punishing benefit cuts for employees of underfunded pension plans, while letting the very executives who ran the company and the pension plan into the ground off the hook. And it does nothing to address the urgent crisis of our airline companies and employees—where jobs and the hard-earned retirement benefits of hundreds of thousands of Americans hang in the balance.

I urge you to oppose this bill.

Madam Speaker, I reserve the balance of my time.

Mr. BOEHNER. Madam Speaker, I yield myself 3 minutes, and I yield to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Madam Speaker, would the chairman engage in a colloquy with me and my colleague, the gentleman from Minnesota (Mr. KLINE), concerning the difficulties facing the airline industry, particularly in terms of assisting airlines and that they fulfill their pension promises to their employees?

Mr. BOEHNER. I will be happy to do so.

Mr. PRICE of Georiga. As you and I are both aware, the airline industry continues to amass losses as the industry strives to become more dynamic, both externally and internally. Losses during the last 4 years have proven that the business model used by legacy carriers is outdated but under duress by high-fuel prices and post-9/11 repercussions.

A primary component playing into the equation of legacy carrier viability is the pension systems currently in place. The current model of defined benefit pension plans and the rules associated with it have come under scrutiny as two legacy carriers, making up approximately 20 percent of the domestic airline market, recently terminated their employee pension plans.

There are no winners when airlines default on their pension plans. Employees now are planning for a retirement with a fraction of what they were originally promised, and further, the Pension Benefit Guaranty Corporation, the government agency and guarantor of all pension plans, is put more and more into the red, and taxpayers are exposed to greater risk. Eventually, the point will be reached when taxpayers have to bail out the PBGC if no action is taken.

With these concerns in mind, I would ask the chairman to agree to work with me and the gentleman from Minnesota (Mr. KLINE) to develop a process, as the Senate has done, to provide airlines with the flexibility needed to fund their defined benefit pension systems over a long amortization period. I believe it is critical that we join with the Senate in this effort and through the conference process to develop final legislation that contains industry-specific reform for the airlines.

Mr. BOEHNER. Madam Speaker, reclaiming my time, let me thank my colleague from Georgia for his work on this issue for lo these many months. I know that my colleague from Minnesota (Mr. KLINE) has similar concerns, and I am happy to yield to him.

Mr. KLINE. Madam Speaker, I thank the chairman for yielding.

I would like to echo my colleague from Georgia's comments on this important subject. I, too, come from a district full of hardworking airline employees that have genuine concerns about the future of their pension plan. Throughout this process, I have worked to ensure that we address this issue in a way that does two critical things: One, make sure airlines can continue to afford participation in their defined benefits system; two, support the policy priorities of our committee, the Education and the Workforce Committee, in our efforts to protect employees by making sure the promises they have been made are backed with well-funded pension plans.

Madam Speaker, I commend the chairman for all his work on this bill and ask for his continued good efforts on behalf of the airline industry as we go forward.

Mr. BOEHNER. Madam Speaker, reclaiming my time, as has been the case all year, the lines of communication between those of us that are interested in this, both on and off the committee, and those on the other side of the aisle as well, the lines of communication are open and will remain open.

As we move into conference, the process, I remain committed to ensuring that the concerns of all stakeholders involved are addressed in a bipartisan fashion as we complete action on comprehensive reforms in an expeditious manner.

I remain committed, as I believe both of my colleagues do, that airlines do, and that we need to find a solution that will allow airlines to maintain their plans and ensure employees of both plans are adequately funded.

Madam Speaker, I reserve the balance of my time.

Mr. CARDIN. Madam Speaker, I am pleased to yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

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

Mr. MCDERMOTT. Madam Speaker, this bill proves that the Republicans are not just after poor people. This pension bill boils down to one fundamental principle: The Republicans want all Americans, including flight attendants and everybody else out there on a pension, to be entirely alone, isolated from the strength and compassion of American values.

I am here to say that this pension bill that forces elderly Americans into solitary confinement is abusive, irresponsible and morally bankrupt. This whole year has been about doing it to people. Get rid of Social Security, privatize it, put them on their own. Medicare: Privatize it, put them on their own. Now we have the pension bill: Privatize it, put them on their own.

Take away the union benefit, how will they do it? They are going to Boeing. They squeeze Boeing tight, and Boeing flips into 401(k), and there goes the pension down the drain.

Now this raises the question, what is wrong with you people? We decided a long time ago in this country that there was strength in numbers. We had to do things together. That is why Social Security was developed. That is why Medicare was developed.

The Republican vision articulated in this bill is that America is a sinking ship, and the shout is for every man and woman, you are on your own.

They call it an ownership society. You will still have a pension; it will be a 401(k). But it really is, you are on your own. If you can figure out the market, good luck, baby.

There are not enough lifeboats in the water, and we know that, and everybody is jumping off the ship. In 1980, 40 percent of employers provided a pension. Today, only 20 percent do. Now, that is a 50 percent reduction in 20 years, and the pensions that are provided, fewer provide a guaranteed benefit than they used to get.

So what do we have left? The stark fact is that half of America's retirees have less than $15,000 income. Imagine living in the United States on $15,000 after working for 45 years. Only 50 percent of American households have retirement savings at all, but if they do not have a benefit from the pension and their Social Security, which has not been ripped away from them, they got nothing.

Now, half of the households who have savings have an average $385 a month. So they get their Social Security, $1,800 a month at the maximum, and $385, oh, they are living fat on $2,000 a month.

The people without any savings are disproportionately poor, have nothing except Social Security, and the Republicans, as I say, tried to take that away earlier in the year. We beat them on that, and we should beat them on this.

This is the definition of financial freedom that Republicans want for Americans: They want riskier pensions and no way for anybody to be sure of anything. I urge my colleagues to vote no on this.

Mr. BOEHNER. Madam Speaker, I am pleased to yield 1½ minutes to the gentleman from Louisiana (Mr. BOUSTANY), a member of our committee.

Mr. BOUSTANY. Madam Speaker, I rise in strong support of this bill.

This bill strengthens our Nation's retirement system and comes at a critical time as economic conditions are requiring companies to confront new challenges.

This legislation provides steps to help employers plan and manage finances accurately, to determine pension liabilities and to ensure pensions are funded and benefits are paid.

I want to discuss an important section of the bill regarding multi-employer pension plans. Under current law, multi-employer pension plans are loosely regulated and have few requirements for timely disclosure of information.

For the first time ever, beneficiaries and contributing employers of these multi-employer pension plans will have transparent information to make accurate funding decisions. The legislation creates a system for identifying financially troubled plans and improving their funding status.

Furthermore, new notice and disclosure requirements will provide participants with clearer and more specific financial information. Workers and retirees must be provided with an annual update on the plan's assets, liabilities, financial condition and funding policies. Underfunded plans are required to file financial information with the PGBC and provide notice to workers and retirees. Existing financial disclosure documents are updated to provide more information, particularly about plan mergers and actuarial assumptions.

Multi-employer plans must notify a contributing employer of their withdrawal liability upon request.

Madam Speaker, I urge colleagues to back this bill and take a very important opportunity to put employees' pension plans on a solid foundation.

Mr. GEORGE MILLER of California. Madam Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Madam Speaker, American workers know that a defined pension plan is a promise from their employer, a promise that, when they retire, they will receive a benefit they can rely on. In fact, they have planned their retirement future on that promise. This bill allows companies to break that promise. It allows companies to switch midstream to cash balance plans, ignoring that promise to their workers.

These workers have trusted that this benefit will be there. It will be there at the end of their service to a company. In fact, these workers have quite often given up pay raises or other benefits for their retirement security. These pension benefits have been earned. They have been promised. They must be honored.

Actually, earlier this year, the Republican majority tried but failed to destroy the Social Security system by going back on their promise to every American that at a certain age they would receive a defined benefit, a benefit they could count on.

Americans overwhelmingly stood up to the Republicans and said Social Security is ours, you promised it, we rely on it, you cannot have it.

So the Republican majority could not take Social Security away from Americans with privatization. Now, they are trying to pull the rug out from under people who have dedicated their lives working hard for their companies.

Madam Speaker, these workers were promised defined retirement benefits. They earned those benefits, and this Congress cannot allow companies to go back on their word. We must ensure that these hardworking Americans get the pension benefits they have been promised that they have earned.

I urge my colleagues to oppose H.R. 2830. Protect American pensions.

Mr. BOEHNER. Madam Speaker, I yield myself such time as I may consume, and I yield to my colleague the gentleman from Ohio (Mr. TIBERI).

Mr. TIBERI. Madam Speaker, I appreciate the chairman rising to engage me in a colloquy.

I would like to thank both you and Chairman THOMAS for your work on this bill. As you remember, back during the committee, I spoke about shutdown benefits and appreciate the work that you and Chairman THOMAS have done in the last couple of days to deal with stakeholders in that industry. However, the language contained in the bill does not quite go far enough, I believe, in helping everybody in every industry.

Mr. Chairman, as I have told you before, my father worked in the manufacturing business as an employee for over 20 years. He was a member of the steel workers, and one day when I was in high school, he came home and was out of a job, which is traumatic enough, but he was also out of a pension.

Today, employers and employer groups can work together to provide shutdown benefits to employees and to families, and my hope is that your commitment still stands, as it has, that we will work, particularly with the steel industry as we have done with the auto industry, to make sure that shutdown benefits remain a vital option for employers.

Mr. BOEHNER. Madam Speaker, reclaiming my time, I would say to my colleague that I agree with his comments regarding the importance of shutdown benefits to workers who may suddenly find that the plant for which they have worked, for 20 years in your father's case, happens to be closed.

I think the gentleman knows that I am troubled by the fact that shutdown benefits are often paid from a company's pension plan, despite the fact that they are not technically retirement benefits in the true sense of the word. These benefits resemble severance-type pay benefits, and more importantly, these benefits are not funded.

But I want to make clear, for the benefit of my colleagues, that our bill does not prohibit shutdown benefits, as some have suggested.

Instead, with further modifications that we have made over the last few days, it merely requires that shutdown benefits be paid from corporate assets and not pension plan assets, if the pension plan is funded at below 80 percent. I think this is an important change, and I believe it will help restore the financial integrity of this important benefit.

My colleague from Ohio correctly notes that we still have work to do on this issue of shutdown benefits, specifically as it relates to the steel industry, and as such, I pledge to him and other Members who may have an interest in this as well that on this issue we will continue to work on this matter throughout this legislative process.

□ 1400

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Speaker, I am going to vote to send this bill along to the conference and vote ''yes'' for two reasons: first, I think the bill very wisely includes relief for multi-employer plans, an issue that many of us have worked on for a very long period of time. These are plans run by small businesses who find large contributions to be very stifling to their ability to compete. I think this relief is long overdue, and it is the principle reason that I will vote to send the bill along to conference.

The second reason is I think conference will finally be the forum where some very serious flaws in the bill can be addressed and renegotiated. Mr. MILLER's substitute, which unfortunately was not made in order under this rule, addresses those flaws.

First of all, the law makes it far too easy for failed pension plans to be dumped into the Pension Benefit Guarantee Corporation. Mr. MILLER and Mr. RANGEL had ideas that would preclude that dumping from happening. They ought to be adopted.

Second, I think the law ought to make it clear that there cannot be bias or favoritism in favor of highly compensated people at the expense of the rank and file. Mr. RANGEL and Mr. MILLER's substitute accomplishes that. The underlying bill does not.

These and some other issues, I believe, need to be worked out in the conference. I think, unfortunately, they should have been worked out on this House floor with a proper rule, but with those reservations I will vote to send the bill along to conference.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Speaker, I rise to urge my colleagues to vote ''yes'' on this important piece of legislation for several reasons. Paramount, it will help an industry that badly needs our help at a very critical time, and the only way we can help the airline industry is to get it into conference. There are a lot of things that may be right with this bill, there a lot of things that may be wrong with this bill, but the only answer and the logical and most responsible thing that we need to do is to vote ''yes'' and send the bill to conference, allow the process to work.

I appreciate Mr. MILLER who has worked very diligently with me and understands my concerns. I represent an area that has probably more airline employees maybe than any other district. I represent Delta Airlines. We all know that Delta Airlines is in a bankruptcy fight, fighting for its very life; and the two most critical issues that they need help on is doing something to lower the high cost of fuel, which we have problems with and how we can do it. There are all kinds of questions. But there is one thing we can do, and that is to help them with relief of their pension plans. So I urge my colleagues to vote ''yes'' on this important legislation.

Mr. Speaker, this is a comprehensive pension reform bill that will protect workers' retirement incomes, give companies a longer window to make underfunded plans whole, and will help protect U.S. taxpayers from taking on the liability associated with future plan terminations.

Now I'm asking your help to help my people in Georgia.

One area that remains to be addressed in conference are major airlines' pension plans. Delta Air Lines employs thousands of men and women in my district who rely now or plan to rely in whole or in part on retirement benefits provided by Delta.

Without a change in current law that allows Delta and other air carriers that have defined benefit plan obligations, like Northwest, Continental and American, to make their pension payments over a longer period of time—20 years—it's certainly a possibility that some or all of these plans will be terminated, benefits reduced and liability shifted to the taxpayer.

These carriers want to honor their obligations, but need to be equipped with the tools to have a fighting chance to do so. And getting this pension bill to conference is our only hope.

Although we are not addressing this specific need today, I strongly support continued pursuit in conference of an airline specific provision similar to that passed by the Senate, extending the payment period for these carriers to 20 years.

Help us get this bill to conference. Let's help Delta and all the airlines who need our help so much.

I want to thank Chairman BOEHNER for your hard work in making this reform bill a reality, and look forward to working with the conferees.

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

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong opposition to H.R. 2830, the so-called Pension Protection Act. It should be pointed out that H.R. 2830 is opposed by AARP, by the Pension Rights Center, and pension advocates across the country. While I recognize that the Republican leadership included some modest provisions to attract some union support, H.R. 2830 still has a number of provisions that will jeopardize the retirement security of millions of American workers.

Among other harmful provisions, this bill would legalize age discrimination in cash balance pension conversions. Year after year, Congress has voted against cash balance pension conversions because of the harm they have caused older workers.

Mr. Speaker, we do not tolerate discrimination in this country based on race, gender, religion, or disability; and we must not tolerate discrimination based on age with regard to pensions.

Unfortunately, that is exactly what H.R. 2830 does. According to the GAO, cash balance conversions without protections slash the pension benefits of an average 50-year-old by $238 a month. Younger workers are also hurt. As the GAO reported, a typical 30-year-old would see his or her pension benefits slashed by $59 a month under a cash balance conversion. H.R. 2830 would legitimize these harmful pension cuts by legalizing cash balance conversions without requiring employers to protect older workers. That is wrong.

Mr. Speaker, let me read to you what the AARP and the Pension Rights Center have to say about this legislation. According to the AARP: ''We cannot support legislation that would clarify the legal status of cash balance pension plans without providing protections for older, long-service workers involved in cash balance plan conversions.''

I urge a ''no'' vote.

Mr. CARDIN. Mr. Speaker, I am curious: Is the majority on the Ways and Means side going to be using their time or not? Does the gentleman know?

Mr. BOEHNER. I assume so.

Mr. CARDIN. Can I inquire as to the amount of time that remains on all sides?

The SPEAKER pro tempore (Mr. LATHAM). The gentleman from Maryland has 13½ minutes remaining. The gentleman from Ohio has 3½ minutes. The gentleman from California has 11 minutes remaining.

Mr. CARDIN. The time for the gentleman from Michigan?

The SPEAKER pro tempore. The gentleman from Michigan still has 22½ minutes remaining.

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

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today to oppose H.R. 2830, the so-called Pension Protection Act, not because the system certainly does not need to be reformed, but because I think this particular vehicle, the way it was constructed, actually does damage to what used to be our three-legged stool of retirement security.

We used to rely on pensions; personal savings; and, of course, Social Security. We spent a great deal of this past year fighting any efforts to privatize Social Security and making sure that we had that leg in place. This bill does nothing to enhance personal savings, something this Congress ought to be taking up and making sure we do enhance.

With respect to pensions, we are in need of serious reform, but this moves us in the wrong direction. We have millions of Americans who have worked and tried to put their houses in order, tried to make sure when they retired they had a dignified and comfortable living, but this situation shows us over and over again that companies are now finding it better for themselves financially to go into bankruptcy, capsize their pension responsibilities, and then sometimes coming out more profitable for the shareholders and for some of the CEOs but not for the rank-and-file workers. This is not fair, it is not right, and it certainly is not sound policy for this country.

In too many instances, these companies are defaulting without first having made every possible effort to finance these pension plans and making them work. Workers on the other hand have had decades of working for companies, providing loyal service, the bargain for which was that in the end they would have a guaranteed pension. Many of them had forgone wages during the course of their 20, 25, 30 years of service. CEOs, however, are still getting golden parachutes. They are getting the chance to steer their businesses into court to dump the pension plans and come out and still get taken care of handsomely; yet workers do not.

The Congressional Budget Office and the Pension Benefit Guaranty Corporation both say that this bill will actually add to the Pension Benefit Guaranty Corporation's deficit; that the bill could actually chase companies out of the defined benefit system and leave workers with fewer choices and plans for retirement than they have now.

This bill does not seem to do anything to discourage the pension plan terminations that threaten workers' retirement security, and it does not stop companies from dumping plans in bankruptcy.

In committee, we offered an amendment that would allow the Pension Benefit Guaranty Corporation to intervene earlier, to work with companies in making sure they first exhausted all their options for making sure the plans survived before permitting them to terminate the plans and go into bankruptcy. A substitute for this bill would have allowed us to present that notion again.

Unfortunately, our colleagues on the Republican majority saw fit not to allow a substitute amendment so that we could not debate this proposal. And I suspect we do not see it here today because it would have carried. We would have gotten a majority of people in this Chamber to understand that everything should be done that is possible to prevent a plan from going into bankruptcy before the plan is actually terminated.

Companies should first have to exhaust every single avenue of creative financing in order to save and restore pensions before they allow bankruptcy filings. The Pension Benefit Guaranty Corporation does have expertise it can lend to companies before it gets to that situation.

For those reasons and many others, Mr. Speaker, I urge we vote against this bill and hope we get a better vehicle in the future.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of my time.

As I listen to my colleagues on the other side of the aisle, I have to tell you that I am confused. Some of them say the rules that we are proposing here are too tough and are going to drive employers out of the pension business, while we have some of my colleagues on the other side of the aisle saying the rules are not tight enough and we are going to create more deficits at the Pension Benefit Guaranty

Corporation. Ladies and gentlemen, I think the bill is just right.

Yes, these are better rules that will require companies to better fund their plans. They certainly are better than current law. But I do not believe they go to the point of driving companies out of the defined benefit system.

My good friend from California believes we are going to drive up the deficit. Now, if the rules were not strong enough, I would not have had virtually every employer in America who has a defined benefit plan beating on my office door complaining about the rules we were proposing. I would not have had every labor organization talking to me about how do we get this right.

The fact is, if you look at the chart that we have here, plans must meet a 100 percent funding target. That is not the law today. If they are in the 80–90 percent range, it is good enough. But then as soon as the market turns down or the industry has a bump in the road, it is not long before they are under 60 and in deep trouble. So requiring plans to be 100 percent funded, I think, is a very good idea.

Having an interest rate that is commensurate with their liabilities is something that we have not done ever. We have had one interest rate used to calculate the plan's liabilities. Under this modified yield curve proposal, they will have three different interest rates to use based on the longevity of their workforce, 0–5 years, 5–20, and those employees who will retire after 20 years. It will give us a more accurate reflection of the true cost of those plans.

Third, it requires funding shortfalls to be erased over 7 years. We want to give companies time to go from the current rules to these more responsible rules; and if we do not have a sufficient transition time, what is going to happen is that we are going to create real havoc in the marketplace.

Fourth, it restricts unlimited use of credit balances. We all know that the current rules about credit balances are, frankly, some of the most irresponsible public policy that I have seen. Beginning to restrict the use of those credit balances will, in fact, strengthen these plans.

Fifth, it curves benefit increases for underfunded plans. We all know there are plans that were underfunded, severely underfunded, and yet increasing benefits at the same time. That is not fair to workers who are being given promises that someone has no intention of keeping.

Last, it shores up the finances of the Pension Benefit Guaranty Corporation.

All of these will bring more funding to company pension plans, it will bring more funding to the Pension Benefit Guaranty Corporation, and put our pension system for American workers on a stronger foundation.

□ 1415

Why else do I think we are just right? I have a long list of business organizations that are supporting this bill and a long list of labor organizations that are supporting this bill. It is a balanced bill. I urge my colleagues to support it.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, when United Airlines announced it was going to go into bankruptcy, the Democratic members of the Committee on Education and the Workforce planned an e-hearing so those people who were most affected by the termination of that plan and the bankruptcy of that company would have an opportunity to talk to their representatives in Congress. We were not going to have a hearing on this problem, and these people could not come to Washington and testify. So we opened up the Internet to them, and we received thousands of replies from people telling us their life stories. The amazing thing about it was how many of these people were using their retirement to care for another member of their family. It could be a spouse with an illness, it could be a child, a grandchild, and all of a sudden, half of their pensions were evaporated into the bankruptcy of United Airlines.

Mr. Kenneth Schmidt, a long-time employee of United from Goodyear, Arizona, wrote, ''Dear Congressman, I had worked at United for 38 years when I retired in February of 2003. My job as a mechanic was always a source of pride to me. I worked midnights for many years, and in doing so, I missed many of my family gatherings and holidays. This was what I chose to do in life, and I did it with no complaints. But now I am faced with large cuts in my retirement benefits. My retirement should be a time for taking it easy, traveling and enjoying my 'golden years.' If this cut happens, both my wife and I will be forced to reenter the work world, probably full time if our medical insurance is also affected. This is a sad time in this country for all the workers who are relying on a pension to ease their lives and make this time relaxing and enjoyable. The stress that is being created by the turn of events is not healthy for anyone. Please try and help all retirees and future retirees out of this most unfortunate set of troubles.''

What the problem is is that this legislation does nothing for the Kenneth Schmidts of the world, he and his family. It does nothing to keep companies from simply making a business decision that they can throw the company into bankruptcy, get rid of the retirement and health care obligations to retirees and move along. This is not some unusual practice to bring shame upon a company. The steel companies did it. The airlines have done it. There is a question of whether the automobile industry will go this way.

It is really not completely about their pensions. It is about a decision of a business plan. It is about competition and a change in the marketplace. But the fact of the matter is that, at the end of the day, there is no showing. United did not have to show that for these pension plans they would be a solvent company. In fact, the people from the PBGC wrote and said that they thought the flight attendant plan could be salvaged, and in fact, maybe the others could. But the decision was made and they went into bankruptcy without a hearing on that issue.

Companies should have to exhaust all of their attempts to try to save the retirement plans of these Americans, these people who have worked hard. Remember, these pension plans, they traded pay. They traded health care benefits. They traded vacation days for this pension plan. That was the agreement and the guarantee. Now, unilaterally, the company gets up and walks away from it.

And to rub salt into their wounds, there were pilots required by the laws of this Nation to retire earlier. They take an additional hit on their pension because they are early retirees, not because they wanted to stop flying but because the law says they have to retire.

So we have pension plans that could have been salvaged and people who are being punished because of the Federal law in terms of their early retirements, and this bill does nothing to fix that.

We do that in our motion to recommit. We address the concerns of the flight attendants. We address the concerns of the early retirees, and we address the concerns of the airlines, but it does not do that in the majority bill because they want to go off and use those people as trading chips, the retirement nest eggs of these hard-working Americans, in the conference committee. I urge Members to vote against this legislation.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2830, the Pension Protection Act of 2005 strengthens retirement security for millions of Americans. Current pension funding laws and structures are outdated and threaten the financial stability of the pension system. In fact, the Pension Benefit Guaranty Corporation, PBGC, the government insurer of pension plans, estimates that single employer plans are underfunded by up to $450 billion.

Furthermore, an increasing number of companies are using the bankruptcy system to dump massively underfunded pension plans on the PBGC. Since traditional pensions are a critical component of retirement security, it is essential to form law that modernizes and strengthens funding rules. H.R. 2830 ensures that companies fulfill their pension promises to working people. It requires employers to fully fund their pension plans and rectify funding shortfalls more quickly. It also ensures that employees receive up-to-date and accurate information about their pensions and prevents companies from making future promises when they cannot even meet current obligations.

The bill strikes the right balance in ensuring the plans will begin to be

more appropriately funded while not being so strict that the companies providing pension plans are in danger of having to terminate them. To that end, H.R. 2830 provides transition relief to employers, giving them time and flexibility to get their pension funding in order.

In addition, the Ways and Means Committee incorporated into this package a number of tax incentives to increase retirement savings for Americans. Included in H.R. 2830 are provisions to make permanent the savers' credit and the increased contribution limits for IRAs and other 401(k) plans. The bill also increases savings opportunities for our men and women in combat and provides increased pension flexibility for public safety officers, including firefighters, policemen and emergency medical service employees.

Furthermore, this bill provides tax benefits to make health care and long-term care more affordable. H.R. 2830 makes permanent bipartisan pension improvements established in 2001. While pension reform is a difficult area to make adjustments, given the unique needs of each employer, this legislation is a fair and balanced package that will provide economic security for millions of Americans. It has broad support for both the employer and labor communities. I urge my colleagues to support this bill.

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

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent to yield the balance of my time to the gentleman from Maryland (Mr. CARDIN) for his control in this debate.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CARDIN. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. LEVIN), the senior Democrat on the Subcommittee for Social Security and who understands retirement security.

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

Mr. LEVIN. Mr. Speaker, in a few words, what we need to do is to reform our pension system but not to undermine it.

There is a basic issue here, and I hope Members will pay attention to it. We have had in this country in the private sector a system of guaranteed monthly benefits under defined pension plans in the private sector for millions and millions of people. That has been meaningful.

What I think is going to happen if this bill becomes law and if it were to be combined in conference with provisions in the Senate is essentially to undermine defined benefit plans and move us towards what are called defined contribution plans, so more and more, everybody will rely on a 401(k) instead of the guaranteed benefit in the private sector. That shift was tried in Social Security by the majority. It failed for good reasons, and now I think there is another effort here regarding private pension plans to lead to the same result.

We asked the Bush administration when they testified before Ways and Means, tell us the impact on industry of your proposals. They could not tell us. If you look at the chief financial officers, 60 percent of them who deal with pension plans essentially say that this yield curve of the administration, and there is a modified version of it in this bill, would lead to benefit cuts and termination of defined benefit plans, and that would affect manufacturing as well as other industries.

I know there have been some efforts to moderate that. Various people have scrambled to try to reduce the potential undermining of defined benefit plans through this provision on credit balances, but I want everybody to know that that is not likely to work out in the main because this Republican bill would discourage companies from doing the responsible and sensible thing, advance funding their pension plans to free up resources in years when they needed to make big expenditures, like rolling out a big product line, and penalize those who would do it any way, who would advance funds.

Look, there are some transition rules, but they are not going to basically resolve this issue of whether we are going to maintain, strengthen defined benefit plans.

Now, it is said, look to the conference committee. All I can say is, look at the history of conference committees in this institution in recent years. What is likely to come out is a bill that would make this bill even worse, and even if it did not, what we face with this bill is this basic question: Do we want to strengthen defined guaranteed pension plans and payments, or are we going to move to everybody on their own? I think this House should stand up and say, let us stand up for a defined benefit system in this country.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. SCOTT).

Mr. SCOTT of Georgia. Mr. Speaker, I rise again in support of this important legislation. I wanted to get down to this, well, to kind of deal with some specifics as to why it is important that we move this bill on over into conference.

First of all, this is a comprehensive pension reform bill that will protect workers' retirement incomes. It will give companies a longer window to make underfunded plans whole, and it will help protect U.S. taxpayers from taking on the liability associated with future plan terminations.

As I mentioned before, Delta Airlines employs thousands of men and women in my district, and other airlines, in many of your districts throughout this country, rely now or plan to rely in whole or in part on retirement benefits provided by Delta. Without a change in current law, that will allow Delta and other airline carriers that have defined benefit plans and obligations, like Northwest, Continental and American, to make their pension payments over a longer period of time, 20 years, then it is a certainty that some or all of these plans will be terminated. Benefits will be reduced, and liabilities will be shifted to the taxpayer.

We have an opportunity with this vehicle today to make sure that does not happen. We do not need to extend this liability over to the taxpayers. These employers and airline carriers want to honor their obligations, their pensions, but they need our help. They need to be equipped with the tools just to have a fighting chance to do so.

Mr. Speaker, let us give our airlines this fighting chance. I know that is not the main item on the agenda, but this is the only vehicle we have that we can use in conference to fix the situation. I urge Members to give us a chance so we can help a very important industry.

□ 1430

Mr. CARDIN. Mr. Speaker, first let me yield myself 30 seconds to point out that I wish we did have provisions in this bill to deal with the airline industry, because I think we should. The problem is that we do not, and we go to conference with a situation where those who have well-funded plans are now likely to be asked to pay because of the costs of the airline industry. And let me also point out from Mr. BOEHNER's comment about making the PBGC better funded, if we have a lot of terminated plans, it is not going to be better funded. And the gentleman brags about a permanent yield curve which is unpredictable to business. It would be better to have a corporate bond rate, and I am sorry that is not in the legislation.

Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. NEAL), a senior members of the Ways and Means Committee and one of the leading experts on retirement issues.

Mr. NEAL of Massachusetts. Mr. Speaker, as the consumer listens to this debate, one of the things I believe that they want to understand is that the advocates of this legislation, they are the ones that, just a year ago, were trying to privatize the Social Security system. They wanted to privatize the Social Security system. That should not be dismissed. So this bill is now shuttled to the floor, barely a word of consideration in the Ways and Means Committee, and the Republicans on the Rules Committee would not grant us the opportunity to offer an alternative.

Pensions, like Social Security, should be sacred between the employer and the employee. There are few things that matter more than long-term security and a guaranteed pension.

Now, let me give you the schedule of the Ways and Means Committee. We found days to discuss a free trade

agreement with Bahrain, days to hear testimony about Bahrain, a country with 700,000 people. And then we took months and months and months, as they attempted to privatize Social Security. We spent a disproportionate amount of time, after the American people said, and the Wall Street Journal poll today, by the way, indicates quite clearly how they felt about their privatization plan of Social Security. Boy, is that clear. I will bet you on the other side everybody has read that poll by now. That was a terrible idea, and this is a terrible idea.

So where do we find ourselves? This legislation will do more harm than it will do good. The Committee on Investment of Employee Benefit Assets, a group that represents chief investment officers from the larger corporations in the country, recently conducted their own survey and concluded that if this were to pass, 60 percent of those employers would either freeze or terminate their pension plans. Everybody knows the most robust debate in America next year is going to take place over retirement security. Reject this legislation.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself 30 seconds just to say that we had several hearings on this pension bill in the Ways and Mean Committee, including the Select Revenue Subcommittee which I chair. Let me just say that the PBGC's analysis shows that funding contributions to this end up being lower only in the short term; but, actually, starting in 2010, contributions to pension plans will increase. And that is because the funding reforms in the bill are phased in over 5 years.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. ENGLISH), a member of the Ways and Means Committee.

Mr. ENGLISH of Pennsylvania. Mr. Speaker, I particularly want to commend the Chairs of the Ways and Means and Education and the Workforce Committees for putting together a bill which could finally fix the antiquated laws that govern pension plans and protect, at the same time, the interests of workers, retirees, and taxpayers.

What comprehensive pension reform must do and what this bill does for the first time in a generation is to significantly shore up pension funds through tough funding rules, but without pushing employers into termination, bankruptcy, and a multibillion dollar taxpayer bail-out of the PBGC.

But this bill goes beyond reforming pension laws. It also embraces new tax policies to encourage savings for retirement. First, the bill provides for automatic enrollment into 401(k) plans. While defined contribution plans such as 401(k)s have seen increases in participation since their inception, our national savings rate now is well below 1 percent.

A study by the Vanguard Group projected that enacting the automatic enrollment provisions in this bill would boost participation to create 5.5 million new participants in 401(k) plans.

The bill also provides for split tax refunds, where taxpayers may direct all or part of their tax refund to be deposited into an IRA. Recently, we became aware of a pilot project that gave a sampling of tax filers the opportunity to split their refunds between a savings account and a refund check. Participants deposited $583, on average, 47 percent, of their refunds into savings accounts. Most significantly, 75 percent of these individuals had no prior savings. These results speak for themselves.

As cochairman of the Savings and Ownership Caucus, I believe that reaching out and empowering working families is essential to increasing the country's savings rate and ultimately to improve on our trade balance, strengthening our economy and providing a growth path for the American future. I urge a ''yes'' vote on this pro-worker, pro-retiree, pro-savings legislation.

Mr. CARDIN. Mr. Speaker, I yield 3 minutes to the gentleman from North Dakota (Mr. POMEROY), one of the leaders in the Ways and Means Committee on pension issues, the former insurance commissioner from North Dakota.

Mr. POMEROY. Mr. Speaker, there are two major problems with this bill. The first is that it costs $70 billion and the costs are not paid for, not offset anywhere. It drives the deficit deeper.

Last week, this Chamber voted to deal with the AMT 1-year fix, $31 billion. The majority voted to pass a budget reconciliation that added another $56 billion in deficit. This adds an additional $70 billion in deficit. $177 billion in deeper deficits.

You know, it is Christmastime. People are thinking what to give their children. Well, the majority seems intent on giving them quite a present indeed, $177 billion deeper deficit going on top of $8 trillion of debt.

The second aspect of this bill that I want to point out is that it is deeply flawed pension policy, and it will cause the cancellation, freezing of thousands of plans affecting millions of workers.

Do not take my word for it. This is the estimate of the chief investment officers in an organization known as CIVA. They estimate that if this bill passes, 60 percent of the plans will freeze. Frozen plans mean frozen benefits. And we do not know, the rest may freeze as well. They conclude: ''These proposals would have long-term consequences for current and future workers with the potential to damage the retirement security of millions of Americans.'' Potential to damage the retirement security of millions of Americans.

We have seen this story before. This is a group that worked for months to privatize Social Security, take away that monthly dependable income our seniors enjoy. Well, they failed on that one. Now they are after pensions, and without question this will dismantle pensions in the very same way they tried to dismantle Social Security.

Now, several groups are for this bill. Why? Well, airlines are so desperate for a fix they are arguing for this bill even though it has no provisions for airlines. I was stunned when the chairman announced in a colloquy his lines of communication are open. Well, Mr. Chairman, people have been calling. Airlines have been calling. Hello. Advocates for airlines, worrying about their workers have been calling. Hello, Northwest Airlines has been calling. Hello. Delta Airlines, calling. Hello. No answer. No answer from the majority. And so someone that supports an airline urged to vote for this bill when the provision is utterly left out, it makes no sense. You do not help airlines with this proposal. The Democrats had an alternative that had airline relief in it. It was not even allowed for consideration.

You think you are going to be treated fairly in conference committee. The administration opposes airline relief. The chairman has spoken out against airline relief. There is nothing in the bill for airline relief. They are hoping against hope that something will be done. They deserve so much more than that.

I believe that this bill is deeply flawed pension policy. It will hurt workers. Vote ''no.''

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. RAMSTAD), a distinguished member of the Ways and Means Committee.

Mr. RAMSTAD. Mr. Speaker, I strongly support this important legislation to address pending funding issues for America's workers, and I applaud the work of Chairman THOMAS and Chairman BOEHNER on this bill.

As my friend from North Dakota, on the other side of the aisle, just pointed out, relief for the pension plans of America's struggling airlines is not in the current House bill. Certainly important to my district, but I have been assured, Mr. Speaker, that as this bill moves to conference with the Senate version, the special challenges facing airlines will be addressed. It is important to the people of my district. Northwest Airlines is the largest employer in the Third Congressional District of Minnesota, and thousands of Northwest employees are counting on Congress to rescue their pension plan. No one wants to see another pension plan fail and be turned over to the Pension Benefit Guarantee Corporation.

Northwest Airlines is struggling to emerge from bankruptcy and is trying to do the right thing for its employees by maintaining its pension plan. So as this bill moves through the process, I agree, we must provide relief to this fragile industry. But we must pass this bill today to get it to conference so we can take care of the airlines. We must act today by passing this bill so employees can get the benefits they were promised and so the PBGC and taxpayers will not be on the hook. So let

us pass this bill, get it to conference, address the airlines' pension problems in conference, and get this bill to the President before we go home for the holidays.

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

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. CHOCOLA), a distinguished member of the Ways and Means Committee.

Mr. CHOCOLA. Mr. Speaker, it is because of today's outdated pension rules, workers, retirees and taxpayers all stand to lose unless we act now to reform our pension system. Under current law, employers have been allowed to underestimate their future pension liabilities and to make promises they simply cannot keep. The recent example of United Airlines underscores the need for reform. United Pilots Plan was severely underfunded, yet the company was not required to make cash contributions to that plan in 8 years prior to its termination.

The legislation before us today strikes a careful balance between preserving the defined benefit pension system for workers and ensuring that employers properly fund their plans. This bill provides workers with meaningful disclosure about the status of their pensions, and it protects taxpayers from a possible multibillion dollar bailout of the PBGC, which insures the pensions of some 44 million workers.

But H.R. 2830 contains other important provisions aimed at improving the economic security of retired Americans. For example, it provides retired firefighters and police officers, who often retire early without Medicare coverage, with a tax break on pension withdrawals to pay for health insurance premiums. This provision enjoys strong bipartisan support and offers a small measure to protect against exorbitant health care costs that follow a career spent responding to emergencies.

All together, Mr. Speaker, this bill represents a balanced approach to protecting the interest of workers, retirees and taxpayers, and I urge my colleagues to support its passage.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Speaker, when this issue first came to the floor, I was very concerned, certainly, about how it dealt with some of our manufacturing companies and our workers as well. So many people in my district have worked a lifetime to secure a good pension to help them in their retirement years. They perform jobs that are difficult on them, both physically and mentally; and they have earned their pension.

In Michigan we have so many workers in the airline industry, because, of course, Detroit is the hub for Northwest Airlines. But we obviously also have a huge number of auto workers because of the Big Three and the numerous suppliers to the auto industry that reside there.

Northwest Airlines supports this legislation, as does Continental Airlines, American Airlines, Delta Airlines. So you might think, well, it must be bad for the airline workers then, right? But the bill is actually supported by the Airline Pilots Association and the Association of Flight Attendants. So both management and labor do support this bill.

This bill is also supported by General Motors and even the Delphi Corporation. So you might think it might be bad for auto workers, right? Well, it is actually also supported by the United Auto Workers Union. In fact, it is also supported by the Affiliated Unions of the Building and Construction Trades Department of the AFL–CIO, the Bricklayers and Allied Craft Workers, the Transport Workers Union, the United Brotherhood of Carpenters and Joiners, and the United Food and Commercial Workers Union.

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It is also supported by the U.S. Chamber of Commerce and the Business Roundtable. Any bill that acquires the support of business and labor must be doing something right in today's economy and this climate.

I think we have crafted an excellent piece of legislation. It does what needs to be done: It protects workers pensions. Let us pass this legislation. Let us get it into conference with the Senate, and let us get on with the job of ensuring that workers are secure in the knowledge that the pension that they have worked so hard to get will be there when they retire.

Mr. CARDIN. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. DOGGETT), a distinguished member of the Ways and Means Committee.

Mr. DOGGETT. Mr. Speaker, in Texas, gray skies could mean a twister, a hurricane, or just a lot of rain. To avoid disaster, we want a reliable weather forecast. The same when we go to the doctor, a diagnosis before taking necessary action. And the same should also be true of our economic health.

Families that work hard to earn a pension depend on it for retirement security. But too many suddenly find that their pension funds are drained, denying them of the dignified and comfortable retirement for which they have worked a lifetime.

In addition to the many other problems identified here today by my Democratic Ways and Means colleagues, this bill lacks a pension disclosure requirement that would empower workers to understand just how strong or weak their pension plans really are. Having to wait until a retirement fund's bankruptcy is announced in the newspaper is a little too late for employees to take any remedial action to be able to protect themselves.

Both the Government Accountability Office and the Pension Benefit Guaranty Corporation recommend that employees be provided information far beyond the provisions of this bill. I think it is important that we not leave the employees in the dark with corporate employers blocking the light switch.

A majority of the House voted to allow the Federal Government to comb through library records yesterday. Why can employees not be allowed full access to their own pension information today?

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding me this time.

I would like to offer my support also for the comprehensive pension reform legislation that we are now considering. I would also like to congratulate and thank Chairman BOEHNER and Chairman THOMAS for their hard work in getting us to a point where we can make meaningful and necessary reforms to our pension system.

It has become very clear to us that the laws governing pension plans are antiquated. This is evident from recent high-profile bankruptcies, pension plan terminations and the Pension Benefit Guaranty Corporation's, PBGC, latest report of a $22.8 billion long-term deficit. It would be criminal if Congress were to ignore these instances and not do something to protect the interests of workers, retirees and taxpayers alike.

As we have all heard here this afternoon, H.R. 2830 will strengthen pension plan funding rules, provide workers with meaningful disclosure about the health of their pension plans and protect taxpayers from a possible multibillion dollar bailout of the PBGC. I would like to highlight a couple of provisions within the bill that I believe are also vital to the health of the system.

First, many workers and retirees in recent years mistakenly believed that their pension plans were well funded only to receive a shock when the plan was terminated. Without basic information, workers and retirees are left without the most basic tool they need to hold their employers accountable: complete and accurate information about the true funded status of their pension plans. The Pension Protection Act ensures workers and retirees are given timely, accurate and straightforward information about the health of their plans and thus their own financial future. It is my belief that requiring transparency is one of the most important things that Congress can do for employees.

Second, when pension plans are underfunded and worker retirement security is in jeopardy, excessive executive compensation packages can add insult to injury by heaping lavish benefits on executives while workers and retirees wonder if they will have any retirement benefit at all. The Pension Protection Act restricts the funding of

such executive compensation arrangements if an employer has a severely underfunded plan. Moreover, it requires plans that become subject to these limitations to notify affected workers and retirees.

Again, I thank the chairmen for their leadership, and I urge my colleagues to support the Pension Protection Act.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. RYAN), a distinguished member of the Ways and Means Committee.

Mr. RYAN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I cannot think of anything more scary, anything worse than working one's lifetime, working hard every day and then seeing their pension go before them, seeing their pension get terminated. That is the worst possible thing that could happen to a worker and to a family.

We have a system that needs fixing, Mr. Speaker. We have a pension system that has some loopholes where companies could not put money in their pension plan when they needed to, to make them funded, and then we have a system that disincentivizes companies from putting more money in their pension plan to prefund the workers and employees when they have one and they have the will to do so. That is wrong, and that needs to be fixed.

Yet, on the other hand, Mr. Speaker, as this legislation was being drafted, we want to make sure we get to a time where companies fully fund their workers' pensions. Getting to that transition was difficult, and I want to thank the chairman of the Ways and Means Committee, Mr. THOMAS; the chairman of the Education and the Workforce Committee, Mr. BOEHNER, for working with us to address our concerns specifically on behalf of the auto sector. Because of this, the issues surrounding credit balances, plant shutdown benefits and those things that were raised by the auto sector, by the UAW, have been addressed in this legislation, are being addressed in this manager's amendment.

I opposed this bill in committee. I was the only Republican to do so. But, Mr. Speaker, we have fixed this legislation. This legislation is good for labor. This legislation is good for management. But, most importantly, this legislation is good to the employees and the workers of America.

I encourage and I ask for a yes vote on this bill because it is fixed. It is good, and it should pass.

Mr. CARDIN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Ohio (Mrs. JONES), distinguished member of the Ways and Means Committee.

Mrs. JONES of Ohio. Mr. Speaker, I thank the gentleman for yielding me this time.

The prior speaker said we have fixed it. Well, if it is fixed, why are the airlines not included in the legislation?

I have been on the floor of the House ever since I came here. My daddy worked for United for 40 years. My sister worked for United for 25 years. My brother-in-law worked for United for 27 years. My niece works for United right now. If we are so concerned about them, why is it not in the legislation?

Secondly, if we fixed it, why is it unclear what happens with cash balance plans that are already in place and the IRS has not given them a decision? We go prospectively, but we do not go retroactively.

In the City of Cleveland, there are four companies that went into a cash balance plan, and cash balance plans are the wave of the future. People want portability. They are not going to work for United, like my dad, for 40 years. They are going to work one place 7 years. They are going to work somewhere else 7 years, and they need to move their money around. It is the wave of the future, and we have not fixed cash balance plans. And I encourage my colleagues to fix it. If they are saying we fixed it, fix it right now.

I want to encourage Mr. BOEHNER, Mr. THOMAS, Mr. CAMP and everyone else: Do not tell us we are going to fix it in conference. Put it in the bill. I would like to see it in writing. I want to see it in red, black, blue, brown, whatever color you want to give it to me. Our promises are idle if it is not in writing. I want this legislation to work for Americans because people do deserve certainty. They deserve certainty. Employers who went into a plan, they even paid up for their employees to deal with the issue of wearaway, and they cannot get clarity on the programs that they have in place right now. Help them. Fix it.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield to the gentleman from Minnesota (Mr. KENNEDY) for the purpose of a colloquy.

Mr. KENNEDY of Minnesota. Mr. Speaker, I believe that section 122 of this bill is an important public policy statement that says corporate executives who are not properly funding the pension plans of their employees should not be feathering their own nests with overly generous retirement packages. Currently, the bill penalizes employers who fund executive compensation if the sponsor's employee defined plans are less than 60 percent funded. My concern is that by setting this threshold too low, we are not discouraging them enough from being irresponsible with the retirement security of their employees while they take care of their own retirement packages.

I ask the chairman to work with me in conference to increase the threshold to at least 80 percent so that we encourage executives to take their pension funding obligations more seriously, not leave their defined benefit plan beneficiaries and, indeed, the PBGC and taxpayers on the hook.

Mr. CAMP of Michigan. Mr. Speaker, reclaiming my time, I would just say to the gentleman, as chairman of the Select Revenue Measures Subcommittee of Ways and Means, I look forward to working with him on this and other issues as this legislation moves through the process and to conference.

Mr. KENNEDY of Minnesota. Mr. Speaker, I thank the gentleman for his response.

Mr. CAMP of Michigan. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a distinguished member of the Ways and Means Committee.

Ms. HART. Mr. Speaker, I thank the subcommittee chairman, Mr. CAMP, and my colleagues for working so hard on this bill, along with our chairman and chairman of the Education and the Workforce Committee. Without their urging, this bill would not be on the floor today, and this bill is so extremely important, especially to constituents in my district.

Over the last year, I have met with employees, union members, covered by both multi-employer and single-employer plans, also with the employers to discuss their concerns regarding pensions. Pension protection continues to be their top issue. Many of my constituents have faced challenges to their pensions with companies like U.S. Airways filing for bankruptcy or others turning their plans over to the Pension Benefit Guaranty Corporation.

This bill would establish sensible funding rules, requiring employers to fund 100 percent of their pension liabilities. In this bill, fair consideration is given to those plans which need to catch up, but funding shortfalls must be made up within 7 years. Also, employers are urged to increase their pension contributions during profitable years, which they cannot currently do freely under the present rules.

In addition, the bill encourages greater transparency so that employees know the status and financial health of their own company's pension plan. Ultimately, this is their own retirement financing. They have a right to know. These requirements will create more stability and certainty in these pension plans.

This bill also prohibits employers from funding golden parachute executive compensation plans if the pension plans of the rank and file are underfunded. U.S. Airways executives walked away with $35 million in executive compensation after running the company nearly into the ground and dragging concessions out of their employees, including reductions in pension benefits for pilots and leaving other employees in the dark about the funding of their pension plans. This is unfair to the hardworking employees of these companies, and this bill would prevent such a travesty in the future.

Finally, this bill encourages additional retirement savings by extending and improving incentives to save. The bill makes permanent provisions

passed in 2001 to increase annual contributions to IRAs and qualified pension plans and ''catch-up'' contributions for individuals over 50.

I hope my colleagues will support this legislation because it finally gives employees what they need: stability in their retirement.

Mr. CARDIN. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EMANUEL), whose provisions are in this bill concerning split refunds and automatic enrollment and other issues that he has brought to the table.

Mr. EMANUEL. Mr. Speaker, this legislation is a missed opportunity.

As my colleague from Maryland just noted, I have sponsored legislation on the automatic enrollment and 401(k) plans, direct deposit of tax savings into a savings plan, and the savers credit for people with moderate income, to start saving. Why? Because basically almost 80 percent of small business employees have no retirement plan outside of Social Security. For approximately 38 percent of the households in America, the only savings plan they have is Social Security.

By doing what is right, by helping people start up their personal savings through 401(k)s and other types of personal savings, we would actually encourage people to save for their retirement. So this legislation on the defined contribution level takes the right step. And it is so unfortunate because we can get an overwhelming vote for those provisions to help Americans save outside of Social Security. And I am glad we took this year to stop the privatization of Social Security. But in doing that, they have added the provisions on the defined benefit plans. On a standalone, none of that would pass. So what they are trying to do is get the goods through Customs using the defined contributions to get through what I think are some very dangerous provisions as it relates to the defined benefit plans for millions of workers who have basically negotiated a deal with their employers. Because what does this legislation do?

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It makes a bad situation worse.

The PBGC and the Congressional Budget Office have estimated that in fact $9 billion in defaulted plans would be left on the taxpayers. We started 3 years ago with the PBGC, which guarantees all retirement plans in this country, with a surplus. Today, we are running a deficit, and this legislation would make that situation worse. As the old saying goes, when you are in a hole stop digging. This legislation would dig even faster.

Companies, and we know them all, we have seen the stories, are using our bankruptcy laws to literally dump their pension systems, and it is a backdoor to walk out of their obligation. This legislation does nothing to stop companies from dumping their plans, and it does not ensure fairness between workers and executives. So while there are good provisions that relate to the defined contributions, it makes the defined benefit plans much worse.

Mr. CAMP of Michigan. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, pension reform is more than just an accounting issue; it is about protecting the trust between employers and their employees. It is critical for Congress to address this issue and step in and fix rules that no longer work. Many businesses are complying with pension laws. However, the current system is too weak, and many companies have plans that are underfunded. It is time for Congress to step in and reform single-employer pension plans, multi-employer plans, improve disclosure and enhance retirement savings. The bill before us achieves these goals.

The pension bill requires companies to accurately measure how much to contribute to their plans and how much they owe.

This bill also protects shutdown benefits. Those are benefits that are paid to workers who are being laid off because of a plant closing. These benefits are critical to help older workers affected by corporate downsizing. It is imperative that well-funded plans be able to continue to provide their workers with shutdown double benefits, and I am glad this Pension Protection Act preserves this important pension security tool.

The strength of multi-employer pension plans is critical to the retirement security of many Americans. Approximately 1,600 multi-employer plans cover about 9.8 working people in the United States. Multi-employer plans, like single-employer plans, cannot simply be turned over to the PBGC. Therefore, it is even more important to those involved that these plans are properly funded.

This bill strengthens the solvency of multi-employer defined pension benefit plans by providing trustees with the tools to fix the plan's financial situation. The bill requires trustees to adopt rehabilitation plans for critically funded pensions and protects employers from defaulting on their promises.

One important provision of this bill, and perhaps one of the least mentioned, is regarding disclosure requirements. The bill would give retirees and employees better information on the financial condition of their plan. Now workers will be sent information from their plan's sponsor and the plan's ratio of assets to liabilities, the plan's funding and asset allocation policies and other critical information.

While protecting pensions is a focus of this legislation, the bill does much more than that. It includes new opportunities for people to prepare for their retirement and bolster their savings. The bill provides individuals with new insurance products that help Americans better afford long-term health care costs.

I applaud the work of Chairman THOMAS and Chairman BOEHNER and urge support of this bill.

Mr. CARDIN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I am sure that people who are watching this debate are somewhat confused about some of the technical provisions that we have talked about on the funding of a guaranteed fund. But let me try to simplify it.

The bottom line is that the total changes that are being suggested make it more rigid and less predictable for those companies that have traditional pension plans as to how much money they have to put into the guaranteed fund. Understand that the guaranteed fund is funded by the companies making contributions to the guaranteed fund. It is not funded by the government.

So if you have a plan that is well-funded and you are now being told it is going to cost you more to stay in that plan, there is an incentive for you to freeze your plan or to leave. That is what is going to happen, and that is why we are very concerned about many people losing their traditional pension plans as a result of this legislation.

The second point, let me point out, is that many Members have been talking about the airline industry and to try to help the airline industry. I pointed out that I think we should do that. We should do that because, A, it will allow the guaranteed fund to concentrate on other plans, and companies will not arbitrarily cancel their plans because they are afraid they are going to be stuck with the costs of bailing out the airline industry. That makes sense. But we are told: We are going to do that in conference, trust us.

We are the legislative body. We should do it. How do we know what is going to come out of conference? It is our responsibility to make sure it is done. We made some changes for the auto industry. Why have we not brought in those provisions? It is our responsibility to do it.

And I haven't heard anyone talk about how we are going to correct the problem of an industry going into bankruptcy in order to save their costs. Is there any hope that that will come out of conference? I doubt it.

We can do better. I urge my colleagues to reject this bill.

Mr. CAMP of Michigan. Mr. Speaker, I yield the balance of my time to the distinguished chairman of the Education and Workforce Committee, the gentleman from Ohio (Mr. BOEHNER).

The SPEAKER pro tempore (Mr. LATHAM). The gentleman from Ohio is recognized for 3 minutes.

Mr. BOEHNER. Let me thank my colleague and my friend and classmate, Mr. CAMP, for yielding me time, and thank all of my colleagues for what I think has been a very healthy debate today about how we strengthen America's pension system.

We have heard Members argue that the bill that we are bringing before us is too difficult, that we will force companies out of pension plans and leave their employees hanging; while others

have argued that the rules are not tough enough, and we are keeping the door open to irresponsible practices.

I truly do believe that we have a bill that is balanced, that will not push employers who have these plans out of the system and will protect American workers who have been promised these benefits.

If we do not act, we know exactly what is going to happen: Millions and millions more Americans are going to lose an opportunity for a defined benefit pension plan, and millions of Americans who already have one are going to be at risk that they will not have their plan. So Congress must act.

Not only did we deal with single-employer pension plans, but we have not talked much about multiple-employer pension plans that you find traditionally in the trucking industry, the food industry and others. And while they have not been talked about much today in this debate and the administration did not propose changes, there are serious changes to the multi-employer pension system in this plan that will help strengthen that system.

Those plans, by and large, are healthier than single-employer plans, and we have labor and management on both sides in the multi-employer sector come together to put rules in place so that their plans can never get into a very weakly funded position. I am glad they are in the bill.

Lastly, let me point out that there are large numbers of groups supporting this bill. Every major labor organization, with the exception of several, is supporting this bill. Many in the management sector in every large business organization is supporting this bill. Why would all of the labor organizations and the business organizations all be on board in support of this bill? Because they think it is balanced. They think it is the right thing to do, and they know that Congress needs to act.

Is everything perfect in the bill? No. As the gentleman pointed out, we have got airline relief that we will probably be talking about again soon. Our commitment is to deal with this in conference.

My colleague from Ohio talked about the need to go further on cash balance language. I certainly agree with her. There are 7 million Americans who have cash balance plans or other types of hybrid plans. We need to provide legal certainty for those who have converted to a cash balance plan so that we do not put in jeopardy the 7 million Americans counting on benefits from those plans.

We have a good bill. I would urge my colleagues to support it.

Ms. MILLENDER-McDONALD. Mr. Speaker, I rise in strong opposition to the Pension Protection Act of 2005. This Act does not protect the American worker. In fact, this bill places the future of today's American worker in jeopardy.

Even worse, this bill places those who have put in the years and worked hard at the mercy of bad management decisions.

Furthermore, pensions are a financial safety net that many Americans and businesses pay into. Pension programs are an important factor when workers choose a job and it plays a large part in financial planning.

Many people go their entire career thinking they will have this money upon retirement and regularly contribute even when they could use the money to take their family on vacation or buy their children clothes. Instead, they place earnings into their pensions as much in the short run as they will need in the future.

Pension plans are as much about personal responsibility as they are about good financial planning.

The American worker's pension should not be a pawn for businesses to navigate bankruptcy. I am especially concerned about the adverse affect this bill has on women.

As a Member on the Aviation subcommittee and a frequent flyer, I have worked for years with airlines and flight attendants.

Many, many airline employees are women. Many of those women are single mothers. Without a guaranteed source of retirement income, it is almost impossible for these women to stay in the employ of the airlines—and worse yet, many of these women have already put in years of hard work and have already lost upwards of 75 percent of their pensions.

Mr. Speaker, my office has received a towering pile of heartbreaking letters from people whose pensions have been lost.

How do we as Members of Congress tell these people that after all these years of paying into a pension—working toward a retirement—they have to make other plans for their golden years.

We have an opportunity to do some real good. We have an opportunity to strengthen the commitment between the employers and workers, however this bill further drives a wedge between the two.

Vote no against this bill today and let us pledge to come back during the second session of the 109th Congress and do this right.

We owe it to the American people to take their financial future as seriously as they do. Vote no on the Pension Protection Act of 2005.

Mr. HOLT. Mr. Speaker, I rise to express my opposition to the pension reform legislation that we are considering today. I oppose this legislation because it will further erode an employer's willingness to provide defined benefit plans and will close the loopholes that allow companies to dump their pension obligations on to taxpayers.

Throughout the 1990's, in American workplaces a dramatic shift from traditional defined-benefit plans to defined-contribution plans occurred. Rather than being able to count on a regular pension check of a specified amount each month for the rest of his or her life, many workers must now put money in a mutual fund or other investment and take what comes each month for as long as it may last. Many other companies began to ''cash out'' their pensions giving employees a cash balance payout, claiming it was equivalent to a pension. It is not equivalent to a pension. Furthermore, some companies have used the Pension Benefit Guarantee Corporation to bail them out of their financial troubles. Now, millions of workers have entered retirement, only to learn that their company could not provide the benefits they had been promised. The Pension Benefit Guarantee Corporation has amassed a $23 billion deficit, jeopardizing its ability to insure defined pension benefit plans. As millions of more workers face reduced benefits, it is clear that Congress must find an effective solution to this problem. Unfortunately, the legislation we are considering today will not strengthen the defined benefit program or help to ensure that millions of workers receive the benefits they have been promised and planned on for retirement.

Unlike the Democratic substitute that Representative MILLER and Representative RANGEL tried to offer, this bill will not make it more difficult for companies to use the bankruptcy code to dump their pension obligations to the Pension Benefit Guarantee Corporation (PBGC). The decision of United Airlines to force the PBGC to cover its pension obligations resulted in reduced benefits for its employees and retirees and shifted its burden to fulfill pension promises on to the American taxpayer. As a result of United Airlines action, the PBGC was forced to absorb $8 billion in guaranteed benefits, and employees and retirees lost $3 billion in their earned pension benefits. Then the directors of the reorganized company gave themselves bonuses. Northwest and Delta Airlines, as well as companies such as Delphi are also on the verge of following in the path of United Airlines. This will undoubtedly increase the PBGC deficit, and further jeopardize its ability to insure pension plans. I hope that when this bill moves to conference, the conferees will include important provisions from the Democratic substitute that will reduce a company's ability to dump their pension liabilities to the PBGC. Specifically, pension reform legislation should include measures that require companies to seek alternatives before terminating their pension plan and require companies to prove that the plan is unaffordable in a court of law.

I also believe that the provisions in the bill that legalize cash balance plans will hurt millions of workers. Over 8 million workers have already been affected by cash balance conversions, before the courts put a hold on the discriminatory way companies converted to these cash balance plans. The GAO has estimated that without older worker protections over 85 percent of younger workers and 90 percent of older workers would loose expected pension benefits if a defined benefit plan were converted to a cash balance plan. Legalizing cash balance plans will hurt workers that are nearing retirement and will cause more anxiety for younger workers that must plan for retirement with uncertain benefits.

Although I will oppose this bill for the aforementioned reasons, there are provisions that I believe will benefit workers. For example, this legislation will allow employers to give their employees access to professional investment advice. With the dramatic increase in hybrid plans and defined contribution plans, employees are now faced with making multiple investment decisions that will have a profound impact on their retirement security. This investment advice provision will ensure that workers will be able to make informed decisions regarding their future.

American workers deserve to know that their pension is secure and that they will receive the benefits that they have been promised during their years of service. As this bill moves to conference, I hope the conferees will be able to improve the shortcomings of this legislation so that we can pass legislation that

will preserve the defined benefit pension system.

Mr. MARKEY. Mr. Speaker, I rise in opposition to the so-called pension ''reform'' bill today on the House Floor.

The bill before us today fails to address fundamental problems that have robbed millions of hard-working Americans of the retirement benefits they have earned. This Republican bill will not prevent companies from dumping their pension plans onto the Pension Benefit Guarantee Corporation (PBGC), which already is burdened with a $23 billion deficit and may have to be bailed out by taxpayers. This bill does nothing to protect older workers when their pension plan is converted to a ''cash-balance'' plan that could short-change them of the benefits they have accrued. This bill also contains provisions that increase the costs and regulations for companies to maintain pension plans to the point that many companies will freeze or abandon their plans, accelerating the growing pension crisis.

Democrats were not permitted to offer amendments to improve this bill. While I cannot support this flawed, misguided Republican bill, I support the Democratic Substitute offered by Representative MILLER, Representative RANGEL and Representative CARDIN. The Democratic Substitute would stabilize existing pension plans by extending for 2 years the corporate-bond-rate used to determine PBGC liabilities, encourage employers to maintain defined benefit plans without cuts in workers' pension benefits, and protect older workers during cash-balance conversions.

As the pensions of workers remain at risk, I am concerned about conflicts-of-interest, hidden financial arrangements and unlawful activities that may be causing or contributing to the poor financial health of pension plans at companies across the country. In May 2005, the Securities and Exchange Commission (SEC) released a report, ''Examinations of Select Pension Consultants'', that revealed significant conflict-of-interest and non-disclosure issues within the pension plan consultant industry. Specifically, the SEC found, among other conclusions, that:

> [P]ension consultants may steer clients to hire certain money managers and other vendors based on the pension consultant's (or affiliate's) other business relationships and receipt of fees from these firms, rather than because the money manager is best-suited to the client's needs. Such a conflict can compromise the fiduciary duty that investment advisers owe their clients.

The findings included in the Commission's report are particularly disturbing for pension plan beneficiaries, whose benefit payments are dependent upon their plan management's diligent performance of its fiduciary duties, and for the Federal Government, which is faced with an enormous deficit at the Pension Benefit Guaranty Corporation (PBGC) as a result of a series of massive corporate bankruptcies that have resulted in PBGC assumption of severely underfunded pension plans terminated when the corporations entered bankruptcy.

Representative MILLER and I have requested that the Government Accountability Office (GAO) investigate whether the Federal Government is aggressively regulating and enforcing statutes intended to protect pension plans and their beneficiaries from conflicts-of-interest and similar undisclosed relationships that can impair pension fund returns. We have urged GAO to examine whether any of the 3,500 terminated pension plans that are now the responsibility of the PBGC may have been adversely affected—prior to PBGC assumption ofthe plans' liabilities—by the types of conflicts and hidden financial arrangements uncovered by the SEC.

I am hopeful that the pension legislation considered today by the House will be greatly improved during the conference with the Senate, so that we can have a vote on pension reform legislation that actually addresses the real problems that exist in the current system. Additionally, I look forward to GAO's work in the important area of pension fund consultants. The ongoing crisis in the pension fund marketplace requires a thorough, independent review to identify problems with government regulation and enforcement and recommend improvements. American workers have relied on the pension promises of their employers. It is unconscionable to abandon these workers.

I urge a ''no'' vote on this Republican pension bill, and a ''yes'' vote on the Democratic Substitute.

Mr. GUTKNECHT. Mr. Speaker, I rise to speak on behalf of 7,000 current and former IBM employees who live in my district. While most of this bill is necessary and the legislation is appropriate, the weakness of the bill is that it fails to clarify the rules concerning the conversion of defined benefit pension plans into cash balance pension plans.

I understand the bill will not affect the IBM employees and their court case. It could, however, affect millions of Americans that are currently vested in defined benefit pension plans. Even though they may be working for a very profitable company, they could, under the terms of this bill, show up for work one day and learn that their promised benefits have been dramatically reduced with the sweep of a pen.

Under cash balance plans, older, long-serving employees do not have the same opportunities to build up retirement benefits that younger workers do. The bill before us today would allow conversions to take place but gives no protections to workers during these transitions. I offered an amendment last night at the Rules Committee to provide protections to vested workers. Unfortunately, the Committee did not rule my amendment in order.

The Senate version of the bill contains more protections for workers. For those and other reasons AARP supports the Senate passed bill and opposes the House bill. I would hope protections like the amendment I tried to offer will be incorporated in the final version.

While I am voting today to move the bill forward into conference with the Senate in the hopes more worker protections can be added, I reserve the right to oppose a report that fails to correct this glaring omission.

Mr. LARSON of Connecticut. Mr. Speaker, I rise in opposiiton to the so-called Pension Protection Act and in support of the Democratic motion to recommit.

There is no question that our Nation is facing a pension crisis. Over 34 million American workers currently rely on the benefits they receive from a defined benefit pension plan to make ends meet. Yet, with the growing number of corporations cutting pension benefits or declaring bankruptcy, people are increasingly concerned about their retirement security. More and more, American workers are facing the prospect of seeing their employers use our Nation's bankruptcy laws to back out of their pension promises and turning their obligations over to the Pension Benefit Guaranty Corporation (PBGC)—which only partially funds promised benefits.

Unfortunately, the bill before us today is a missed opportunity to provide American workers with real pension protection.

H.R. 2830 makes significant changes to the rules for defined benefit pension plans, increases the premiums that companies pay into the PBGC, and does nothing to prevent companies from dumping their pension obligations on American taxpayers. According to the Chief Investment Officers of over sixty percent of our Nation's largest pension plans, these likely will lead to cuts or terminations of existing plans. According to the Congressional Budget Office, this legislation would add over $70 billion to the federal deficit and fails to improve the PBGC's financial condition by increasing the agency's financial shortfall by $2.5 billion.

Rather than allowing an open debate on this important issue, the majority leadership has chosen to close this bill from amendments or even allow consideration of a Democratic substitute. The Miller/Cardin motion to recommit protects American pension benefits by making it harder for companies to declare bankruptcy and abandon workers pensions, protects worker's retirement security by providing employers with pension funding stability and gives the airlines the tools they need to shore up their employee pension plans. This alternative would provide American workers with real pension protection, rather than continued retirement insecurity.

Mr. Speaker, today's legislation is the latest in a series of attempts to privatize profits and socialize losses. It is my sincere hope that as we move into conference, we can produce legislation that will protect the hard earned pension benefits of our Nation's workers.

Mr. NORWOOD. Mr. Speaker, I rise in strong support of the Pension Protection Act (H.R. 2830), legislation that responds to the many challenges currently facing the financial health of the defined benefit pension system.

The defined benefit system provides millions of American retirees and current workers with retirement benefits earned over the course of a lifetime. Yet the rules governing the structure of the defined benefit system are geared towards a 20th century workforce that no longer exists. The Pension Protection Act will bring these outdated rules into the 21st century and respond to the rapidly evolving American workforce that is more fluid, technologically advanced and diverse than ever before.

H.R. 2830 accomplishes this goal by implementing four commonsense reforms that hold employers to a higher standard and will ensure the fiscal future of the defined benefit system: (1) The legislation will ensure employers properly and adequately fund employees' defined benefit pension plans; (2) provide meaningful new disclosure to workers about the status of their pension plan; (3) secure the financial future of the Pension Benefit Guarantee Corporation (PBGC) and prevent a possible multi-billion dollar taxpayer-funded bailout; (4) encourage greater employee savings for retirement goals by reforming outdated defined contribution plan rules.

The legislation also prohibits executive compensation arrangements when a rank and file employee pension plan is severely under-funded. This important provision will prevent corporate chieftains from escaping via the golden

parachute when an employer carries a qualified pension plan that is 60 percent underfunded or more. After all, the average working man in rural Georgia deserves nothing less than a corporate executive in New York.

And while H.R. 2830 includes important reforms to ensure employers more accurately fund their pension obligations, it also holds union leaders to a higher standard as well. Over the years, union leaders have exerted tremendous pressure on employers in every commercial sector by negotiating benefit increases to defined benefit plans that are already under-funded.

While many employers have not held up their end of the bargain by responsibly funding plan benefits, union leaders are equally responsible for misleading their workers and pushing for unrealistic benefit increases knowing full well an employer's plan is already under-funded. This is no less outrageous, and H.R. 2830 takes important steps to prevent union leaders and employers from negotiating unrealistic benefit increases that will only hasten plan failure and an eventual taxpayer bailout.

In addition, the compromise measure includes a series of requirements to address ''Critical Multiemployer Plans'' funded between 65 percent and 70 percent. These plans face significant and immediate funding problems. H.R. 2830 not only strengthens the funding requirements for critical plans, it also requires trustees to develop a rehabilitation proposal to show a 20 percent improvement over 15 years.

Mr. Speaker, the number of employer sponsored defined benefit plans are declining by the day, down from an all-time high of 170,000 in 1985 to 30,000 today. This is unacceptable. Congress should not sit idly by while the defined benefit system continues to die on the vine, and for that reason I urge all of my colleagues to avert the pending retirement security crisis by passing the Pension Protection Act today.

Mr. UDALL of Colorado. Mr. Speaker, I must reluctantly oppose this legislation.

I support changing the current rules related to pensions, and had hoped that this bill would be considered under procedures that would allow it to be improved.

However, the Republican leadership has made it impossible for even a single amendment to be considered—and the bill's flaws so outweigh its good features that it should not be passed in its current form.

Among the most troubling aspects of the bill is its potential effect on defined-benefit pension plans.

Some 34 million Americans are now covered by defined-benefit plans, but their retirement security is threatened by the failure of some companies to adequately fund the plans, by corporate bankruptcies such as that of United Airlines, and consideration by even profitable companies of freezing benefits and ending their plans.

And many of the people who manage large pension plans tell us the result of enacting this bill's provisions that would make significant changes to the rules for these plans and increase the premiums companies pay the Pension Benefit Guaranty Corporation, PBGC, could be benefit cuts or, worse, termination of even well-funded plans.

At the same time, the bill's requirements for increased payments to PBGC threatens the financial health of many manufacturing companies and fail even to adequately improve PBGC's financial condition—its own analysis found that the bill would increase the agency's financial shortfall by $2.5 billion.

And both the Congressional Budget Office and PBGC have concluded that the bill would increase claims on the Federal Government by billions of dollars, which would increase the likelihood of a massive taxpayer bailout as well as the loss of billions of dollars in employee and retiree benefits.

I am not prepared to support legislation that would increase the chances of such outcomes, especially when its tax provisions would substantially increase future budget deficits and would primarily benefit taxpayers in the highest income groups.

According to the Joint Committee on Taxation, the revenue effects of the tax provisions primarily benefiting higher-income households would grow from $3.6 billion in 2012, the first full year affected, to $5.6 billion a year by 2015. But the effect of extending the saver's credit, which is most important to lower-income honseholds, would fall from $1.4 billion in 2008, the first full year affected by that provision, to $943 million by 2015.

That means that while in 2012, the saver's credit would account for one-fourth of the total benefits of all of these provisions, by 2015 it would account for only 14 percent of the total benefits. And after that the saver's credit would dwindle further, eventually fading away, while the upper-income pension tax changes would become still more robust.

As the Center on Budget and Policy Priorities says, ''To allow the severe erosion over time of the principal tax incentive for modest-income families to save for retirement does not make sense as retirement policy. To do so while protecting very generous retirement tax-cut benefits that go overwhelmingly to higher-income taxpayers who generally are able to save adequately for retirement anyway, without these tax subsidies, is even less defensible. And incorporating regressive tax policy of this nature into a bill that swells budget deficits, and opens the door to still more deficit-increasing tax cuts in the future, stands sound policy on its head.''

I think they are right.

And, in addition to badly framed provisions, the bill's flaws also include some serious omissions. I am particularly disappointed there is nothing in the bill like the bipartisan Senate-passed provisions to protect the pensions of employees and retirees of airline companies. As Coloradans know all too well, the employees and retirees of United Airlines already have lost $3 billion in earned pension benefits. We should be working to help them, and we also should be working to make it less likely that their experience will be repeated.

In summary, Mr. Speaker, while I recognize that there are good aspects to this bill, and while I think Congress does need to act on this subject, I think that on balance the bill as it stands should be rejected so that a better-balanced measure can be brought forward.

Mr. BLUMENAUER. Mr. Speaker, the income security of Americans has been under constant attack by the administration and Congress this year, especially those families who have not had the good fortune to earn a living that places them in our highest income brackets.

The year started with efforts to dismantle Social Security, an efficient program that is the primary source of income for a majority of retirees. Next, a slanted bankruptcy bill that puts no burden of responsibility on unscrupulous lenders and credit card companies and all of it on the families that face hardships from large medical bills, family breakups, and job losses. Congress has been wringing its hands the last couple of months over which programs for America's most vulnerable should be cut so tax cuts can be extended years from now.

The latest attack on the security of American families is this pension bill. It is clear that the Pension Benefit Guaranty Corporation must be strengthened and that rules must be put in place to ensure companies adequately fund the promises they make to employees.

Instead, the Congressional Budget Office has reported that this bill would actually increase the PBGC's deficit by $9 billion over the next 10 years. The bill also legalizes cash balance plans without protections for long serving employees. It has been reported that without older worker protections over 90 percent of older workers would lose expected pension benefits if a defined benefit plan were converted to a cash balance plan. Additionally, this bill does nothing to help the struggling airline industry that has already seen United Airlines employees and retirees lose over $3 billion in earned pension benefits.

Strengthening the pension system and providing security to all families should be a priority of Congress and can be achieved with fiscal responsibility and fair policy. This bill falls short on both accounts.

Mr. STARK. Mr. Speaker, I rise today in strong opposition to H.R. 2830, which would be better titled the Republican Pension Destruction Act. American workers deserve much better than a bill that will reduce employee pensions and provide incentives for employers to break pension promises to employees.

Recent bankruptcies in the airline industry shed a bright light on exactly what big corporations are up to. A few months ago, United Airlines dumped its flight attendant pension program onto the Pension Benefit Guaranty Corporation (PBGC)—a government organization meant to serve as an insurance policy for corporations who can no longer afford to meet their pension obligations. The PBGC, however, does not fund pensions at 100 percent, instead making a reduced payment to retired employees.

As a result, tens of thousands of United employees, past and present, will receive smaller pension payments than they deserve. Unbelievably, in the same bankruptcy proceedings United Airline's CEO Glen Tilton was allowed to keep his $4.5 million pension. This is unacceptable, and the bill offered today does nothing to prevent CEOs from opening these golden parachutes while their employees are forced to take a reduction in their benefits.

I've heard from hundreds of constituents on this issue. I can't say it any better than this former United employee from Hayward, CA who made the following statement during an e-hearing I have been co-hosting regarding the United Airlines crisis.

''I worked for United Airlines 35 years as a mechanic. Two years ago I retired with the promise that my pension was safe. If I lose a big chunk of pension I will have to sell my house and take my almost blind wife to another state where it's cheaper to live. Away from our doctors and family. I am not able to

work anymore—physically unable—can you help us?''

We could help United employees and the retirement security of millions of Americans by passing real pension reform, but Republicans would rather destroy pensions instead of protecting them. When Democrats offered legislation to fix the pension solvency issue by protecting retirees and forcing CEOs to be held accountable, the Republican Majority wouldn't bring it up for a vote because it could have passed. Sadly, this is just one more example of Republicans siding with corporate campaign donors instead of working Americans.

The list of problems associated with this bill is seemingly endless. The PBGC itself says its own ability to cover pensions will decrease by $2.5 billion under this bill. The Republican bill does nothing to protect airline employees. And in a final slap in the face to hardworking taxpayers, the bill adds $71 billion to the deficit over the next 10 years, because Republicans refuse to be fiscally responsible and pay for their reforms.

This Republican pension bill undermines retirement security and puts the once guaranteed pension benefits of millions of hard working Americans in jeopardy. I urge all my colleagues to vote ''no'' on this bill.

Ms. KILPATRICK of Michigan. Mr. Speaker, I rise in reluctant support of the Pension Protection Act of 2005, H.R. 2830. I commend the authors of this bill who worked with elements of the union movement to craft legislation designed to address some of the issues affecting the employer-provided pension system. Key stakeholders in Michigan's 13th Congressional District support the bill that we will consider today. Organizations like General Motors, Ford Motor Company, the United Auto Workers Union, building trade unions, Northwest Airlines, airline pilots, flight attendants, and more have contacted my office to express their support for the bill.

The leadership of my party has pointed out that the bill has several major shortcomings. My leadership argues that H.R. 2830 does very little over the long-term to strengthen traditional, defined benefit plans. Had the majority permitted Members on my side of the aisle to amend the bill, I am sure that our suggestions would go a long way to improving the legislative product before us. We, however, are being denied that opportunity, and I must decide what best represents the interests of the income security needs of my Southeast Michigan constituents. After careful examination, I have decided to support the passage of H.R. 2830, but with the hope that it will be improved when a compromised is reached with the other body.

My district is the center of the world automotive industry. As my colleagues know, the economic condition of the GM, Ford Motor and Daimler-Chrysler is under stress. The workers employed in local plant sites throughout the Nation feel their future income security is threatened because their pensions are dependent on the financial health of company-sponsored plans.

All in all, this bill strengthens funding for employer pension plans and includes reforms advocated by companies and unions who participate in multi-employer pension plans. Therefore, I vote for this bill with hope that it will move the process forward to address the pension concerns of the airline industry and airline employees and the concerns of our steelworkers, who take exception with shutdown provisions of the bill to address the pension needs of companies in total ''shutdown'' status.

Mr. DAVIS of Kentucky. Mr. Speaker, I rise today in strong support of H.R. 2830, The Pension Protection Act of 2005. This bill addresses a serious issue facing our Nation. The ultimate enactment of pension reform must be a priority to this House and the Congress.

I congratulate and thank Chairman BOEHNER and Chairman THOMAS for crafting a comprehensive pension reform bill with so much support from the business and the labor communities.

This legislation represents a successful compromise that will help protect workers in the auto industry and also protect the major U.S. auto manufacturers against loss of promised benefits or plan terminations.

One area that remains to be addressed in conference is the issue of airline pension plans. The Cincinnati/Northern Kentucky Airport is one of the Nation's busiest. It is home to Delta Air Lines' second largest hub. Thousands of men and women in Kentucky's Fourth District work for airlines. They depend on the retirement benefits provided by the airline industry.

Without a change in current law that allows air carriers with Defined Benefit plan obligations to make their pension payments over a longer period of time—20 years—it is possible that some or all of these plans will be terminated, benefits reduced and liability shifted to the American taxpayer.

The airlines want to keep their promises to their employees. They want to honor their obligations. They do NOT want to terminate their pension plans nor to reduce benefits. But, they need to be equipped with the tools necessary to have a fighting chance to keep those promises.

The Senate airline pension language is carefully crafted to meet the particular concerns of all the major carriers and provide them with a 20 year period to meet their obligations.

Although we are not addressing this specific issue today, I strongly support continued pursuit in conference of the Senate-passed airline pension provision.

Finally, I wish to thank my colleagues on the Ways and Means and Education and Workforce Committees and their staff for the hard work that has brought us to this point today. I urge all of my colleagues to vote in favor of final passage.

Mr. VISCLOSKY. Mr. Speaker, I rise today in opposition to H.R. 2830. I am old enough to remember a time when everyone on my block in the Glen Park section of Gary, Indiana had a pension. The defined benefit pension system today, which protects the retirement security of over 44 million workers, retirees, and their families, is at a critical juncture. The number of defined benefit plans has declined from over 100,000 in 1985 to under 32,000 in 2004. While the number of active workers covered by such plans has dropped from over 40 million to under 20 million, an additional 20 million retirees depend on defined benefit plans for their retirement security.

Both the Congressional Budget Office and the Pension Benefit Guaranty Corporation have found that H.R. 2830 will add billions more to the PBGC's already mounting deficit. According to the CBO, this legislation would increase the PBGC's deficit by $9 billion dollars over the next ten years. The PBGC is already facing a deficit of $23 billion and could face additional liabilities of up to $100 billion in the near future.

In the five years leading up to the closings of LTV and Bethlehem Steel, steel companies in North America were filing for bankruptcy in record numbers, using the bankruptcy courts to break their contractual obligations and impose cuts or outright elimination of jobs, benefits, pensions and wages of steelworkers. In 2000, LTV Steel filed for Chapter 11 bankruptcy for protection from its creditors, including its obligations to its pension plan. In 2002, LTV filed Section 7 bankruptcy, which liquidated its assets. Today's legislation would put additional pressure on an agency that is already picking up the slack because corporate America has used them as a dumping ground.

In addition, H.R. 2830 does not ensure fair treatment between workers and executives. The bill permits CEOs to receive executive golden parachutes at the same time employees are suffering deep cuts in their promised retirement benefits. Under H.R. 2830, if an employer does not fund its pension plan above 80 percent, then workers cannot receive any increases in benefits or take a lump sum at retirement. No similar restriction is imposed on executives. If an employer does not fund above 60 percent, then the workers' plan must be frozen with no new benefits allowed to accrue. Only at 60 percent are employers prohibited from transferring funds to executive compensation. However, employers can get around this prohibition and make promises of future benefits to executives. I find this deplorable at a time when we are seeing companies like Delphi abuse the system. Under Chapter 11 reorganization, Delphi could award 500 of their executives cash bonuses of 30 percent to 250 percent of their base salary for exiting Chapter 11.

In closing Mr. Speaker, I urge my colleagues to oppose H.R. 2830. According to CBO, H.R. 2830 would increase the Federal deficit by over $70 billion from 2006–2015. It contains a variety of unoffset tax incentives for corporate America that will not secure the pension of the hardworking men and women who are making our steel, mining our coal, building our homes, and flying our airplanes. Congress owes working Americans more.

Mr. PAUL. Mr. Speaker, while H.R. 2830, the Pension Protection Act of 2005, is not perfect, it does decrease the risk that employees will be deprived of pension benefits they were promised as part of their employment contracts. H.R. 2830 also decreases the likelihood that American taxpayers will be forced to bailout private pensions, and reduces the tax burden on American workers to provide them with greater incentives and opportunities to save for their own retirements. Therefore, I will vote for this bill on final passage.

However, I oppose this rule, because I do not like the process under which this bill is being brought to the floor. The rule before us today does not allow any member to offer, or vote on, amendments that may improve this bill. In particular, I was hoping to vote on an amendment protecting United Airline retirees from having their pension benefits reduced or terminated even though United expects to make $1 billion in profit within 1 year of being discharged from bankruptcy. The Senate

version of the bill does address same problems of the airline industry. However it fails to protect United Airlines retirees. The Federal Government should not facilitate a large companies getting out of its contractual obligations to their retired workers. I, therefore, urge my colleagues to protect the pensions of retired United Airline employees by rejecting this rule and voting for a rule that allows us to consider adding, language helping the United Airline retirees to the bill. If this rule does pass, I urge my colleagues to move the process foreword by voting for the bill and working to add language protecting the United Airline pilots to the bill when it goes to conference with the Senate.

Mr. BRADY of Texas. Mr. Speaker, I rise today in strong support of H.R. 2830, the Pension Protection Act of 2005. I applaud the chairman of the Ways and Means Committee, the distinguished BILL THOMAS, as well as the chairman of the Education and Workforce Committee, JOHN BOEHNER, for their hard work and leadership on this issue. Protecting the pensions of millions of Americans is a top priority for this 109th Congress and H.R. 2830 is strong legislation designed to that end.

I rise today to also thank Chairman THOMAS for his inclusion in the Pension Protection Act of legislation I introduced related to the waiver of a 10 percent federal tax penalty for public safety employees—our Nation's firefighters, police officers and emergency medical personnel. People who put their lives on the iine for us everyday deserve our full support and they are receiving that support here today thanks to Chairman THOMAS.

Many public safety personnel begin their careers at a young age. They will vest in their regular pension plans and, even if they participate in one of the new deferred plans and remain on the job longer, will be eligible for retirement before they reach age 55.

For example, in Houston the average firefighter begins his career at age 23. After 20 years of service, now age 43, the average firefighter is fully vested in the regular pension fund and can retire and begin receiving benefits immediately. Today, the firefighter can participate in the deferred plan for up to an additional 10 years. If the firefighter participates for the full 10 years and then elects to retire, he or she will be age 53 and, in general, will not be able to take distributions prior to the age of 59½ without triggering the 10-percent penalty.

For distributions to public safety employees that are subject to the 10-percent penalty, section 905 of H.R. 2830 would waive the penalty. This provision has received considerable attention and support during this and previous Congresses. The effort began in 2002, when my Texas colleague, Congressman GENE GREEN, introduced H.R. 4796. Later that year, Senator JIM INHOFE introduced companion language, S. 3072.

Mr. Speaker, in closing, I want to applaud my House colleagues and, particular, Ways and Means Chairman THOMAS, to whom I would like to express the deep gratitude of our Nation's firefighters, police and emergency medical service employees for including section 905 in the House bill and moving the issue forward.

I strongly urge my colleagues to support passage of H.R. 2830, the Pension Protection Act.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 602, the previous question is ordered on the bill, as amended.

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.

MOTION TO RECOMMIT OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Speaker, I offer a motion to recommit on behalf of myself and Congressman CARDIN.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GEORGE MILLER of California. Yes, I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. George Miller of California moves to recommit the bill H.R. 2830 to the Committee on Education and the Workforce and the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Pension Protection Act of 2005''.

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

Sec. 1. Short title and table of contents.

TITLE I—INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS

Sec. 101. Interest rate for 2006 and 2007 funding requirements.
Sec. 102. Government Accountability Office pension funding report.

TITLE II—PROTECTING PENSION BENEFITS IN BANKRUPTCY

Sec. 201. Promotion of reasonable alternatives to plan termination.
Sec. 202. Election by employer to restore plan upon emergence from bankruptcy.
Sec. 203. Date on which lien for missed contributions is deemed perfected.

TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE EMPLOYEES

Sec. 301. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
Sec. 302. Recognition of legally mandated early retirement ages in determining amount of guaranteed benefits.

TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

Sec. 401. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status.
Sec. 402. Nonqualified deferred compensation reduced by percentage of underfunded plan upon bankruptcy of employer.
Sec. 403. Termination fairness standard for nonqualified deferred compensation plans in connection with pension plan terminations based on bankruptcy reorganization.

TITLE V—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 501. Funding rules for multiemployer defined benefit plans.
Sec. 502. Additional funding rules for multiemployer plans in endangered or critical status.
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PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

Sec. 511. Funding rules for multiemployer defined benefit plans.
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Sec. 516. Sunset of funding rules.

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Sec. 609. Direct payment of tax refunds to individual retirement plans.
Sec. 610. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
Sec. 611. IRA eligibility for the disabled.

TITLE VII—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

Sec. 701. Treatment of annuity and life insurance contracts with a long-term care insurance feature.
Sec. 702. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.
Sec. 703. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.

TITLE VIII—REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000

Sec. 801. Reduction in benefit of rate reduction for families with incomes over $1,000,000.

## TITLE I—INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS

### SEC. 101. INTEREST RATE FOR 2006 AND 2007 FUNDING REQUIREMENTS.

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Subclause (II) of section 302(b)(5)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(5)(B)(ii)(II)) is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2008'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

(2) CURRENT LIABILITY.—Subclause (IV) of section 302(d)(7)(C)(i) of such Act (29 U.S.C. 1082(d)(7)(C)(i)(IV)) is amended—

(A) by striking ''or 2005'' and inserting '', 2005, 2006, or 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

(3) RISK-BASED PREMIUMS.—Section 4006(a)(3)(E)(iii)(V) of such Act (29 U.S.C. 1306(a)(3)(E)(iii)(V)) is amended by striking ''January 1, 2006'' and inserting ''January 1, 2008''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2008'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

(2) CURRENT LIABILITY.—Subclause (IV) of section 412(l)(7)(C)(i) of such Code is amended—

(A) by striking ''or 2005'' and inserting '', 2005, 2006, or 2007'', and

(B) by striking ''AND 2005'' in the heading and inserting '', 2005, 2006, AND 2007''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

### SEC. 102. GOVERNMENT ACCOUNTABILITY OFFICE PENSION FUNDING REPORT.

(a) IN GENERAL.—The Comptroller General of the Government Accountability Office shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required under subsection (a) shall include an analysis of the feasibility, advantages, and disadvantages of—

(1) requiring an employee pension benefit plan to insure a portion of such plan's total investments;

(2) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry; and

(3) amortizing a single-employer defined benefit pension plan's shortfall amortization base (referred to in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 (as amended by this Act)) over various periods of not more than 7 years.

## TITLE II—PROTECTING PENSION BENEFITS IN BANKRUPTCY

### SEC. 201. PROMOTION OF REASONABLE ALTERNATIVES TO PLAN TERMINATION.

(a) ADDITIONAL REQUIREMENTS FOR DISTRESS TERMINATION.—Section 4041(c)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)(B)) is amended by adding at the end the following:

''(iv) ADDITIONAL REQUIREMENTS.—Notwithstanding any other provision of this section, unless the corporation or the court, in the case of a distress termination pursuant to clause (ii), has determined that reasonable efforts to consider available alternatives to termination (including, but not limited to, alternatives described in section 4042(c)(3)) have been undertaken by such person (and, in the case of a plan maintained pursuant to a collective bargaining agreement, have been undertaken by the bargaining parties in good faith bargaining), the plan may not be terminated. A participant or beneficiary of the plan or an employee organization representing such participants or beneficiaries may bring an action in the appropriate court to challenge such determination by the corporation and seek equitable relief or must be afforded an opportunity to be heard by the appropriate court if a court is making such determination.''.

(b) EFFORTS BY THE CORPORATION AT CONSULTATION WITH PARTIES.—Section 4042(c) of such Act (29 U.S.C. 1342(c)) is amended—

(1) by inserting ''(1)'' after ''(c)'';

(2) by striking ''If the corporation and the plan administrator agree'' and all that follows through ''in subsection (d)(3).'';

(3) by redesignating paragraph (3) as paragraph (2); and

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

''(3)(A) The corporation may not institute proceedings under this section to terminat such plan unless the corporation demonstrates that it has made all reasonable efforts to negoitate with the plan sponsor, the plan participants, and (in the case of a plan maintained pursuant to a collective bargaining agreement) the employee organization representing plan participants for purposes of collective bargaining to determine whether there are any reasonable available alternatives to termination (including, but not limited to, alternatives described subparagraph (B).

''(B) The reasonable alternatives to termination referred to in subparagraph (A) consist of measures which are in the best interest of plan participants and which include (but are not limited to) the following:

''(i) Financing or loans sought by any member of the plan sponsor's controlled group, with or without assistance from the corporation, in order to obtain plan financing, including back-up guarantees to any such financing which the corporation is hereby authorized to provide for such purpose.

''(ii) New plan structures agreed to by the parties, such as transfer of plan liabilities to multiemployer plans, new benefit formulas for new hires or non-vested participants, or other plan restructuring alternatives agreed to by the parties.

''(iii) Reinsurance which the corporation is hereby authorized to obtain for the plan.

''(iv) An agreement by the parties authorizing alternative funding schedules, approved by the corporation, which shall thereafter be treated as meeting the minimum funding requirements for the plan under part 3 of subtitle B of title I.

''(v) Purchase by the plan sponsor of an annuity contract to cover liabilities of the plan, which the corporation is hereby authorized to guarantee as necessary to secure such a contract.''.

(c) REQUIRED COURT DETERMINATIONS.—Section 4042(c) of such Act is amended by adding at the end the following new paragraph:

''(4)(A) A plan may not be terminated under this section unless the court, in the proceedings described in paragraph (1), finds that—

''(i) reasonable efforts to consider available alternatives to termination (including, but not limited to, alternatives described in paragraph (3)) have been undertaken by the plan sponsor (and, in the case of a plan maintained pursuant to a collective bargaining agreement, have been undertaken by the bargaining parties in good faith bargaining),

''(ii) without such termination, a contributing sponsor of the plan (or a member of such a sponsor's controlled group) would be unable to pay its debts when due and—

''(I) if such proceedings include proceedings in which reorganization of such sponsor or member is sought in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State, such sponsor or member could not be discharged in such proceedings, or

''(II) in any other case, such sponsor or member would be unable to continue in business, and

''(iii) all otherwise applicable requirements for termination under this section are met.

''(B) Any party consisting of the plan sponsor, a plan participant, or (in the case of a plan maintained pursuant to a collective bargaining agreement) the employee organization representing plan participants for purposes of collective bargaining may intervene in the proceedings described in paragraph (1) to challenge whether all applicable requirements for termination under this section are met.''.

(d) NOTICE.—

(1) Section 4041(a) of such Act (29 U.S.C. 1341(a) is amended by adding at the end the following new paragraph:

''(4) NOTICE OF RIGHT TO CHALLENGE.—Together with the notice of intent to terminate, the plan administrator shall provide to each participant and beneficiary a written notice of the right of participants and beneficiaries to challenge determinations under this section, written in a manner likely to be understood by the participant or beneficiary.''.

(2) Section 4042(a) of such Act (29 U.S.C. 1342(a)) is amended by adding at the end the following new sentence: ''Prior to commencing proceedings under this section with respect to any plan, the corporation shall provide notice to plan participants and beneficiaries of the right to challenge determinations under this section, written in a manner likely to be understood by the participant or beneficiary.''.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to any plans undergoing termination proceedings pursuant to section 4041 or 4042 of the Employee Retirement Income Security Act of 1974 which are pending on or after the date of the enactment of this Act.

(2) TRANSITIONAL RULE FOR INVOLUNTARY TERMINATIONS.—In any case in which, during the period beginning December 1, 2004, and ending with the date of the enactment of this Act, the Pension Benefit Guaranty Corporation has commenced termination proceedings under section 4042 of the Employee Retirement Income Security Act of 1974 (including the execution of any termination or trust agreement under such section)—

(A) the Corporation or other entity serving as trustee shall, effective as of the date of the enactment of this Act—

(i) cease any activities undertaken to terminate the plan, and

(ii) take such actions as may be necessary to restore the plan to its status immediately prior to the commencement of such proceedings or the execution of such agreement, and

(B) the procedures and requirements of section 4042 of the Employee Retirement Income Security Act of 1974 (as amended by this section) shall apply to any further such proceedings undertaken after the date of the enactment of this Act.

**SEC. 202. ELECTION BY EMPLOYER TO RESTORE PLAN UPON EMERGENCE FROM BANKRUPTCY.**

(a) IN GENERAL.—Section 4047 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1347) is amended—

(1) by inserting ''(a)'' before ''Whenever'', and

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

''(b) Within 3 years after the date on which a plan sponsor of a plan terminated under section 4041(c)(2)(B)(ii) or under section 4042 with respect to a reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or with respect to a case described in section 4041(c)(2)(B)(i) which has been converted to such a reorganization case), is discharged in such case (or the case is otherwise dismissed), the plan sponsor may elect to restore the plan to its pretermination status. Rules similar to the rules of subsection (a) shall apply with respect to any election made under this subsection. ''.

(b) PREMIUM RATE FOR TERMINATED SINGLE-EMPLOYER PLANS WHICH ARE NOT RESTORED.—Subsection (a) of section 4006 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306) is amended by adding at the end the following:

''(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

''(A) IN GENERAL.—In any case in which a plan sponsor of a plan terminated under 4041(c)(2)(B)(ii) or under section 4042 with respect to a reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State, (or with respect to a case described in section 4041(c)(2)(B)(i) which has been converted to such a reorganization case) is discharged in such case (or the case is otherwise dismissed), unless there is in effect an election under section 4047(b) in connection with such case after such discharge (or dismissal), there shall be payable to the corporation, with respect to each applicable 12-month period before the end of the 3-year period after such discharge (or dismissal) for which such election is not in effect, a premium at a rate equal to $1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

''(B) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A), the term 'applicable 12-month period' means—

''(i) the 12-month period beginning with the first month following the month in which the termination date occurs, and

''(ii) each of the first two 12-month periods immediately following the period described in subclause (I).

''(C) COORDINATION WITH SECTION 4007.—

''(i) Notwithstanding section 4007—

''(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

''(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

''(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.

''(D) USE OF FUNDS.—All amounts paid to the corporation under subparagraph (A) shall be deposited in the appropriate fund established under section 4005(a). Amounts deposited under the preceding sentence shall only be available to the corporation for payment of nonforfeitable benefits under the plan to participants of the terminated plan in excess of the corporation's guarantee under section 4022.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

**SEC. 203. DATE ON WHICH LIEN FOR MISSED CONTRIBUTIONS IS DEEMED PERFECTED.**

(a) IN GENERAL.—Section 4041 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

''(f) In the case of the commencement of any reorganization case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State, (a case described in section 4041(c)(2)(B)(i)) by or against a plan sponsor which has been converted to such a reorganization case), any lien or other security of a plan in such plan sponsor for missed contributions to the plan shall be treated as being perfected as of the earlier of the date of the commencement of such case or the date such security or lien is filed.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan terminations with respect to which proceedings are instituted, or are pending, on or after November 9, 2005.

## TITLE III—PROTECTION OF PENSION PLANS FOR AIRLINE EMPLOYEES

**SEC. 301. SPECIAL FUNDING RULES FOR PLANS MAINTAINED BY COMMERCIAL AIRLINES THAT ARE AMENDED TO CEASE FUTURE BENEFIT ACCRUALS.**

(a) IN GENERAL.—If an election is made to have this section apply to an eligible plan—

(1) in the case of any applicable plan year beginning before January 1, 2007, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (d) for the plan for the plan year, and

(2) in the case of any applicable plan year beginning on or after January 1, 2007, the minimum required contribution determined under sections 303 of such Act and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (d) for the plan for the plan year.

(b) ELIGIBLE PLAN.—For purposes of this section—

(1) IN GENERAL.—The term ''eligible plan'' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act and 412 of such Code applies—

(A) which is sponsored by an employer—

(i) which is a commercial airline passenger airline, or

(ii) the principal business of which is providing catering services to a commercial passenger airline, and

(B) with respect to which the requirements of paragraphs (2) and (3) are met.

(2) ACCRUAL RESTRICTIONS.—

(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act, of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

(B) INCREASES IN SECTION 415 LIMITS DISREGARDED.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this paragraph unless, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term ''applicable benefit increase'' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan.

(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) if the participant—

(A) was receiving disability benefits as of such date, or

(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

(c) ELECTIONS AND RELATED TERMS.—

(1) IN GENERAL.—A plan sponsor shall make the election under subsection (a) at such time and in such manner as the Secretary of the Treasury may prescribe. Except as provided in subsection (h)(5), such election, once made, may be revoked only with the consent of such Secretary.

(2) YEARS FOR WHICH ELECTION MADE.—

(A) IN GENERAL.—The plan sponsor may select the first plan year to which the election under subsection (a) applies from among plan years ending after the date of the election. The election shall apply to such plan year and all subsequent years.

(B) ELECTION OF NEW PLAN YEAR.—The plan sponsor may specify a new plan year in the election under subsection (a) and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

(3) APPLICABLE PLAN YEAR.—The term ''applicable plan year'' means each plan year to which the election under subsection (a) applies under paragraph (1).

(d) MINIMUM REQUIRED CONTRIBUTION.—

(1) IN GENERAL.—In the case of any applicable plan year during the amortization period,

the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act and section 412(a)(2)(A) of such Code shall apply to such plan, but any charge or credit in the funding standard account under section 302 of such Act of section 412 of such Code shall be zero.

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

(A) UNFUNDED LIABILITY.—The term ''unfunded liability'' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) AMORTIZATION PERIOD.—The term ''amortization period'' means the 20-plan year period beginning with the first applicable plan year.

(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section, shall apply,

(B) the rate of interest under section 302(b) of such Act and section 412(b) of such Code, as so in effect, shall be used for all calculations requiring an interest rate, and

(C) the value of plan assets shall be equal to their fair market value.

(5) SPECIAL RULE FOR CERTAIN PLAN SPIN-OFFS.—For purposes of subsection (a), if, with respect to any eligible plan to which this subsection applies—

(A) any applicable plan year includes the date of the enactment of this Act, and

(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under subsection (a)(1) for the eligible plan for such applicable plan year shall be determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of the minimum required contribution between such plans for the applicable plan year and direct the appropriate reallocation between the plans of any contributions for the applicable plan year.

(e) FUNDING STANDARD ACCOUNT AND PREFUNDING BALANCE.—Any charge or credit in the funding standard account under section 302 of such Act or section 412 of such Code, and any prefunding balance under section 303 of such Act or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

(f) AMENDMENTS TO OTHER PROVISIONS.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a)(36) of the Internal Revenue Code of 1986, as added by section 402 of this Act, is amended by adding at the end the following: ''This paragraph shall also apply to any plan during any period during which an amortization schedule under section 403 of the Pension Security and Transparency Act of 2005 is in effect.''

(2) PBGC LIABILITY LIMITED.—Section 4022 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following new subsection:

''(g) SPECIAL RULE FOR PLANS ELECTING CERTAIN FUNDING REQUIREMENTS.—During any period in which an election by a plan under section 301 of the Pension Protection Act of 2005 is in effect, then this section and section 4044(a)(3) shall be applied by treating the first day of the first applicable plan year as the termination date of the plan. This subsection shall not apply to any plan for which an election under section 403(h) of such Act is in effect.''.

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iii) of the Internal Revenue Code of 1986, as added by this Act, is amended by adding at the end the following new sentence: ''This clause shall also apply to any plan for a plan year if an election under section 403 of the Pension Security and Transparency Act of 2005 is in effect for such year.''

(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE PLANS.—During any period an election is in effect under this section with respect to an eligible plan, the Pension Benefit Guaranty Corporation shall, before it seeks or approves a termination of such plan under section 4041(c) or 4042 of the Employee Retirement Income Security Act of 1974—

(1) make a determination under section 4041(c)(4) or 4042(i) of such Act whether the termination would be necessary if the Secretary of the Treasury were to enter into an agreement under section 4047(a) of such Act which provides an alternative funding agreement to replace the amortization schedule under this section, and

(2) if the Corporation determines such an agreement would make such termination unnecessary, take all necessary actions to ensure the agreement is entered into.

The Pension Benefit Guaranty Corporation shall make the determination under paragraph (1) within 90 days of receiving all information needed in connection with a request for a termination (or if no such request is made, within 90 days of consideration of the termination by the Corporation).

(h) CERTAIN BENEFIT ACCRUALS AND INCREASES ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO COVER COSTS.—

(1) IN GENERAL.—If an employer elects the application of this subsection—

(A) the requirements of paragraphs (2) and (3) of subsection (b) shall not apply with respect to any eligible plan maintained by the employer and specified in the election, and

(B) the minimum required contribution under subsection (d) for any plan year with respect to the plan shall be increased by the amounts described in paragraphs (2) and (3). Any liabilities and assets taken into account under this subsection shall not be taken into account in determining the unfunded liability of the plan for purposes of subsection (d).

(2) CURRENT FUNDING OF ACCRUALS AND INCREASES.—The amount determined under this paragraph for any plan year is the target normal cost which would occur under section 302 of such Act and 412 of such Code if—

(A) any benefit accrual, or benefit increase taking effect, during the plan year by reason of this subsection were treated as having been accrued or earned during the plan year, and

(B) the plan were treated as if it were subject to section 302(d) of such Act and section 412(d) of such Code.

(3) FUNDING MUST BE MAINTAINED.—The amount determined under this paragraph for any plan year is the amount charged to the funding standard account under section 302(d) of such Act and section 412(d) of such Code if—

(A) the funding target were determined by only taking into account benefits to which paragraph (2) applied for preceding plan years,

(B) the only assets taken into account were the contributions required under this paragraph and paragraph (2) for preceding plan years (and any earnings thereon),

(C) the amortization period included only the plan year,

(D) the transition rule under section 303(c)(4)(B) of such Act and section 430(c)(4)(B) of such Code did not apply, and

(E) the plan were treated as if it were subject to section 302(d) of such Act and section 412(d) of such Code.

(4) SPECIAL RULES FOR YEARS BEFORE 2007.—Notwithstanding any other provision of this Act, in the case of an applicable plan year of an eligible plan to which this subsection applies which begins before January 1, 2007, in determining the amounts described in paragraphs (2) and (3) for such plan year—

(A) the provisions of, and amendments made by, sections 101, 102, 111, and 112 shall apply to such plan year, except that

(B) the interest rate used under section 303 of such Act and section 430 of such Code for purposes of applying paragraphs (2) and (3) to such plan year shall be the interest rate determined under section 302(b)(5) of such Act and section 412(b)(5) of such Code, as in effect for plan years beginning in 2005.

(5) ELECTION OUT OF SECTION.—An employer maintaining an eligible plan to which this subsection applies may make a one-time election with respect to any applicable plan year not to have this section apply to such plan year and all subsequent plan years. Subject to subsection (d)(2), the minimum required contribution under section 302 of such Act and 412 of such Code for all such plan years shall be determined without regard to this section.

(i) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—Section 410(b)(3) of such Code is amended by striking the last sentence and inserting the following: ''For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning before, on, or after the date of the enactment of this Act.

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

**SEC. 302. RECOGNITION OF LEGALLY MANDATED EARLY RETIREMENT AGES IN DETERMINING AMOUNT OF GUARANTEED BENEFITS.**

(a) SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED.—Section 4022(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(3)) is amended, in the flush matter following subparagraph (B), by

adding at the end the following: ''If, at the time of termination of a plan under this title, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining a specified age which is less than age 65, the first sentence of this paragraph shall be applied to an individual who is a participant in the plan by reason of such service by substituting such age for age 65.''.

(b) AGGREGATE LIMIT ON BENEFIT GUARANTEED.—Section 4022B(a) of such Act (29 U.S.C. 1322b(a)) is amended by adding at the end the following: ''If, as of such date, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining a specified age which is less than age 65, this subsection shall be applied to an individual who is a participant in any such plan by reason of such service by substituting such age for age 65.''.

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to benefits payable on or after the date of the enactment of this Act.

## TITLE IV—FAIRNESS FOR RANK AND FILE EMPLOYEES

### SEC. 401. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—

''(A) If—

''(i) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

''(ii) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors.

''(B) AT-RISK STATUS.—For purposes of subparagraph (A), a plan is in an at-risk status if the funded current liability percentage (as defined in section 412(l)(8)), reduced as described in subparagraph (E) thereof, of the plan is less than 60 percent. ''.

(b) CONFORMING AMENDMENTS.—Paragraphs (4) and (5) of section 409A(b) of such Code, as redesignated by subsection (a) of this subsection, are each amended by striking ''paragraph (1) or (2)'' each place it appears and inserting ''paragraph (1), (2), or (3)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

### SEC. 402. NONQUALIFIED DEFERRED COMPENSATION REDUCED BY PERCENTAGE OF UNDERFUNDED PLAN UPON BANKRUPTCY OF EMPLOYER.

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding), as amended by section 302, is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) REDUCTION IN ALLOWABLE DEFERRED COMPENSATION UPON BANKRUPTCY.—

''(A) Upon the commencement of any reorganization case under title 11 of the United States Code, or under any similar Federal or State law—

''(i) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

''(ii) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

the employer shall reduce the amount of benefit under the non-qualified plan by the applicable percentage of underfunding in the pension plan.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage is the excess (if any) of 100 percentage points over the funded current liability percentage (as defined in section 412(l)(8)), reduced as described in subparagraph (E) thereof.

''(C) ADDITIONAL TAX.—The tax imposed by this chapter for any taxable year on any taxpayer with respect to whom a benefit is reduced under subparagraph (A) shall be increased by 100 percent of the amount of such reduction. Such amount shall not be treated as a tax for purposes of section 26(b)(2).''.

(b) CONFORMING AMENDMENTS.—Paragraphs (5) and (6) of section 409A(b) of such Code, as redesignated by subsection (a) of this subsection, are each amended by striking ''or (3)'' each place it appears and inserting ''(3), or (4)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

### SEC. 403. TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.

(a) IN GENERAL.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

''(g) TERMINATION FAIRNESS STANDARD FOR NONQUALIFIED DEFERRED COMPENSATION PLANS IN CONNECTION WITH PENSION PLAN TERMINATIONS BASED ON BANKRUPTCY REORGANIZATION.—

''(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which a plan amendment is adopted that has the effect of implementing a distress termination of the plan under section 4041(c) based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guaranty Corporation under section 4042 based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(d)(2)) as of the proposed termination date, any covered deferred compensation plan established or maintained by such plan sponsor after the date of the adoption of such plan amendment shall meet the termination fairness standard of this subsection with respect to such plan amendment.

''(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to a plan amendment described in paragraph (1) if, during the 5-year period beginning on the date of the adoption of such plan amendment—

''(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan (irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation), and

''(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is adopted during or after such 1-year period), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) NOTICE DATE.—The term 'notice date' means, with respect to an amendment described in paragraph (1)—

''(i) in the case of a distress termination under section 4041(d), the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2), and

''(ii) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042, the date of the application to the court under section 4042(c).

''(B) COVERED DEFERRED COMPENSATION PLAN.—

''(i) IN GENERAL.—The term 'covered deferred compensation plan' means any plan providing for the deferral of compensation of a disqualified individual, whether or not—

''(I) compensation of the disqualified individual which is deferred under such plan is subject to substantial risk of forfeiture,

''(II) the disqualified individual's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the plan sponsor,

''(III) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation (including income), and all income attributable to such amounts, remain (until made available to the disqualified individual or other beneficiary) solely the property of the plan sponsor (without being restricted to the provision of benefits under the plan),

''(IV) the amounts referred to in subclause (III) are available to satisfy the claims of the plan sponsor's general creditors at all times (not merely after bankruptcy or insolvency), and

''(V) some or all of the compensation of the disqualified individual which is deferred under such plan is guaranteed by an insurance company, insurance service, or other similar organization.

''(ii) EXCEPTION FOR QUALIFIED PLANS.—Such term shall not include a plan that is—

''(I) described in section 219(g)(5)(A) of the Internal Revenue Code of 1986, or

''(II) an eligible deferred compensation plan (as defined in section 457(b) of such Code) of an eligible employer described in section 457(e)(1)(A) of such Code.

''(iii) PLAN INCLUDES ARRANGEMENTS, ETC.—For purposes of this subparagraph, the term 'plan' includes any agreement or arrangement.

''(C) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means a director or executive officer of the plan sponsor.

''(D) TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—A termination of a plan which is a distress termination under section 4041(c) or a termination instituted by the Pension Benefit Guaranty Corporation under section 4042 is 'based on bankruptcy reorganization' if such termination is based in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor's controlled group, of a petition seeking reorganization in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought).

''(E) TITLE IV TERMINOLOGY.—Any term used in this subsection which is defined in section 4001(a) shall have the meaning provided such term in section 4001(a).

''(4) SPECIAL RULES.—

''(A) COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in paragraph (1), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(B) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this subsection through the use of 2 or more plan amendments rather than a single amendment.

''(C) CONTROLLED GROUPS, ETC.—For purposes of this subsection, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

''(D) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income attributable to such compensation or such income.

''(5) COORDINATION.—The Secretary and the Secretary of the Treasury shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which both such Secretaries have responsibility under this subsection and section 4980H of the Internal Revenue Code of 1986 are administered so as to have the same effect at all times.

''(6) EFFECT OF WAIVER GRANTED BY SECRETARY OF THE TREASURY.—To the extent that any requirement of the termination fairness standard of section 4980H(a)(2) of the Internal Revenue Code of 1986 is waived by the Secretary of the Treasury with respect to any disqualified individual under section 4980H(g) of such Code in the case of any plan amendment having the effect of a termination described in paragraph (1) of this subsection, such requirement under the termination fairness standard of paragraph (2) of this subsection shall not apply with respect to such individual in the case of such plan amendment.''.

(b) EXCISE TAX ON FUNDING NONQUALIFIED DEFERRED COMPENSATION PLANS IN THE EVENT OF A PENSION PLAN TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—

(1) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

**''SEC. 4980H. FUNDING NONQUALIFIED DEFERRED COMPENSATION PLANS.**

''(a) IMPOSITION OF TAX IN THE EVENT OF A PENSION PLAN TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—

''(1) IN GENERAL.—In any case in which a corporation is a plan sponsor of a defined benefit plan with respect to which an plan amendment is adopted that has the effect of implementing a distress termination of the plan under section 4041(c) of the Employee Retirement Income Security Act of 1974 based on bankruptcy reorganization or a termination of the plan initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act based on bankruptcy reorganization, in any case in which the plan is not sufficient for guaranteed benefits (within the meaning of section 4041(d)(2) of such Act) as of the proposed termination date, there is hereby imposed a tax on any failure to meet the termination fairness standard of paragraph (2) with respect to such plan amendment.

''(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to a plan amendment described in paragraph (1) if, during the 5-year period beginning on the date of the adoption of such plan amendment—

''(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan, irrespective of whether the accrual in deferred compensation is expressed in the form of a promise, a guarantee, or any other representation, and

''(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is adopted during or after such 1-year period), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to the amount of the accrual described in subsection (a)(2)(A) comprising the failure or the distribution described in subsection (a)(2)(B) comprising the failure.

''(c) LIABILITY FOR TAX.—The plan sponsor shall be liable for the tax imposed by this section.

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

''(1) NOTICE DATE.—The term 'notice date' means with respect to an amendment described in subsection (a)(1)—

''(A) in the case of a distress termination under section 4041(d) of the Employee Retirement Income Security Act of 1974, the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2) of such Act, and

''(B) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042 of such Act, the date of the application to the court under section 4042(c) of such Act.

''(2) COVERED DEFERRED COMPENSATION PLAN.—

''(A) IN GENERAL.—The term 'covered deferred compensation plan' means any plan providing for the deferral of compensation of a disqualified individual, whether or not—

''(i) compensation of the disqualified individual which is deferred under such plan is subject to substantial risk of forfeiture,

''(ii) the disqualified individual's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the plan sponsor,

''(iii) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the (without being restricted to the provision of benefits under the plan),

''(iv) the amounts referred to in clause (iii) are available to satisfy the claims of the plan sponsor's general creditors at all times (not merely after bankruptcy or insolvency), and

''(v) some or all of the compensation of the disqualified individual which is deferred under such plan is guaranteed by an insurance company, insurance service, or other similar organization.

''(B) EXCEPTION FOR QUALIFIED PLANS.—Such term shall not include a plan that is—

''(i) described in section 219(g)(5)(A), or

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

''(C) PLAN INCLUDES ARRANGEMENTS, ETC.—For purposes of this paragraph, the term 'plan' includes any agreement or arrangement.

''(3) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means a director or executive officer of the plan sponsor.

''(4) TERMINATION BASED ON BANKRUPTCY REORGANIZATION.—A termination of a plan which is a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 or a termination instituted by the Pension Benefit Guaranty Corporation under section 4042 of such Act is 'based on bankruptcy reorganization' if such termination is based in whole or in part on the filing, by or against any person who is a contributing sponsor of such plan or a member of such sponsor's controlled group, of a petition seeking reorganization in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or such a case in which liquidation is sought has been converted to a case in which reorganization is sought).

''(5) TITLE IV TERMINOLOGY.—Any term used in this section which is defined in section 4001(a) of the Employee Retirement Income Security Act of 1974 shall have the meaning provided such term in such section 4001(a).

''(e) SPECIAL RULES.—

''(1) COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subsection (a)(1), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

''(2) MULTIPLE AMENDMENTS.—The Secretary shall issue regulations to prevent the avoidance of the purposes of this section through the use of 2 or more plan amendments rather than a single amendment.

''(3) CONTROLLED GROUPS, ETC.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

''(4) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income attributable to such compensation or such income.

''(f) COORDINATION.—The Secretary and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which both such Secretaries have responsibility under this section

and section 206(g) of the Employee Retirement Income Security Act of 1974 are administered so as to have the same effect at all times.

''(g) WAIVER.—

''(1) IN GENERAL.—In the case of any plan amendment having the effect of a termination described in subsection (a)(1), the Secretary may waive the application of any requirement of the termination fairness standard of subsection (a)(2) with respect to any disqualified individual who first commences service for the plan sponsor after the notice date with respect to such plan amendment. The Secretary may grant any such waiver in the case of any such plan amendment with respect to any such disqualified individual only after consultation with the Pension Benefit Guaranty Corporation. The Secretary shall promptly notify the Secretary of Labor of any such waiver granted by the Secretary.

''(2) REQUIREMENTS FOR WAIVER.—A waiver may be granted under paragraph (1) only—

''(A) upon the filing with the Secretary by the plan sponsor of an application for such waiver, in such form and manner as shall be prescribed in regulations of the Secretary,

''(B) upon a showing, to the satisfaction of the Secretary, that such waiver is a business necessity for the plan sponsor, as determined under such regulations, and is in the interest of plan participants and beneficiaries, as determined under such regulations, and

''(C) after the participants, in such form and manner as shall be provided in such regulations, have been notified of the filing of the application for the waiver and have been provided a reasonable opportunity to provide in advance comments to the Secretary regarding the proposed waiver.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''Sec. 4980H. Funding nonqualified deferred compensation plans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) plan amendments adopted on or after May 10, 2005, and

(2) plan amendments adopted before such date implementing a plan termination as described in section 206(g)(1) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) or section 4980H(a)(1)(A) of the Internal Revenue Code of 1986 (as added by subsection (b)) based on a bankruptcy reorganization in a case under title 11 of the United States Code (or under any similar law of a State or a political subdivision of a State) pending on such date.

## TITLE V—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

### Subtitle A—Funding Rules

### PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

#### SEC. 501. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by this Act) is amended by inserting after section 303 the following new section:

''MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

''SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 302(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 of the Internal Revenue Code of 1986 in such manner as is determined by the Secretary of the Treasury.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would

be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

''(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

''(i) submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

''(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary of the Treasury shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

''(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

''(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

''(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

''(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

''(iv) the notice required under paragraph (3)(A) has been provided.

''(2) ADDITIONAL EXTENSION.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

''(B) DETERMINATION.—The Secretary make grant an extension under subparagraph (A) if the Secretary determines that—

''(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

''(ii) the failure to permit such extension would—

''(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

''(II) be adverse to the interests of plan participants in the aggregate.

''(C) ACTION BY SECRETARY.—The Secretary of the Treasury shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) SHORTFALL FUNDING METHOD.—

(1) IN GENERAL.—A multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall be deemed approved by the Secretary of the Treasury under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 and section 412(e)(1) of the Internal Revenue Code of 1986.

(2) CRITERIA.—A multiemployer pension plan meets the criteria of this clause if—

(A) the plan has not used the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method under paragraph (1); and

(B) the plan is not operating under an amortization period extension under section 304(d) of such Act and did not operate under such an extension during such 5-year period.

(3) SHORTFALL FUNDING METHOD DEFINED.—For purposes of this subsection, the term ''shortfall funding method'' means the shortfall funding method described in Treasury Regulations section 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

(4) BENEFIT RESTRICTIONS TO APPLY.—The benefit restrictions under section 302(c)(7) of such Act and section 412(d)(7) of such Code shall apply during any period a multiemployer plan is on the shortfall funding method pursuant to this subsection.

(5) USE OF SHORTFALL METHOD NOT TO PRECLUDE OTHER OPTIONS.—Nothing in this subsection shall be construed to affect a multiemployer plan's ability to adopt the shortfall funding method with the Secretary's permission under otherwise applicable regulations or to affect a multiemployer plan's right to change funding methods, with or without the Secretary's consent, as provided in applicable rules and regulations.

(c) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by this Act) is amended by inserting after the item relating to section 303 the following new item:

''Sec. 304. Minimum funding standards for multiemployer plans.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

**SEC. 502. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended by inserting after section 304 the following new section:

''ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

''SEC. 305. (a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

''(1) if the plan is in endangered status—

''(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

''(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

''(2) if the plan is in critical status—

''(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

''(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

''(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

''(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years,

taking into account any extension of amortization periods under section 304(d).

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

''(A) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 304(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 304(d).

''(C) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value of the reasonably anticipated employer contributions for the current plan year,

''(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

''(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

''(D) A plan is described in this subparagraph if the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury—

''(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

''(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

''(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(i) IN GENERAL.—In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years, using reasonable actuarial estimates, assumptions, and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The projected present value of liabilities as of the beginning of such year shall be determined based on the actuarial statement required under section 103(d) with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

''(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

''(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

''(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary.

''(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the funding improvement plan—

''(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

''(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

''(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

''(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

''(i) such percentage as of the beginning of such period, plus

''(ii) 10 percent of the percentage under clause (i).

''(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

''(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

''(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

''(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

''(B) COORDINATION WITH CHANGES IN STATUS.—

''(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

''(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

''(C) PLANS IN ENDANGERED STATUS AT END OF PERIOD.—If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

''(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

''(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

''(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

''(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

''(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

''(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

''(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

''(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104.

''(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

''(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

''(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law, and

''(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

''(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

''(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

''(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

''(3) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the rehabilitation plan—

''(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 204(g)) have been reduced to the maximum extent permitted by law.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

''(3) REHABILITATION PLAN.—For purposes of this section—

''(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

''(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

''(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

''(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

''(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104.

''(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

''(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 304(d).

''(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4).

''(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

''(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

''(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

''(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

''(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

''(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

''(1) COMPLIANCE WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

''(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

''(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

''(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 204(g), the plan shall not pay—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)),

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary of the Treasury by regulations.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 203(e) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

''(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

''(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of

qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

''(h) NONBARGAINED PARTICIPATION.—

''(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

''(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

''(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

''(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means—

''(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

''(ii) in the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

''(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

''(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 304(c)(3).

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 304(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a).

''(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

''(9) PLAN SPONSOR.—In the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''.

(b) CAUSE OF ACTION TO COMPEL ADOPTION OF FUNDING IMPROVEMENT OR REHABILITATION PLAN.—Section 502(a) of the Employee Retirement Income Security Act of 1974 is amended by striking ''or'' at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ''; or'' and by adding at the end the following:

''(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305, if the plan sponsor has not adopted a funding improvement or rehabilitation plan under subsection (c) or (e) of that section by the deadline established in that section, by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan.''.

(c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971 of the Internal Revenue Code of 1986 is amended by redesignating subsection (g) as subsection (h), and inserting after subsection (f) the following:

''(g) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—No tax shall be imposed under this section for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This subsection shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan) and shall not apply if an excise tax is required to be imposed under this section by reason of a violation of such section 305.''.

(d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

(1) Section 302(b) of the Employee Retirement Income Security Act of 1974, as amended by this Act , is amended by adding at the end the following new paragraph:

''(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) and complies with such rehabilitation plan (and any modifications of the plan).''.

(2) Section 412(c) of the Internal Revenue Code of 1986, as amended by this Act, is amended by adding at the end the following new paragraph:

''(3) MULTIEMPLOYER PLANS IN CRITICAL STATUS.—Subparagraph (A) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305 of the Employee Retirement Income Security Act of 1974. This paragraph shall only apply if the plan adopts a rehabilitation plan in accordance with section 305(e) of such Act and complies with such rehabilitation plan (and any modifications of the plan).''.

(e) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended by inserting after the item relating to section 304 the following new item:

''Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

**SEC. 503. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section

4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking ''3 plan years'' the second place it appears and inserting ''5 plan years''; and

(2) by adding at the end the following new sentence: ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2006.

**SEC. 504. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION.**

In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

(1) increases benefits, and

(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383),

the amendments made by sections 201, 202, 211, and 212 of this Act shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).

**SEC. 505. WITHDRAWAL LIABILITY REFORMS.**

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY OF INSOLVENT EMPLOYERS.—

(1) IN GENERAL.—Subsections (b) and (d) of section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) are repealed.

(2) CONFORMING AMENDMENTS.—Subsections (c) and (e) of section 4225 of such Act are redesignated as subsections (b) and (c), respectively.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting ''or to an entity or entities owned or controlled by the employer'' after ''to another location''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(c) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

**SEC. 506. SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES.**

(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by this subtitle and subtitle B shall not apply to plan years beginning before the earlier of—

(1) the first plan year for which the plan ceases to be an eligible cooperative plan, or

(2) January 1, 2017.

(b) ELIGIBLE COOPERATIVE PLANS.—For purposes of this section, the term ''eligible cooperative plan'' means a plan which is maintained by more than 1 employer and at least 85 percent of the employers are—

(1) rural cooperatives (as defined in section 401(k)(7)(B) of the Internal Revenue Code of 1986 without regard to clause (iv) thereof),

(2) rural telephone cooperative associations described in section 3(40)(B)(v) of the Employee Retirement Income Security Act of 1974 which is not described in paragraph (1), or

(3) organizations described in section 1381(a) of such Code more than 50 percent of the ownership or capital and profits interests of which are held—

(A) by producers of agricultural products, or

(B) organizations described in section 1381(a) of such Code meeting the requirements of subparagraph (A).

## PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

**SEC. 511. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as added by this Act) is amended by inserting after section 430 the following new section:

**''SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

''(a) IN GENERAL.—For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

''(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

''(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

''(b) FUNDING STANDARD ACCOUNT.—

''(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

''(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

''(A) the normal cost of the plan for the plan year,

''(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

''(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), and

''(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005).

''(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

''(A) the amount considered contributed by the employer to or under the plan for the plan year,

''(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

''(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

''(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

''(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

''(C) the amount of the waived funding deficiency (within the meaning of section 412(d)(3)) for the plan year, and

''(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

''(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

''(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

''(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

''(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

''(6) INTEREST.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

''(7) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

''(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

''(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

''(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

''(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) of such Act as of the end of the last plan year that the plan was in reorganization.

''(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

''(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

''(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Security and Transparency Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(ii) shall not apply to the amount so charged).

''(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

''(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(i) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

''(c) ADDITIONAL RULES.—

''(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

''(2) VALUATION OF ASSETS.—

''(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

''(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

''(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

''(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

''(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

''(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

''(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

''(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

''(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

''(A) the funding standard account shall be credited with the amount of such excess, and

''(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

''(6) FULL-FUNDING LIMITATION.—

''(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

''(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(ii) the lesser of—

''(I) the fair market value of the plan's assets, or

''(II) the value of such assets determined under paragraph (2).

''(B) MINIMUM AMOUNT.—

''(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

''(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

''(II) the value of the plan's assets determined under paragraph (2).

''(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

''(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

''(D) CURRENT LIABILITY.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

''(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

''(I) age, service, compensation, death, or disability, or

''(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

''(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

''(iv) MORTALITY TABLES.—

''(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

''(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

''(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

''(I) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

''(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

''(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

''(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

''(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

''(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

''(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

''(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

''(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

''(I) determined without taking into account the experience of the plan and reasonable expectations, but

''(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

''(7) ANNUAL VALUATION.—

''(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

''(B) VALUATION DATE.—

''(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

''(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

''(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

''(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

''(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—

''(1) AUTOMATIC EXTENSION UPON APPLICATION BY CERTAIN PLANS.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan—

''(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

''(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

''(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

''(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

''(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

''(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

''(iv) the notice required under paragraph (3)(A) has been provided.

''(2) ADDITIONAL EXTENSION.—

''(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 5 years) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

''(B) DETERMINATION.—The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

''(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

''(ii) the failure to permit such extension would—

''(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

''(II) be adverse to the interests of plan participants in the aggregate.

''(C) ACTION BY SECRETARY.—The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

''(3) ADVANCE NOTICE.—

''(A) IN GENERAL.—The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

''(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act, including the use of the rate of interest determined under section 6621(b) of such Code.

**SEC. 512. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (as amended by this Act) is amended by inserting after section 431 the following new section:

**''SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

''(a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan—

''(1) if the plan is in endangered status—

''(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

''(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

''(2) if the plan is in critical status—

''(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

''(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

''(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

''(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and either—

''(A) the plan's funded percentage for such plan year is less than 80 percent, or

''(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan described in subparagraph (B) shall be treated as in seriously endangered status.

''(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

''(A) A plan is described in this subparagraph if—

''(i) the funded percentage of the plan is less than 65 percent, and

''(ii) the sum of—

''(I) the market value of plan assets, plus

''(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 5 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 5 succeeding plan years (plus administrative expenses for such plan years).

''(B) A plan is described in this subparagraph if—

''(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

''(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

''(C) A plan is described in this subparagraph if—

''(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

''(II) the present value of the reasonably anticipated employer contributions for the current plan year,

''(ii) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

''(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

''(D) A plan is described in this subparagraph if the sum of—

''(i) the market value of plan assets, plus

''(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

''(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

''(A) IN GENERAL.—During the 90-day period beginning on the first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary—

''(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year, and

''(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

''(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

''(i) IN GENERAL.—In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years, using reasonable actuarial estimates, assumptions, and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The projected present value of liabilities as of the beginning of such year shall be determined based on the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

''(ii) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any actuarial projection of plan assets shall assume—

''(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

''(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

''(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(4) of such Act.

''(D) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered or critical status under subparagraph (A), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary, and the Secretary of Labor.

''(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the funding improvement plan—

''(i) in the case of a plan in seriously endangered status, shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable requirements under paragraph (3) in accordance with the funding improvement plan, including a description of the reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to meet the applicable requirements if the plan sponsor assumes that there are no increases in contributions under the plan other than the increases necessary to meet the applicable requirements after future benefit accruals have been reduced to the maximum extent permitted by law, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the requirements under paragraph (3) in accordance with the funding improvement plan.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

''(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

''(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which, under reasonable actuarial assumptions, will result in the plan meeting the requirements of this paragraph.

''(B) PLANS OTHER THAN SERIOUSLY ENDANGERED PLANS.—In the case of plan not in seriously endangered status, the requirements of this paragraph are met if the plan's funded percentage as of the close of the funding improvement period exceeds the lesser of 80 percent or a percentage equal to the sum of—

''(i) such percentage as of the beginning of such period, plus

''(ii) 10 percent of the percentage determined under clause (i).

''(C) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, the requirements of this paragraph are met if—

''(i) the plan's funded percentage as of the close of the funding improvement period equals or exceeds the percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 33 percent of the difference between 100 percent and the percentage under subclause (I), and

''(ii) there is no accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

''(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

''(i) the second anniversary of the date of the adoption of the funding improvement plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

''(B) COORDINATION WITH CHANGES IN STATUS.—

''(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

''(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

''(5) SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the funded percentage of a plan in seriously endangered status was 70 percent or less as of the beginning of the initial determination year, the following rules shall apply in determining whether the requirements of paragraph (3)(C)(i) are met:

''(i) The plan's funded percentage as of the close of the funding improvement period must equal or exceed a percentage which is equal to the sum of—

''(I) such percentage as of the beginning of such period, plus

''(II) 20 percent of the difference between 100 percent and the percentage under subclause (I).

''(ii) The funding improvement period under paragraph (4)(A) shall be 15 years rather than 10 years.

''(B) SPECIAL RULES FOR PLANS WITH FUNDED PERCENTAGE OVER 70 PERCENT.—If the funded percentage described in subparagraph (A) was more than 70 percent but less than 80 percent as of the beginning of the initial determination year—

''(i) subparagraph (A) shall apply if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, and

''(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

''(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

''(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

''(B) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(7) PENALTY IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—A failure of the plan sponsor to adopt a funding improvement plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

''(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term 'funding plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

''(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

''(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

''(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

''(i) an increase in the plan's funded percentage, and

''(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

''(2) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

''(B) NO REDUCTION IN CONTRIBUTIONS.—A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

''(C) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

''(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

''(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

''(3) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

''(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

''(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

''(B) within 30 days after the adoption of the rehabilitation plan—

''(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

''(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and increases in contributions that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

''(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a

plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

''(3) REHABILITATION PLAN.—For purposes of this section—

''(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

''(i) actions which will enable, under reasonable actuarial assumptions, the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

''(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

Such plan shall include the schedules required to be provided under paragraph (1)(B)(i). If clause (ii) applies, such plan shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

''(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

''(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

''(ii) SCHEDULES.—The plan sponsor may periodically update any schedule of contribution rates provided under this subsection to reflect the experience of the plan, except that the schedule or schedules described in paragraph (1)(B)(i) shall be updated at least once every 3 years.

''(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

''(C) DEFAULT SCHEDULE.—If the collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

''(4) REHABILITATION PERIOD.—For purposes of this section—

''(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

''(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

''(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

''(B) EMERGENCE.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to use of the shortfall method or any extension of amortization periods under section 431(d).

''(5) PENALTY IF NO REHABILITATION PLAN ADOPTED.—A failure of a plan sponsor to adopt a rehabilitation plan by the date specified in paragraph (1)(A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

''(6) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term 'rehabilitation plan adoption period' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

''(7) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under any schedule described in paragraph (1)(B)(i) shall not reduce the rate of future accruals below—

''(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

''(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that established lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

''(8) EMPLOYER IMPACT.—For the purposes of this section, the plan sponsor shall consider the impact of the rehabilitation plan and contribution schedules authorized by this section on bargaining parties with fewer than 500 employees and shall implement the plan in a manner that encourages their continued participation in the plan and minimizes financial harm to employers and their workers.

''(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

''(1) COMPLIANCE WITH REHABILITATION PLAN.—

''(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

''(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

''(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

''(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

''(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(b)(1)(A)),

''(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

''(iii) any other payment specified by the Secretary by regulations.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

''(3) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

''(4) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the rehabilitation plan adoption period—

''(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

''(i) a reduction in the level of contributions for any participants,

''(ii) a suspension of contributions with respect to any period of service, or

''(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

''(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

''(5) FAILURE TO MEET REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan—

''(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

''(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount

equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

''(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by section 4971 to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

''(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

''(h) NONBARGAINED PARTICIPATION.—

''(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and to employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

''(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining parties, and its participation agreement with the plan was a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

''(3) EMPLOYEES COVERED BY A COLLECTIVE BARGAINING AGREEMENT.—The determination as to whether an employee covered by a collective bargaining agreement for purposes of this section shall be made without regard to the special rule in Treasury Regulation section 1.410(b)–6(d)(ii)(D).

''(i) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

''(1) BARGAINING PARTY.—The term 'bargaining party' means—

''(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

''(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employee settlor of the plan; and

''(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

''(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage equal to a fraction—

''(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

''(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

''(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given such term in section 412(a).

''(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

''(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

''(A) is not in covered service under the plan, and

''(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

''(6) PAY STATUS.—A person is in pay status under a multiemployer plan if—

''(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

''(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

''(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

''(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

''(9) PLAN SPONSOR.—In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.

## PART III—SUNSET OF FUNDING RULES

### SEC. 516. SUNSET OF FUNDING RULES.

(a) REPORT.—Not later than December 31, 2011, the Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall conduct a study of the effect of the amendments made by this subtitle on the operation and funding status of multiemployer plans and shall report the results of such study, including any recommendations for legislation, to the Congress.

(b) MATTERS INCLUDED IN STUDY.—The study required under subsection (a) shall include—

(1) the effect of funding difficulties, funding rules in effect before the date of the enactment of this Act, and the amendments made by this subtitle on small businesses participating in multiemployer plans,

(2) the effect on the financial status of small employers of—

(A) funding targets set in funding improvement and rehabilitation plans and associated contribution increases,

(B) funding deficiencies,

(C) excise taxes,

(D) withdrawal liability,

(E) the possibility of alternatives schedules and procedures for financially-troubled employers, and

(F) other aspects of the multiemployer system, and

(3) the role of the multiemployer pension plan system in helping small employers to offer pension benefits.

(c) SUNSET.—

(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act, the provisions of, and the amendments made by, this subtitle shall not apply to plan years beginning after December 31, 2014, and the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 shall be applied to such plan years under the provisions of sections 302 through 308 of such Act and 412 of such Code (as in effect before the amendments made by this Act).

(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a funding improvement or rehabilitation plan under section 305 of such Act or 432 of such Code for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period.

(3) AMORTIZATION SCHEDULES.—In the case of any amount amortized under section 304(b) of such Act or 431 of such Code (as in effect after the amendments made by this subtitle) over any period beginning with a plan year beginning before January 1, 2015, such amount shall, in lieu of the amortization which would apply after the application of this subsection, continue to be amortized under such section 304 or 431 (as so in effect).

## Subtitle B—Deduction and Related Provisions

### SEC. 521. DEDUCTION LIMITS FOR MULTIEMPLOYER PLANS.

(a) INCREASE IN DEDUCTION.—Section 404(a)(1)(D) of the Internal Revenue Code of 1986, as amended by this Act, is amended to read as follows:

''(D) AMOUNT DETERMINED ON BASIS OF UNFUNDED CURRENT LIABILITY.—

''(i) IN GENERAL.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

''(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term 'unfunded current liability' means the excess (if any) of—

''(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

''(II) the value of the plan's assets determined under section 431(c)(2).''.

(b) EXCEPTION FROM LIMITATION ON DEDUCTION WHERE COMBINATION OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 404(a)(7)(C) of such Code, as amended by this Act, is amended by adding at the end the following new clause:

''(v) MULTIEMPLOYER PLANS.—In applying this paragraph, any multiemployer plan shall not be taken into account.''.

(2) CONFORMING AMENDMENT.—Section 404(a)(7)(A) of such Code is amended by striking the last sentence.

(c) EFFECTIVE DATES.—

(1) DEDUCTION LIMIT.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2006.

(2) EXCEPTION.—The amendments made by subsection (b) shall apply to years beginning after December 31, 2005.

**SEC. 522. TRANSFER OF EXCESS PENSION ASSETS TO MULTIEMPLOYER HEALTH PLAN.**

(a) IN GENERAL.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(5) APPLICATION TO MULTIEMPLOYER PLAN.—In the case of any plan to which section 404(c) applies (or any successor plan primarily covering employees in the building and construction industry)—

''(A) the prohibition under subsection (a) on the application of this section to a multiemployer plan shall not apply, and

''(B) this section shall be applied to any such plan—

''(i) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

''(ii) in accordance with such modifications of this section (and the provisions of this title and the Employee Retirement Income Security Act of 1974 relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.''

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(3) Section 408(b)(13) of such Act (29 U.S.C. 1108(b)(13)) is amended by striking ''American Jobs Creation Act of 2004'' and inserting ''Pension Security and Transparency Act of 2005''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers made in taxable years beginning after December 31, 2004.

## TITLE VI—ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

**SEC. 601. AMERISAVE MATCHING CREDIT.**

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and by inserting after section 35 the following new section:

**''SEC. 36. AMERISAVE MATCHING CREDIT.**

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 100 percent of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed the applicable limit.

''(b) APPLICABLE LIMIT.—For purposes of this section—

''(1) IN GENERAL.—The applicable limit is $1,000, reduced (but not below zero) by the reduction amount for each $1,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount.

''(2) REDUCTION AMOUNT; THRESHOLD AMOUNT.—For purposes of paragraph (1), the reduction amount and the threshold amount shall be determined in accordance with the following table:

| ''In the case of | The reduction amount is: | The threshold amount is: |
|---|---|---|
| Joint return | $50 | $50,000 |
| Head of a household. | $66.67 | $37,500 |
| All other cases | $100 | $25,000. |

''(3) JOINT RETURN.—In the case of a joint return, this subsection shall be applied separately to each individual filing such return, except that for purposes of paragraph (1), the adjusted gross income shall be their combined adjusted gross income of the taxpayer.

''(4) COORDINATION WITH MANNER IN WHICH CREDIT ALLOWED.—The credit under subsection (a) shall be allowed only as provided in section 6430.

''(c) ELIGIBLE INDIVIDUAL.—For purposes of this section—

''(1) IN GENERAL.—The term 'eligible individual' means any individual if such individual has attained the age of 18 as of the close of the taxable year.

''(2) DEPENDENTS AND FULL-TIME STUDENTS NOT ELIGIBLE.—The term 'eligible individual' shall not include—

''(A) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins, and

''(B) any individual who is a student (as defined in section 152(f)).

''(d) QUALIFIED RETIREMENT SAVINGS CONTRIBUTIONS.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified retirement savings contributions' means, with respect to any taxable year, the sum of—

''(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

''(B) the amount of—

''(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

''(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

''(C) the amount of voluntary employee contributions by such individual to any qualified retirement plan (as defined in section 4974(c)).

''(2) REDUCTION FOR CERTAIN DISTRIBUTIONS.—

''(A) IN GENERAL.—The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.

''(B) TESTING PERIOD.—For purposes of subparagraph (A), the testing period, with respect to a taxable year, is the period which includes such taxable year and the 3 preceding taxable years.

''(C) EXCEPTED DISTRIBUTIONS.—There shall not be taken into account under subparagraph (A)—

''(i) any distribution referred to in section 72(p), 401(k)(8), 401(m)(6), 402(g)(2), 404(k), or 408(d)(4), and

''(ii) any distribution to which section 408A(d)(3) applies.

''(D) TREATMENT OF DISTRIBUTIONS RECEIVED BY SPOUSE OF INDIVIDUAL.—For purposes of determining distributions received by an individual under subparagraph (A) for any taxable year, any distribution received by the spouse of such individual shall be treated as received by such individual if such individual and spouse file a joint return for such taxable year and for the taxable year during which the spouse receives the distribution.

''(3) ADDITIONAL TAX ON EARLY NET WITHDRAWALS.—

''(A) IN GENERAL.—If with respect to a taxable year there is a disqualified net withdrawal, the amount of tax imposed by this chapter for such taxable year shall be increased by the amount determined under subparagraph (B).

''(B) DETERMINATION OF AMOUNT.—The amount determined under this subparagraph is the aggregate decrease in credits allowed under this section for any of the preceding 10 taxable years if the disqualified net withdrawals were applied against (and operated to reduce) the qualified retirement savings contributions taken into account under subsection (a). Such reduction shall be applied in order beginning with the first taxable year in such 10-year period and shall take into account any prior application of this paragraph.

''(C) DISQUALIFIED NET WITHDRAWALS.—The term 'disqualified net withdrawals' means the aggregate distributions subject to tax under section 72(t) for the taxable year over the qualified retirement savings contributions for the taxable year.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) ADJUSTED GROSS INCOME.—Adjusted gross income shall be determined without regard to sections 911, 931, and 933.

''(2) INVESTMENT IN THE CONTRACT.—Any credit under this section shall be disregarded in determining investment in the contract.

''(f) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations requiring recordkeeping and information reporting.

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2010.''.

(b) REPEAL OF SAVERS CREDIT.—Subpart A of part IV of subchapter A of chapter 1 of such Code is amended by striking section 25B (relating to elective deferrals and IRA contributions by certain individuals).

(c) CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) of such Code is amended by striking ''and'' at the end of subparagraph (R), by striking the period at the end of subparagraph (S) and inserting '', and'', and by inserting after subparagraph (S) the following new subparagraph:

''(T) section 36(d)(3) (relating to additional tax where net withdrawals exceed credit).''.

(2) Section 24(b)(3)(B) of such Code is amended by striking ''sections 23 and 25B'' and inserting ''section 23''.

(3) Section 25(e)(1)(C) of such Code is amended by striking ''25B,''.

(4) Section 26(a)(1) of such Code is amended by striking ''sections 23, 24, and 25B'' and inserting ''sections 23 and 24''.

(5) Subchapter C of part IV of subchapter A of chapter 1 of such Code is amended—

(A) by redesignating section 36 as section 37, and

(B) by redesignating section 25B, as moved by paragraph (1), as section 36.

(6) Section 904(h) of such Code is amended by striking ''sections 23, 24, and 25B'' and inserting ''sections 23 and 24''.

(7) Section 1400C of such Code is amended by striking ''sections 23, 24, and 25B'' and inserting ''section 23 and 24''.

(8) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the item relating to section 36 and inserting the following:

''Sec. 36. AmeriSave matching credit.
''Sec. 37. Overpayments of tax.''.

(9) The table of sections for subpart A of part IV of such Code is amended by striking the item relating to section 25B.

(10) Section 1324(b)(2) of title 31, United States Code, is amended by inserting '', or from section 36 of such Code'' before the period at the end.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

**SEC. 602. MANNER IN WHICH AMERISAVE MATCHING CREDIT ALLOWED.**

(a) IN GENERAL.—Subchapter B of chapter 65 of the Internal Revenue Code of 1986 (relating to rules of special application) is amended by adding at the end the following new section:

**''SEC. 6430. MANNER IN WHICH AMERISAVE MATCHING CREDIT ALLOWED.**

''(a) GENERAL RULE.—The credit allowed under section 36 shall be allowed only as provided in this section.

''(b) AMOUNT PAID DIRECTLY TO RETIREMENT PLAN.—The credit allowed under section 36 for a taxable year shall be paid directly by the Secretary to a plan to which qualified retirement savings contributions (as defined by section 36(d)) may be made, as specified by the taxpayer on the return for such taxable year.

''(c) TREATMENT OF AMOUNTS RECEIVED BY PLANS.—

''(1) CERTAIN RULES DISREGARDED.—Amounts paid under this section to a retirement plan shall be disregarded for all purposes in determining whether the plan meets the applicable requirements of subtitle A.

''(2) ACCEPTANCE BY PLANS.—A plan to which payments may be made under this section shall not fail to be treated as qualified merely on account of the receipt of such payments.

''(d) AMOUNT NOT TREATED AS CREDIT OR REFUND.—Except as provided by subsection (b), the credit allowed under section 36 shall not be used as a credit under subtitle A or refunded as part of a return under subtitle A.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 of such Code is amended by adding at the end the following new item:

''Sec. 6430. Manner in which AmeriSave matching credit allowed.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

**SEC. 603. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

''(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

''(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term 'qualified automatic contribution arrangement' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

''(C) AUTOMATIC DEFERRAL.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

''(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

''(I) to not have such contributions made, or

''(II) to make elective contributions at a level specified in such affirmative election.

''(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term 'qualified percentage' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

''(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

''(II) 4 percent during the first plan year following the plan year described in subclause (I),

''(III) 5 percent during the second plan year following the plan year described in subclause (I), and

''(IV) 6 percent during any subsequent plan year.

''(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—Clause (i) shall be applied without taking into account any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause).

''(D) PARTICIPATION.—

''(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—

''(I) highly compensated employees, and

''(II) at the election of the plan administrator, employees described in subparagraph (C)(iv).

''(ii) FIRST PLAN YEAR.—An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year with respect to which such arrangement is a qualified automatic contribution arrangement (determined without regard to this subparagraph).

''(E) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

''(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

''(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

''(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

''(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

''(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

''(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

''(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

''(F) NOTICE REQUIREMENTS.—

''(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

''(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

''(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

''(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

''(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

''(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

''(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.''.

(2) MATCHING CONTRIBUTIONS.—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

''(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

''(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

''(B) meets the requirements of paragraph (11)(B).''.

(3) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(A) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting ''or 401(k)(13)'' after ''section 401(k)(12)''.

(B) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is

amended by inserting ''or 401(m)(12)'' after ''section 401(m)(11)''.

(4) CORRECTIVE DISTRIBUTIONS.—

(A) IN GENERAL.—Section 414 of such Code (relating to definitions and special rules) is amended by adding at the end the following new subsection:

''(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

''(1) IN GENERAL.—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee with respect to whom such contribution relates if such distribution does not exceed the erroneous automatic contribution amount and is made not later than the 1st April 15 following the close of the taxable year in which such contribution was made.

''(2) ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'erroneous automatic contribution amount' means the lesser of—

''(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount for purposes of this subsection, or

''(ii) $500.

''(B) AUTOMATIC CONTRIBUTION.—The term 'automatic contribution' means contributions which, under the terms of the plan—

''(i) the employee can elect to be made as contributions under the plan on behalf of the employee, or to the employee directly in cash, and

''(ii) which are made on behalf of the employee under the plan pursuant to a plan provision treating the employee as having elected to have the employer make such contributions on behalf of the employee until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions as a specified level.

''(3) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term 'applicable employer plan'means—

''(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

''(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

''(4) APPLICABLE PERIOD.—For purposes of this subsection, the term 'applicable period' means, with respect to any employee, the three month period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to such employee.''.

(B) VESTING CONFORMING AMENDMENTS.—

(i) Section 411(a)(3)(G) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(ii) The heading of section 411(a)(3)(G) of such Code is amended by inserting ''**OR ERRONEOUS AUTOMATIC CONTRIBUTION**'' before the period.

(iii) Section 401(k)(8)(E) of such Code is amended by inserting ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),''.

(iv) The heading of section 401(k)(8)(E) of such Code is amended by inserting ''**OR ERRONEOUS AUTOMATIC CONTRIBUTION**'' before the period.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after December 31, 2005.

**SEC. 604. PREEMPTION OF STATE LAWS PRECLUDING AUTOMATIC ENROLLMENT OR AUTOMATIC ROLLOVERS.**

(a) IN GENERAL.—Section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended—

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

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

''(d) The provisions of this title shall supersede any and all State laws insofar as they may preclude, or have the effect of precluding—

''(1) the establishment or operation of, or making of contributions to, a pension plan under a qualified automatic enrollment arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986), or

''(2) a distribution described in section 401(a)(31)(B) of the Internal Revenue Code of 1986 or the establishment or operation of an individual retirement plan (as defined in section 7701(a)(37) of such Code) allowing receipt of such distributions.''.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to actions (described in paragraph (1) or (2) of section 514(d) of the Employee Retirement Income Security Act of 1974 (added by this subsection)) taken before, on, or after the date of the enactment of this Act.

**SEC. 605. FIDUCIARY STANDARDS RELATING TO AUTOMATIC OR DEFAULT INVESTMENTS.**

(a) IN GENERAL.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e)(1) A fiduciary with respect to an individual account plan shall be deemed to have satisfied the requirements of subsection (a)(1)(B) with respect to the plan, in connection with any qualifying automatic investment under the plan, to the extent those requirements pertain to asset allocation as between equity instruments or investments and debt instruments or investments and to such further extent as may be specified by the Secretary in administrative guidance of general applicability.

''(2) For purposes of this subsection, the term 'qualifying automatic investment' means, in connection with a participant in a plan, an investment of assets constituting some or all of the participant's accrued benefit under the plan in a form of investment specified by the plan, in any case in which—

''(A) such assets—

''(i) are attributable to employer contributions (and earnings thereon) made pursuant to a qualified automatic enrollment arrangement (as defined in section 401(k)(13) of the Internal Revenue Code of 1986),

''(ii) are attributable to distributions described in section 401(a)(31)(B) of such Code, or

''(iii) have been identified by the Secretary as appropriate for automatic investment,

''(B) the plan provides for investment of such assets in such form of investment unless, in lieu thereof, alternative forms of investments, which are also made available to the participant under the terms of the plan, are selected by the participant,

''(C) the plan provides, under such form of investment, for investment of such assets under constraints designed to—

''(i) limit the risk associated with the investment portfolio to a reasonable level of risk while seeking to maximize return consistent with that level of risk, or

''(ii) minimize risk while seeking a reasonable expected return, and

''(D) the expenses associated with the investment meet the standards of paragraph (3).

''(3)(A) The expenses associated with an investment meet the standards of this paragraph if they do not exceed reasonable expenses. Such expenses shall not be treated as exceeding reasonable expenses solely because the expenses in any year (excluding expenses for acquisition of the investment) exceed the investment returns for that year and cause a reduction in principal.

''(B) For purposes of subparagraph (A), the term 'expense' means any fee, charge, commission, load, or other cost or expense associated with the investment (including cost of acquisition, establishment, maintenance, surrender, or termination of the investment and any other cost of managing or administering the investment) to the extent borne by participants.

''(C) The expenses associated with an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) shall not be treated as meeting the standards of this paragraph if such expenses exceed the expenses normally charged by the trustee or custodian of a comparable individual retirement plan established to receive rollover contributions (as defined in section 408(d)(3) of such Code) which are not distributions described in section 401(a)(31)(B) of such Code.

''(4) The requirements of paragraph (2)(C) shall be treated as satisfied with respect to investments provided for by a plan to the extent such investments consist of—

''(A) a balanced portfolio comprised of both equity investments and either stable value or fixed income investments provided by a financial institution (or similar financial entity) that is regulated by the United States or a State in any case in which—

''(i) the equity investments are broad-based index funds or, to the extent permitted by the Secretary under regulations, guidelines, or other administrative guidance, actively managed funds that are broadly diversified so as to minimize the risk of large losses, and

''(ii) the stable value or fixed income investments—

''(I) are designed to comprise at least 20 percent of the total (measured in terms of fair market value), and

''(II) are either diversified to minimize the risk of large losses or are obligations (which may include inflation-protected obligations) issued by the United States, or

''(B) stable value investments.

For purposes of this paragraph, the term 'stable value investments' means investments provided by a financial institution regulated by the United States or a State that are designed to preserve principal and provide a reasonable rate of return, whether or not guaranteed, which may include investments designed to maintain a stable dollar value equal to the original value of the investment. The Secretary may prescribe regulations or other administrative guidance prescribing the manner in which the requirements of paragraph (A)(i) may be applied taking into account classes of investment determined on the basis of investment in large, intermediate, or small capitalization funds, funds of varying styles (such as growth funds or value funds), or funds consisting of, or not consisting of, foreign or international securities.

''(5) An investment otherwise described in the preceding provisions of this subsection shall not be treated as failing to be a qualifying automatic investment solely by reason of:

''(A) the availability to the participant under the terms of the plan of alternative forms of investment which meet the requirements of subsection (c)(1) or are managed by an independent investment manager;

''(B) the extent to which provisions of the plan are or are not directed toward limiting the risk of loss of principal under such investment or promoting long-term capital appreciation;

''(C) any change or variation in the percentages of equity and stable value investments included in the investment portfolio

or other aspects of the constituent investments to the extent such change or variation is based on:

''(i) automatic rebalancing or variable investment returns prior to periodic rebalancing,

''(ii) the participant's age, or

''(iii) other factors relating to the participant's situation, such as years until retirement, other retirement plan coverage, financial situation, or investment preferences expressed to the plan by the participant; or

''(D) the extent to which such investment consists of interests in real estate or real-estate-based investments, if such interests are broadly diversified and do not comprise more than 10 percent of the equity portion of the total investment of plan assets.

''(6)(A) Notwithstanding paragraph (1), the requirements of subsection (a)(1)(C) shall not be treated as satisfied in connection with any qualifying automatic investment unless such investment (other than the stable value portion thereof) is designed so that no more than 0.5 percent of the total fair market value of the assets invested are invested in securities issued by, or interests in the property of, any single person.

''(B) For purposes of subparagraph (A), any person and all affiliates thereof shall be treated as a single person. A corporation is an affiliate of a person if such corporation is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1986, except that 'applicable percentage' shall be substituted for '80 percent' wherever the latter percentage appears in such section) of which person is a member. For purposes of the preceding sentence, the term 'applicable percentage' means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of any other person to the extent provided in regulations of the Secretary. Regulations under this subparagraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

''(7) The Secretary shall issue regulations or other administrative guidance specifying the manner in which investments under independent professional investment management pursuant to sections 402(c)(3) and 403(a)(2) and other qualifying automatic investments may serve as the default investment arrangement with respect to some or all plan assets without adversely affecting plan compliance with this part, as governed by subsection (c)(1) with respect to assets over which participants or beneficiaries exercise control.

''(8)(A) The Secretary may issue regulations or other administrative guidance for compliance with the requirements of this subsection which are consistent with the provisions of this subsection. Compliance with such regulations or guidance shall be deemed to be compliance with the requirements of this subsection. Such regulations or guidance may express compliance in terms of percentages of assets under management, flat dollar amounts, or other factors.

''(B) The regulations issued pursuant to subparagraph (A) may include procedures for granting conditional or unconditional exemptions of investments, classes of investments, investment managers, or classes of investment managers from all or part of the requirements of this subsection. Such procedures shall be similar to the procedures applicable under section 408(a) and subject to the same standards and limitations as apply under section 408(a). Such exemptions may include, in the case of qualifying automatic investments, relief from, or simplified methods of compliance with, the requirements of subparagraphs (B) and (C) of subsection (a)(1) and the provisions of subsection (c).''.

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to investments made on or after January 1, 2005 (irrespective of the extent to which the Secretary of Labor has issued regulations, guidelines, or other administrative guidance pursuant to section 404(e) of the Employee Retirement Income Security Act of 1974 (added by this subsection)).

**SEC. 606. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

''(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2 years after the date of the enactment of this subparagraph.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by striking ''or'' at the end of subclause (III), by striking ''and'' at the end of subclause (IV) and inserting ''or'', and by inserting after subclause (IV) the following new subclause:

''(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and''.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

(3) Section 403(b)(11) of such Code is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) for distributions to which section 72(t)(2)(G) applies.''.

(c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

**SEC. 607. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.**

(a) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions), as amended by section 904, is amended by adding at the end the following new subsection:

''(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

''(i) IN GENERAL.—Distributions to an individual who is a qualified public safety employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

''(ii) DEFINITIONS.—For purposes of this subparagraph—

''(I) DROP BENEFIT.—The term 'DROP benefit' means a feature of a governmental plan which is a defined benefit plan and under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits (payable in the form of an annuity) that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee's accrued pension benefit based on years of service after the effective date of the DROP election.

''(II) QUALIFIED PUBLIC SAFETY EMPLOYEE.—The term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receive immediate retirement benefits.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

**SEC. 608. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEDUCTIBILITY OF CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 609. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.

**SEC. 610. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.**

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

''(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—

''(A) IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

''(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

''(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

''(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

''(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.''.

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting ''and (11)'' after ''(7)''.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking ''and (9)'' and inserting '', (9), and (11)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

**SEC. 611. IRA ELIGIBILITY FOR THE DISABLED.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following:

''(8) SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.—In the case of an individual—

''(A) who is disabled (within the meaning of section 72(m)(7)), and

''(B) who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year,

subparagraph (B) of subsection (b)(1) shall not apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

## TITLE VII—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

**SEC. 701. TREATMENT OF ANNUITY AND LIFE INSURANCE CONTRACTS WITH A LONG-TERM CARE INSURANCE FEATURE.**

(a) EXCLUSION FROM GROSS INCOME.—Subsection (e) of section 72 of the Internal Revenue Code of 1986 (relating to amounts not received as annuities) is amended by redesignating paragraph (11) as paragraph (12) and by inserting after paragraph (10) the following new paragraph:

''(11) SPECIAL RULES FOR CERTAIN COMBINATION CONTRACTS PROVIDING LONG-TERM CARE INSURANCE.—Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

''(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

''(B) such charge shall not be includible in gross income.''.

(b) TAX-FREE EXCHANGES AMONG CERTAIN INSURANCE POLICIES.—

(1) ANNUITY CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (2) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(2) LIFE INSURANCE CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (3) of section 1035(b) of such Code is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.''.

(3) EXPANSION OF TAX-FREE EXCHANGES OF LIFE INSURANCE, ENDOWMENT, AND ANNUITY CONTRACTS FOR LONG-TERM CARE CONTRACTS.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended—

(A) in paragraph (1) by striking ''contract;'' and inserting ''contract or for a qualified long-term care insurance contract;'',

(B) in paragraph (2) by striking ''contract;'' and inserting ''contract, or (C) for a qualified long-term care insurance contract;'', and

(C) in paragraph (3) by striking ''contract.'' and inserting ''contract or for a qualified long-term care insurance contract.''.

(4) TAX-FREE EXCHANGES OF QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended by striking ''or'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ''; or'', and by inserting after paragraph (3) the following new paragraph:

''(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.''.

(c) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Subsection (e) of section 7702B of such Code (relating to treatment of qualified long-term care insurance) is amended to read as follows:

''(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

''(1) COVERAGE TREATED AS CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.

''(2) DENIAL OF DEDUCTION UNDER SECTION 213.—No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

''(3) APPLICATION OF SECTION 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—

''(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for coverage under the qualified long-term care insurance contract made to that date under the life insurance contract, less

''(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).

''(4) PORTION DEFINED.—For purposes of this subsection, the term 'portion' means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

''(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:

''(A) A trust described in section 401(a) which is exempt from tax under section 501(a).

''(B) A contract—

''(i) purchased by a trust described in subparagraph (A),

''(ii) purchased as part of a plan described in section 403(a),

''(iii) described in section 403(b),

''(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

''(v) from an individual retirement account or an individual retirement annuity.

''(C) A contract purchased by an employer for the benefit of the employee (or the employee's spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.''.

(d) INFORMATION REPORTING.—

(1) Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

**''SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS UNDER COMBINED ARRANGEMENTS.**

''(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

''(1) the amount of the aggregate of such charges against each such contract for the calendar year,

''(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

''(3) the name, address, and TIN of the individual who is the holder of each such contract.

''(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

''(1) the name, address, and phone number of the information contact of the person making the payments, and

''(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.''.

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

''Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.''.

(e) TREATMENT OF POLICY ACQUISITION EXPENSES.—Subsection (e) of section 848 of such Code (relating to classification of contracts) is amended by adding at the end the following new paragraph:

''(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT ARRANGEMENTS.—An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).''.

(f) TREATMENT AS QUALIFIED ADDITIONAL BENEFIT.—Subparagraph (A) of section 7702(f)(5) of such Code (relating to qualified additional benefits) is amended by striking ''or'' at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

''(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to exchanges occurring after December 31, 2006.

**SEC. 702. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

''(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be—

''(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

''(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

''(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

''(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

''(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

''(B) the actual amount of reimbursement for such year under such arrangement.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

**SEC. 703. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.**

(a) IN GENERAL.—Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees' trust) is amended by adding at the end the following new subsection:

''(l) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

''(1) IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

''(2) LIMITATION.—The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $5,000.

''(3) DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE.—

''(A) IN GENERAL.—An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

''(B) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) ELIGIBLE RETIREMENT PLAN.—For purposes of paragraph (1), the term 'eligible retirement plan' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

''(B) ELIGIBLE RETIRED PUBLIC SAFETY OFFICER.—The term 'eligible retired public safety officer' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

''(C) PUBLIC SAFETY OFFICER.—The term 'public safety officer' shall have the same meaning given such term by section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(8)(A)).

''(D) QUALIFIED HEALTH INSURANCE PREMIUMS.—The term 'qualified health insurance premiums' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

''(5) SPECIAL RULES.—For purposes of this subsection—

''(A) DIRECT PAYMENT TO INSURER REQUIRED.—Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

''(B) RELATED PLANS TREATED AS 1.—All eligible retirement plans of an employer shall be treated as a single plan.

''(6) ELECTION DESCRIBED.—

''(A) IN GENERAL.—For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

''(B) SPECIAL RULE.—A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

''(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

''(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(a) of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(2) Section 403(b) of such Code (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by inserting after paragraph (1) the following new paragraph:

''(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.''.

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 2005.

**TITLE VIII—REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000**

**SEC. 801. REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000.**

(a) GENERAL RULE.—Section 1 of the Internal Revenue Code of 1986 (relating to imposition of tax on individuals) is amended by adding at the end the following new subsection:

''(j) REDUCTION IN BENEFIT OF RATE REDUCTION FOR FAMILIES WITH INCOMES OVER $1,000,000.—

''(1) IN GENERAL.—If the adjusted gross income of a taxpayer exceeds the threshold amount, the tax imposed by this section (determined without regard to this subsection) shall be increased by an amount equal to 1.8 percent of so much of the adjusted gross income as exceeds the threshold amount.

''(2) THRESHOLD AMOUNTS.—For purposes of this subsection, the term 'threshold amount' means—

''(A) $1,000,000 in the case of a joint return, and

''(B) $500,000 in the case of any other return.

''(3) TAX NOT TO APPLY TO ESTATES AND TRUSTS.—This subsection shall not apply to an estate or trust.

''(4) SPECIAL RULE.—For purposes of section 55, the amount of the regular tax shall be determined without regard to this subsection.

''(5) TERMINATION.—This subsection shall not apply to taxable years beginning after December 31, 2010.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(c) SECTION 15 NOT TO APPLY.—The amendment made by subsection (a) shall not be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

Mr. GEORGE MILLER of California (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from California is recognized for 5 minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, we offer this motion to recommit to address a number of issues that are not addressed in the legislation before us and to hopefully not do some of the things that the legislation before us does. We believe that we can do these things without driving employers out of the defined benefit system.

The current bill before us provides a compilation of interest rates and premium fees and costs that we believe will drive employers to accelerate the termination and freezing of these plans. That is not because we say it; that is what the employers have told one another in their associations, the expectation that some 60 percent of the employers will freeze or terminate their plans.

We believe that our motion to recommit does not impose arbitrary benefit cuts and freezes on workers who do not control whether or not the employers fund the pension plans or not.

The motion to recommit would require companies to seek alternatives to the termination and prove that a plan is in fact unaffordable before they can cast it away in bankruptcy, as we saw United Airlines do, that cost the employees billions of dollars in pension benefits.

Importantly, the motion to recommit would actually help the employees of American, Continental, Delta and Northwest Airlines, whose pension plans are in danger of being terminated. The bill before us does not do that. It talks about doing that in the future.

The motion to recommit would also protect 9 million workers who are covered by multi-employer pension plans in the construction, food service and transportation industries. We would ensure that workers and executives would be affected equally in pension plans. Again, the horrible demonstration out of United Airlines, as the executives walked away with $235 million in a new, debt-free company and the employees walked away with wage cuts and benefits cuts and the loss of retirement benefits.

Finally, the motion to recommit would help workers who do not have access to defined benefit plans through the automatic enrollment in 401(k) plans and the expanded savers credit.

This legislation, if it is not corrected, is the greatest assault on the pension benefits and the retirement nest eggs of hardworking, middle class Americans in the history of this Congress. I say that because it is quite clear that this will expedite and will accelerate the freezing and the termination of these plans that so many millions of Americans are relying on.

One thing this legislation will do, if you want to continue to debate Social Security, you will now prove with the passage of this legislation that Social Security is the most secure retirement system in this country, that it is the only one that people can count on, because these other plans are in jeopardy.

Mr. Speaker, I yield to my colleague, Mr. CARDIN from Maryland.

Mr. CARDIN. Let me thank Mr. MILLER for offering this substitute. I am pleased to join him.

I listened to a lot of my colleagues talk in favor of this bill, telling me things they do not particularly like about it, things that will be, they hope, corrected in conference, and now we have a motion to recommit that does exactly that.

So if we are sincere in wanting to move the process forward so that we can get to conference, let us speak to what we want to get from the conference report. Let me make it clear that the rule did not permit us to offer this directly as a substitute, so the only way we can do it is by the motion to recommit.

But it does contain the issues that many have talked about. It has the good without the bad. It has the provisions for the defined contributions, so that we can deal with the 401(k)s and the IRAs and the savers credits and automatic enrollments and those provisions that are important. But it also deals with the issue of the airline industry directly, not on a promise that we will deal with it in conference, and it deals with the revolving door of bankruptcy, which, if we do not correct, we are going to have other problems in addition to the airline industry. So it deals with those problems.

But it does one more thing, Mr. Speaker, that is critically important: It takes away the additional deficit that this bill would create. This bill will add an additional $14 billion to the deficit of this country. The substitute pays for the cost of the legislation so that we do not add to the growing problem of the deficit of this Nation.

□ 1515

This is a responsible motion, and I urge my colleagues to support it.

Mr. BOEHNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. LATHAM). The gentleman is recognized for 5 minutes.

Mr. BOEHNER. Mr. Speaker, the debate today on the floor is about the massive underfunding in worker pensions and the need to change the status quo. Unfortunately, what we have just been presented is what would actually make pensions less secure by preserving the status quo and putting at risk millions of American pensions.

Let me make five points. First, the motion to recommit preserves the status quo by requiring employers and union leaders to fund their plans at 90 percent or in some cases only 80 percent, instead of the 100 percent funding requirements that we have in the underlying bill. It just does not pass the straight-face test.

Second, they are preserving the status quo by continuing to allow employers to take up to 30 years to erase any funding shortfall in their plan. Pension experts agree that this increases the risk of plan termination, threatening the benefits of workers and retirees.

Third, they are preserving the status quo on unrestricted use of credit balances which mask the massive pension

plan underfunding we see today. We know that the credit balance rules that are in place today are irresponsible public policy. They must be changed if we are going to strengthen the pension system. And to allow those rules to stay in place, again, does not pass the straight-face test.

Fourth, they propose preserving the status quo by failing to incorporate the full package of multi-employer reforms that were agreed to by a broad coalition of organized labor and employer groups.

Last, they preserve the status quo by promoting uncertainty among employers if these pension benefits and workers who are relying on them maintain the current interest rate package for 2 years and then go back to the 30-year rate thereafter.

The modified yield curve in the underlying bill presents a more accurate picture of the liabilities that these plans have and should, in fact, stay in the bill.

Mr. Speaker, I believe that the underlying bill is far more balanced. It really does strengthen American pensions, and I would urge my colleagues to reject this.

I yield to the gentleman from Michigan.

Mr. CAMP of Michigan. Mr. Speaker, I thank the distinguished chairman for yielding.

I oppose the motion to recommit. This motion to recommit leaves current pension funding rules in place which ends up weakening the funding rules in the underlying bill. This means that businesses would not be fulfilling their promises to working people.

The motion to recommit also has a $53 billion surtax contained in it on small business. That surtax is bad for workers, bad for small business, bad for America. So I would urge a ''no'' vote on the motion to recommit, a ''yes'' vote on the underlying bill, which would ensure that pension plans would be appropriately funded, but not so strict as to cause employers to terminate their pension plans. I urge a ''yes'' vote on the underlying bill.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

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

Mr. GEORGE MILLER of California. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on the question of passage, if ordered; adoption of H. Res. 610; and motions to suspend the rules with respect to H. Res. 579 and H. Con. Res. 315.

The vote was taken by electronic device, and there were—yeas 200, nays 227, not voting 6, as follows:

[Roll No. 634]

YEAS—200

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—227

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Davis (FL)
Diaz-Balart, M.
Hyde
Pearce
Pickering
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1542

Mr. BARRETT of South Carolina and Mr. SOUDER changed their vote from ''yea'' to ''nay.''

Messrs. McDERMOTT, REYES and FARR changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

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. BOEHNER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 294, noes 132, not voting 7, as follows:

[Roll No. 635]

AYES—294

Aderholt
Akin
Alexander
Andrews
Baca
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boustany
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capuano
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costello
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Dingell
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
Engel
English (PA)
Everett
Fattah
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Gene
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hooley
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Lynch
Mack
Manzullo
Marchant
Marshall
Matheson
McCarthy
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
McNulty
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore (KS)
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Osborne
Otter
Owens
Oxley
Pascrell
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Ryan (OH)
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Souder
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—132

Abercrombie
Ackerman
Allen
Baird
Baldwin
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Boucher
Boyd
Brown, Corrine
Butterfield
Capps
Cardin
Cardoza
Carnahan
Carson
Clyburn
Costa
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Doggett
Doyle
Emanuel
Eshoo
Etheridge
Evans
Farr
Filner
Frank (MA)
Gonzalez
Green, Al
Grijalva
Hastings (FL)
Higgins
Hinchey
Hinojosa
Holt
Honda
Hostettler
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren, Zoe
Lowey
Maloney
Markey
Matsui
McCollum (MN)
McDermott
McGovern
McKinney
Meehan
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Reyes
Roybal-Allard
Ruppersberger
Rush
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Solis
Spratt
Stark
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Woolsey

NOT VOTING—7

Davis (FL)
Diaz-Balart, L.
Diaz-Balart, M.
Gilchrest
Hyde
Pickering
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1550

Mr. COSTELLO and Mr. MEEK of Florida changed their vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PERSONAL EXPLANATION

Mr. PICKERING. Mr. Speaker, on rollcall Nos. 634 and 635, I was unavoidably detained. I would have voted ''nay'' on recommit and ''aye'' on passage.

## MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

## PROVIDING FOR CONSIDERATION OF H.R. 4437, BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

The SPEAKER pro tempore. The pending business is the vote on adoption of House Resolution 610 on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

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

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 220, nays 206, not voting 7, as follows:

[Roll No. 636]

YEAS—220

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—206

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Hayworth
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kolbe
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOT VOTING—7

Davis (FL)
Diaz-Balart, M.
Emanuel
Hunter
Hyde
Souder
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1559

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.

## EXPRESSING SENSE OF THE HOUSE THAT SYMBOLS AND TRADITIONS OF CHRISTMAS SHOULD BE PROTECTED

The SPEAKER pro tempore (Mr. LATHAM). The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 579, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and agree to the resolution, H. Res. 579, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 401, nays 22, answered ''present'' 5, not voting 5, as follows:

[Roll No. 637]

YEAS—401

Abercrombie
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mollohan
Moore (KS)
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Oxley
Pallone
Pascrell
Pastor
Paul
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schiff
Schmidt
Schwarz (MI)
Scott (GA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NAYS—22

Ackerman
Blumenauer
Capps
Cleaver
DeGette
Harman
Hastings (FL)
Honda
Lee
Lewis (GA)
McDermott
Miller, George
Moore (WI)
Moran (VA)
Payne
Rush
Schakowsky
Scott (VA)
Stark
Wasserman Schultz
Wexler
Woolsey

ANSWERED ''PRESENT''—5

Holt
Israel
Lowey
Owens
Schwartz (PA)

NOT VOTING—5

Davis (FL)
Diaz-Balart, M.
Emanuel
Hyde
Waters

□ 1608

Mr. PAYNE changed his vote from ''yea'' to ''nay.''

Mr. ROHRABACHER changed his vote from ''nay'' to ''yea.''

Mr. RUSH changed his vote from ''present'' to ''nay.''

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the resolution was amended so as to read: ''Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected for those who celebrate Christmas''.''

A motion to reconsider was laid on the table.

## URGING OBSERVANCE OF AMERICAN JEWISH HISTORY MONTH

The SPEAKER pro tempore (Mr. BASS). The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 315.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. PORTER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 315, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 423, nays 0, not voting 10, as follows:

[Roll No. 638]

YEAS—423

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
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Hall
Harman
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Hastings (FL)
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Israel
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Jackson (IL)
Jackson-Lee (TX)
Jefferson
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Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
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Kildee
Kilpatrick (MI)
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Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
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Northup
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Nussle
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Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
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Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
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Scott (GA)
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Sensenbrenner
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Sherwood
Shimkus
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Simmons
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Slaughter
Smith (NJ)
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Taylor (MS)
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Thompson (CA)
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Thornberry
Tiahrt
Tiberi
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Watson
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Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—10

Davis (FL)
Deal (GA)
Diaz-Balart, M.
Emanuel
Gonzalez
Herger
Hunter
Hyde
Tierney
Waters

□ 1616

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent 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. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4437 to be considered shortly.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 610 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. 4437.

□ 1618

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. 4437) to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes, with Mr. BASS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

General debate shall not exceed 2 hours, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Homeland Security.

The gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from Michigan (Mr. CONYERS), the gentleman from New York (Mr. KING), and the gentleman from Mississippi (Mr. THOMPSON) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 4437, the Border Security, Antiterterrorism, and Illegal Immigration Control Act of 2005.

Mr. Chairman, our Nation has lost control of its borders, which has resulted in a sharp increase in illegal immigration and has left us vulnerable to infiltration by terrorists and criminals. Estimates indicate that there are currently more than 10 million illegal aliens already here, and that population continues to grow by an estimated half million additional aliens each year.

Large majorities of Americans support efforts to restore the security of our Nation's borders and to assure accountability of those who illegally enter the United States. America is a compassionate Nation that welcomes legal immigrants from all corners of the world. But it is also a Nation of laws. These concepts are not mutually exclusive, and H.R. 4437 reflects this.

This legislation, which I introduced with Homeland Security Committee Chairman KING, will diminish the lure of higher-wage employment that drives illegal entry into the United States while enhancing border security. This legislation will re-establish respect for our laws by holding violators accountable, including human traffickers, employers who hire illegal aliens, and alien gang members who terrorize communities throughout the country.

I am pleased that this bill incorporates vital border security provisions from legislation reported by the Committee on Homeland Security and congratulate Chairman KING for his committee's important role in drafting this component of the bill.

H.R. 4437 will deliver on the unkept promise of the Immigration Reform and Control Act of 1986 by providing employers with a reliable method of determining whether their employees are eligible to work. The bill expands on the premise of Representative CALVERT's legislation, H.R. 19, to build upon a successful pilot program that currently enables employers to verify the employment eligibility of their workers. Currently, employer participation in this program is on a voluntary basis. Within 2 years, this bill provides that all employers must check new hires against this database.

The bill also increases penalties for alien smuggling. Those who suffer most from alien smuggling are often the most vulnerable and desperate, entering the country in perilous conditions that sometimes result in injury or even death.

Moreover, debts owed to alien smugglers by those transported into the country illegally often create a form of indentured servitude that enriches criminal syndicates. The GAO has found that convicted smugglers, including those responsible for death or serious injury, receive an average prison sentence of only 10 months. Only 10 months, far less than that imposed for transporting illegal drugs or committing other serious crimes. The bill corrects these disparities by increasing criminal penalties for alien smugglers.

The legislation also gets tough on alien members of violent street gangs. It incorporates H.R. 2933, the Alien Gang Removal Act, which was authored by the gentleman from Virginia (Mr. FORBES). Alien gangs are a threat to communities across the country and represent a problem that is international in scope. We should not have to wait until alien gang members commit violent crimes before we can remove them from our communities.

The legislation also increases penalties for previously deported aliens who illegally re-enter the United States. These provisions are incorporated from H.R. 3150, the Criminal Alien Accountability Act, introduced by the gentleman from California (Mr. ISSA).

Another crucial provision of the legislation remedies the current situation in which the Department of Homeland Security is required to release dangerous alien criminals who cannot be deported. This has compelled the release of nearly 1,000 criminal aliens, including murderers and rapists, onto our streets. One such alien shot a New York state trooper. The legislation allows for the continued detention of these violent criminal aliens.

The bill also contains commonsense provisions that would bar aliens who are terrorists or security risks from being naturalized U.S. citizens, making aggravated felons inadmissible to the United States, and facilitate the deportation of aliens who sexually abuse minors.

Mr. Chairman, this legislation represents a critical step in helping to regain control of our borders and to prevent illegal immigration. I urge my colleagues to support this important bill.

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

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Ladies and gentlemen, let me say from the outset that we on this side, the Democrats, believe that a strong border security policy is an absolute necessity for this Nation. We must ensure that terrorists cannot lurk in the shadows of our society and do us harm. Let us begin with that.

Now, if you will look at the dissenting views in our report on this measure, there may be 20 to 40 different reasons that we do not like the bill. So rather than take all that time up, what I want to talk about is the one that offends me the most, and that is the criminalizing of unlawful presence. Now, this, alone, should turn away a majority of the House. There are roughly 11 million undocumented individuals in the United States who, under sections 203 and 201 of this bill, would be subject to mandatory detention if convicted of a crime of being unlawfully in the United States. First time in history. Are you ready for this? These individuals would be mandatorily retained without regard to whether the person is a flight risk or poses any danger.

Re-entry after removal would also be another aggravated felony, and these provisions would result in a permanent bar to re-entry and no chance of a waiver whatsoever.

Now, criminalizing unlawful presence by an incarceration of more than 1 year is, to me, over the top. Millions of immigrants could be impacted and would suddenly be unable to apply for relief if they had been convicted of unlawful presence. Any immigrant who overstayed a visa and was convicted would be permanently barred from any form of immigration relief. Families who have been living and working in the U.S. for years would suddenly be ineligible for immigration relief that they would otherwise be able to receive. Virtually anyone who overstayed a visa could be guilty of an aggravated felony and thus ineligible for release.

Now, the last thing I want to mention before I reserve the balance of my time is to state what we do need. And I have taken a little time to come around to this. We do need a program for the 11 million people in this country who are out of status to a system of earned legalization. This is the only rational solution that I can bring to you today, my colleagues. The President of the United States, who I seldom quote, has said that without a comprehensive approach that includes earned legalization, we will not solve the problem. Otherwise, these millions will remain in this country, in the shadows; and we will not know what they are doing and who they are and where they are going.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, the gentleman from Michigan, I think, has exposed what the difference is between those who are for this bill and those who are against this bill.

□ 1630

Earned legalization is a nice word for amnesty for illegal aliens. The American public is against amnesty for illegal aliens. This bill does not give amnesty to illegal aliens, and it should not because it rewards somebody for breaking our laws.

Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, the American people know the difference between legal immigration, which has made our country great, and illegal immigration, which threatens our homeland security.

This legislation represents a crucial step forward in securing our borders and protecting the lives and property of the American people. Sponsored by Chairman SENSENBRENNER and Chairman KING, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005 achieves four essential goals.

It combats illegal immigrant smuggling and makes it easier to deport illegal aliens, 20 percent of all Federal prisoners, who have committed crimes. This will make our communities much safer. This legislation makes it easier to apprehend, convict and deport potential terrorists. It allows employers to determine whether a job applicant is legally in the United States. Last year, not a single employer was fined for illegally hiring someone. If we do not diminish the magnet of jobs, no amount of border enforcement alone will prevent illegal immigration. Lastly, Mr. Chairman, this initiative will result in more individuals being held accountable for breaking our immigration laws.

Our hearts go out to those who want to come to this country. We are the freest, most prosperous nation in the world. It is no surprise that America welcomes more legal immigrants than all other countries combined.

But no nation can protect its residents without knowing who is entering and why. Thousands of people continue to cross our borders illegally every day instead of playing by the rules and coming into the country the right way.

No Member of Congress advocates rounding up 10 to 20 million illegal immigrants, no one really knows how many, for mass deportation. But if we enforce our laws, many either will leave voluntarily or decide not to enter illegally. Perhaps the time will come for a limited foreign worker program, but that is only after we have secured our borders and put the interests of American workers first.

Immigration is an emotional, sensitive, complex subject. But Americans, citizens and legal immigrants alike, have every right to secure borders in a safe homeland. And it is time we turned that right into reality.

Mr. Chairman, Chairman SENSENBRENNER and Chairman KING deserve much credit and the thanks of the American people for bringing this legislation to the House floor.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a distinguished member of the Judiciary Committee, the head of the California Democratic delegation.

Ms. ZOE LOFGREN of California. Mr. Chairman, every country has the right, even the obligation, to control its borders, and that includes the United States of America. Since 9/11, as many have mentioned, that obligation has taken on increased importance and significance, and all of us believe that we need to do a better job. The truth is that the bill before us today really does not do that better job.

We all watch TV, and we see the extravagant comments made, and some of them turn out to be correct. There is something called ''catch and release,'' and actually what it is, is individuals who are apprehended as they unlawfully enter the United States are cited and released with the promise that they will appear. It turns out that over 80 percent of the people who promise to appear do not show up. Now, when I was in local government, we had a failure-to-appear rate in single digits. We were alarmed at that. But even though the administration has seen this rate, they have not stopped doing it. Does this bill order the administration to go out and find those people that fail to appear and bring them in for processing to be deported or whatever the law requires? No, it does not.

When I was in local government, we would have individuals who were undocumented, without papers, who committed a crime, and they would be in our jail. And every week, the Immigration Service would come, and they would take those people away from our jail after their sentences were served, and they would deport them, which we thought was a pretty good deal. Recently, the ball has been dropped on that score. And so we have got people who have committed crimes, who should be deported, and they are not being deported. And sometimes they are being released from jail. Does this bill tell the administration to go out and find those people and bring them in, ready to be deported, as the law provides? No, it does not. It does not.

Does it order the administration to enhance its efforts so that criminals who are in jails who are supposed to be brought in for deportation are brought in? No, it does not do that either. It does not increase the resources.

And it does some things that I think are quite weird and unfortunate. I am a member of the Homeland Security Committee as well as the Judiciary Committee, and I have mentioned section 404 in both committees. Section 404 allows for the exclusion of legal residents if they were born in the following countries: China, Vietnam, Cuba, Ethiopia, India, Eritrea or Laos. Why is that? Those countries refuse to accept or unreasonably delay the acceptance of people whom we deport. The answer is not to exclude legal residents who were born in those countries.

I thank the gentleman for yielding me this time, and I will have further comments as the day proceeds.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, could we begin this discussion amongst ourselves by distinguishing between earned legalization and amnesty? Earned legalization is not a free lunch. Those working under this program will have to work for years in the United States to gain citizenship. They are here. They work. They pay taxes. They raise their families. And that is one legitimate plan.

What does someone have here for an alternative? The bill before us does nothing about the 11 million people who are already here. And, by the way, is the President of the United States supporting an amnesty program? I do not think so.

I thank the gentlewoman for yielding to me.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

(Mr. DANIEL E. LUNGREN of California asked and was given permission to revise and extend his remarks.)

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, one of the primary attributes of a sovereign nation is the ability to control its own borders. In this regard, it is clear that the Constitution, article 1, section 8, places this duty right here, in the Congress. We have thus arrived at that moment of decision where the American people have a legitimate expectation that we will rise to this fundamental responsibility of governance.

As one who has had the opportunity to participate in the birthing process of this legislation in both of the committees of primary jurisdiction, I would be the first to acknowledge that this was not an immaculate conception. It remains my belief that a comprehensive approach to the issue is necessary if we are to maximize the effectiveness of our resources on the border.

However, it is critical that we have to take a first step. This bill should be judged on the basis of what it does contain, not for what it does not. On its own merits, this is a good bill. It is a good first step towards regaining control of our borders. And, furthermore, we have the assurances of the chairman of the Judiciary Committee that other aspects of the larger immigration issue will be considered after our return. The decision has been made to begin the process of reform of the border security bill. Why? Because that is what the American people expect of us. Even if it is not a Rembrandt, it is not a bad paint job.

As one who participated in the crafting of the 1986 Immigration Reform and Control Act, actually as the Republican floor manager of that bill, I can tell the Members that it was on the issue of employer sanctions that that bill crashed and burn. That legislation made it illegal for employers to knowingly hire or employ aliens not eligible to work in the United States. It was part of a carefully crafted compromise. It was part of the balance in the program. Little did we know that neither Republican nor Democratic administrations were going to enforce it nor Democratic nor Republican Congresses were going to support it. There is enough blame to go around. It is not just in the Executive branch. It is here in this body as well. And the American people now are demanding that we do something about it.

Under the law then passed, employers were to check the identity and work eligibility documents of all new hires. However, the explosion of a new industry dedicated to the production of false and fraudulent documents completely

undermined the employer sanctions provision of the bill. It did not have to happen that way. Congressman HALL of Texas offered a verification system somewhat like that contained in the bill before us. However, at that time I did not believe, nor did others in this body, that we had the technology to make it work. However, today, we do. It is incumbent upon us that we must learn from the past and have a reliable system of employment verification if employer sanctions are to work. A workable employment verification system is the critical linchpin in devising a strategy to demagnetize the attraction of unlawful employment.

These and other things are in this bill. This is a good first step. Let us not fall on our own swords in an effort to try to say we want a perfect bill. If we do not do this, we will not do anything.

Mr. CONYERS. Mr. Chairman I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), ranking member of the Subcommittee on Immigration and member of the House Judiciary Committee.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the chairman very much for yielding me this time.

And might I thank Mr. SENSENBRENNER because, as I said in the Rules Committee, I believe, between the ranking chairman of the Judiciary Committee and certainly the chairman and ranking member of the Homeland Security Committee, there are a lot of good intentions. But, frankly, I think it is overwhelming to expect that, in this short period of time, that we can answer all of the concerns of the American people and answer the question of 20 years of shortsighted enforcement-only legislation to address this question of the enormity of illegal and undocumented individuals but, in particular, to address the question of security. That is the underpinning of this border security bill, and that is where I believe that we have a number of failures.

The American people have polled repeatedly on one concept. That is whether or not they consider the immigration question a crisis worthy of our attention. But when they are asked about solutions, they specifically suggest the idea of comprehensive immigration reform. Strong enforcement at the border, which many legislative initiatives offered by KOLBE and GUTIERREZ, offered by members of the Homeland Security Committee, offered in Judiciary, offered by H.R. 4044, the Rapid Response Border Protection bill, all had reasonable responses, enforcement and earned access to immigration.

But allow me to tell my colleagues why this particular bill is going to fall on its own weight and, as I heard someone say, the wheels are going to fall off, unless we turn back the bill and work together.

It is important to note that as we stand here on the floor today, there are members of the United States military on the frontlines of Iraq and Afghanistan whose family members are undocumented. We have a program that many of us supported that would allow those who are on the frontlines of Iraq to become documented, legal permanent residents. In fact, we heard a story of a young man who was killed on his way to get fingerprinted, tragically. But it allows them to be able to be documented, and they can then access legalization for their family members.

While they are on the frontlines of Iraq, the very presence of their grandmother, their mother, their sister or their father will allow them to be incarcerated as a felon under this bill, will allow them to be detained under this bill. And then you want to ask the employers of America, who I believe should be responsible for who they hire, not to verify people whom they may question, and that means that they will think that anyone with a name that sounds unlike American should be verified.

□ 1645

That will be close to 146 million persons who are currently employed and then 54 million persons who are eligible for employment. The basic pilot program will fall under its own weight. Why? Because the technology is not yet able to document and detail whether one name that has a particular sounding name is equal to the other name. Our technology does not equal that kind of competence at this point.

And we have not answered the question of the funding because we require mandatory detention. The question is what kind of resources will be utilized.

There are many elements to this bill that we could find common ground on, and those are the technology aspects. I believe there should be more in there to provide for our Border Patrol agents, the equipment, the night goggles, the computers that we have been saying they need over and over again, the helicopters, power boats and training. But that, unfortunately, was not allowed in this legislation.

So, Mr. Chairman, as I conclude, might I thank those who have done the heavy lifting, might I thank the work that the Hispanic Caucus has done on behalf of all immigrants or individuals that may be undocumented. I value the fact that we as a Congress have been charged with the responsibility of securing America. Criminalizing undocumented hotel workers and restaurant workers does not do the job. Let us turn this bill back so that we will have an opportunity to work in a bipartisan manner.

I rise in support of my Rapid Response Border Protection Amendment, H.R. 4044, to the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, and against the underlining bill as it is presently drafted.

H.R. 4437 has a substantial number of provisions that would increase border security, but it is lacking in one very important respect. It does not provide the Border Patrol with the equipment and resources that it needs to secure the border. My amendment would address that deficiency.

For instance, aircraft and watercraft are invaluable tools for spotting people illegally crossing our borders and for assisting in their apprehension. They also are essential for rescue operations when people crossing the border need emergency assistance. The Secretary of the Homeland Security Department would be required to increase the number of Border Patrol helicopters by at least 100 and to increase the number of Border Patrol powerboats by at least 250.

The Border Patrol currently suffers from a severe shortage of serviceable, police-type vehicles. In many locations, agents have to wait for vehicles to be brought in from the field by other agents on the previous shift before they can begin their duties. The Secretary would be required to establish a fleet of such motor vehicles of at least one vehicle per every three Border Patrol agents.

The lack of portable computers precludes Border Patrol agents from utilizing biometric databases in the field. This results in inadequate checks being performed before suspects are released. The Secretary would be required to ensure that each police-type motor vehicle in the Border Patrol's fleet is equipped with a portable computer with access to all necessary law enforcement databases.

Smugglers and other criminals historically have used the cover of darkness to cross our borders. Although technology that enables the user to see at night has been available for many years, it is not readily available to all of the Border Patrol agents, and the Border Patrol is one of the few law enforcement agencies that conducts most of its operations in remote areas during the hours of darkness. The Secretary would be required to ensure that sufficient quantities of state-of-the-art night vision equipment are provided for every Border Patrol agent who works during the hours of darkness.

Body armor is a relatively inexpensive piece of protective equipment that has saved the lives of countless law enforcement officers. The Secretary would be required to ensure that every Border Patrol agent is issued high-quality body armor that is appropriate for the climate and risks faced by the individual officers.

Currently, fewer than 11,000 Border Patrol agents are responsible for patrolling more than 8,000 miles of land and coastal borders. Because of the need to provide continuous, around-the-clock coverage, no more than 25 percent of those agents are securing our borders at any given time. That averages one Border Patrol agent every 3 miles. A substantial increase in personnel is desperately needed. The Secretary would be required to hire an additional 10,000 agents.

Recruitment and retention problems make it difficult to maintain a large force of experienced Border Patrol agents. One of the key difficulties in this regard is the fact that the pay lags behind that of many other law enforcement officers. The amendment would address this problem by requiring the Secretary to raise the base pay for all journey-level Border Patrol agents to a GS–13 level.

Nonimmigrant S visas are available for aliens who assist the Government with the investigation or prosecution of a criminal organization or a terrorist organization. The amendment would establish a third category for aliens who assist the United States Government with the investigation or prosecution of a commercial alien smuggling organization or an organization engaged in the sale or production of fraudulent documents to be used for entering or remaining in the United States unlawfully. A protection program would be available for informants who need it.

A rewards program would be established for encouraging informants to assist in the elimination or disruption of commercial alien smuggling operations or an organization engaged in the sale or production of fraudulent documents to be used for entering or remaining in the United States unlawfully. A protection program would be available if needed.

Those who object to the cost of H.R. 4044 need to recall the enormous costs, not just in monetary terms, of the last terrorist attacks. If we want to prevent another terrorist attack on American soil, we must be prepared to devote whatever resources are necessary to keeping terrorists out of our country.

I urge you to vote for this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. I thank the distinguished gentleman from Wisconsin for yielding me time and for his extraordinary leadership of the Judiciary Committee on which I serve. I also congratulate Chairman KING for his hard work on this important legislation.

As the grandson of an Irish immigrant, I believe in the ideals that are enshrined on the Statue of Liberty in New York Harbor. America has always and will always be a welcoming Nation, welcoming under the law any and all with the courage enough to come to this shining city on a hill. But a nation without borders is not a nation, and across this country Americans are anxious about the security of our border. Night after night they see news images of people sneaking across the border in the dark of night; they hear tales of people paying thousands of dollars to so-called ''coyotes'' to smuggle them into the country; they worry that drugs will make their way into the hands of their children more readily; and they rightly fear that our porous borders make it more likely that terrorists will cross with deadly intentions against our families.

This year alone, some 115,000 illegal aliens from countries other than Mexico have been apprehended by our Border Patrol; and simply as an ordinary American, I share this concern. That is why I support the legislation before us today.

Estimates vary, but it is generally accepted that around 11 million illegal aliens are living in our Nation today. The great majority of these people entered America by making an illegal border crossing. We cannot allow this trend to continue.

In today's legislation, the Department of Homeland Security is required to develop and submit to Congress a comprehensive strategy for securing the border, including surveillance plans, a timeline for implementation, 1,000 additional port of entry inspection personnel, 1,500 additional canine units and beyond.

Also, importantly, this legislation takes a giant step towards ending the current practice of what is known as ''catch and release'' that plagues the border by requiring mandatory detention of illegal border crossers until an immigration removal hearing can be held. As part of a well-developed strategy, the bill mandates that Homeland Security use every available detention bed and authorizes new detention space.

Finally, this bill addresses the need to enforce our employment laws by instituting an employer verification system whereby employers will be required to submit information to the Department of Homeland Security and the Social Security Administration for verification. Providing this verification system will ensure that only Americans and legal visitors to the United States of America are living and working in our Nation.

We have before us today an important first step in securing America's borders and stopping the flow of illegal immigrants into our Nation. I rise again in strong support of the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005. With gratitude for its authors, I urge its passage.

Mr. CONYERS. Mr. Chairman, I yield 5½ minutes to the gentleman from Illinois (Mr. GUTIERREZ), the one gentleman not on the Judiciary Committee that has worked with us all year long on this subject matter, who has done noble work for his caucus and for the committee.

Mr. GUTIERREZ. Mr. Chairman, I thank the chairman very much for all of his hard work.

Mr. Chairman, I guess I come to speak before this very, very able body today to say that we are really not solving the problem. The fact is that this bill represents a retreat from true immigration reform and from true security. Evaluate the bill, and you will see that it neither demonstrates the political will nor commits the requisite resources to deport 11 million people who currently live and work in the United States of America.

So after the bill is passed, there will still be 11 million, and I do not see anything in the bill that is going to cure that problem; 11 million people who we should, as President Bush has urged, as all like-minded people have urged, should be given the opportunity to come out of the shadows of darkness, should come out of the marginalized existence of exploitation in which they live and be able to join all of us doing three things: demonstrating their good moral character; demonstrating that they pay taxes; demonstrating that they work and they contribute to this great country of ours.

The bill does not do anything. It is silent. Eleven million people. Are we going to go out and arrest and detain and deport 11 million people? Nobody would argue that that is what we are going to do, because we have never demonstrated the political will to do that, nor have we ever committed the requisite resources to do that. So in the absence of that, if you truly want security here, I suggest that we should get their fingerprints; that we should have them come out of the darkness and give us their fingerprints; give us their bank accounts; give us their addresses and become full-fledged members of our society.

I am not saying put them at the head of the line. Put them at the back of the line. Let us see what it truly is. They have committed what is a civil offense. That is what it is, according to our statute. You cannot retroactively make it a criminal offense. It is a civil offense, and let us deal with the civil offense that they have committed.

What offense have they committed to come here? I do not know. But I just think that in America no one is in fear and trepidation of the Windex-wielding cleaning lady at K-Mart. I do not think anyone in America is in fear of the woman who wakes up every morning to cherish and to nourish and to raise the children of American citizens. No one is in fear when they go to their hotel room and they see the woman that has made their bed and cleaned their carpeting and placed their towels in their appropriate places. No one in this place fears walking into a restaurant and eating from the dishes that have been cleaned. No one in this room would say, God, I cannot eat those grapes, will not touch those apples from Washington State. Yet we well know who has toiled in those vineyards and in that agricultural sector in very tough conditions with very low wages.

I do not see people in America saying, God, Luis, the Congress of the United States should do something. I want my son to be a dishwasher. I want my daughter to pick grapes out there in the State of California.

We know who is doing these jobs. As a matter of fact, according to our own Department of Labor, our economy will continue to create low-wage, low-skilled, entry-level jobs for which there will not be an American workforce to fulfill those necessities.

So given that reality, let us not cast that all of the problems and ills of our society are somehow upon the immigrants who have come to this country. I will suggest to you that they are your neighbors; that you know that when you walk into a building and you see those shiny floors, you know who was up the night before shining those floors; when you walk into that comfortable room after a long day of work, you know who cleaned that room; when you eat from those dishes, you know who washed them.

It is critical and essential to our economy for their being here in the United States of America. So let us stop it. Let us put an end to it.

I would say to all of my colleagues here today, if you are selling drugs, if you are a rapist, if you are a robber, if you are a murderer, if you are someone of ill repute, I and the colleagues I know would be the first to stand up and to say, Out with you and back to your country of origin, if that is what you have come here to do.

But let us be honest. The immense majority of them are hardworking. The immense majority of them are people we know that are hardworking, taxpaying, good moral character people who want to do nothing more than what other immigrants have done before them, to become part of this great process.

So let us keep that in mind as we continue this debate. Let us take the high road, not the low road, in this debate.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. CALVERT).

Mr. CALVERT. Mr. Chairman, I rise in support of H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act. I would like to thank Chairman SENSENBRENNER and Chairman King for the remarkable job they have done to bring this bill to the floor today.

A mandatory electronic employment verification system must be a key component in any immigration reform bill worthy of the name. We can never gain control of our borders until we turn off the job magnet that encourages people to flout the law. If illegal immigrants know that a job awaits them in the United States provided they can get past the gauntlet of the border, no amount of border security will ever stop them.

Every employee already fills out an I–9 immigration form and presents documents confirming their identify and eligibility to work. Of course, the current system does not work because the documents themselves are easily forged and cannot be checked.

The system proposed today would simply require that the information on the I–9 form be confirmed. It is not discriminatory; it is easy to use and will do more to stem the tide of illegal immigration than any other single provision.

Many people have commented on the mandatory employment verification system, and some comments have missed the point. This system is all about ensuring a legal workforce by preventing document fraud during the hiring process.

I believe that most employers are trying to do the right thing and hire only legal workers. Unfortunately, the current employment verification system does not give the employer enough information to be confident that their workforce is legal. Forged documents easily pass through the system without a problem, which leaves the employer with dubious U.S. citizens and legal immigrants at a competitive disadvantage and encourages the mass illegal immigration America is experiencing today.

Not only would this system strike a blow against document fraud; it would also reduce identity theft, a practice on the rise in the United States. Just like credit card companies can flag unusual purchases to stop identity theft, this program would flag unusual behavior.

This is a good program, and this bill must pass.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ), one of our dedicated members on the Judiciary Committee and a leader in the Hispanic Caucus.

Ms. LINDA T. SÁNCHEZ of California. Mr. Chairman, I thank the gentleman from Michigan for yielding me time.

Mr. Chairman, I rise today in strong opposition to H.R. 4437. Americans are right to demand better border security and better enforcement of our immigration laws, but this bill is just a false sense of security. It does not secure our borders, it leaves our ports of entry exposed, and does nothing to reform our broken immigration system. What is needed is enforcement of laws that work, and we cannot have this without comprehensive immigration reform. Even President Bush agrees on this.

We should not be debating a bill thrown together at the 11th hour before we adjourn for recess, a bill that basically opens the door for witch hunts of anyone who looks foreign and a bill that erodes basic civil liberties and human rights for migrants, legal immigrants, and even citizens.

In looking at the lack of merit in this bill, we need to ask ourselves what kind of America do we want to live in. Do we want an America where we have mass deportations? Do we want an America where police officers can randomly ask foreign-looking Americans to produce identification to prove their legal status? Do we want an America where people can be detained for life when their home country is unwilling to take them back? Do we want an America where American citizens will have to carry national identification cards to travel, work, or just walk down the street? Do we want an America that criminalizes 1.6 million children? Because that is exactly what this bill will do.

□ 1700

As the daughter of immigrants, I am offended by this bill, and I urge my colleagues to think long and hard about the vote they are about to cast and the detrimental impact it will have on the proud tradition of immigration that this country was built on.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN) who is an emeritus member of the Judiciary Committee.

Mrs. BLACKBURN. Mr. Chairman, I thank Chairman SENSENBRENNER and Chairman KING of New York for their extraordinary efforts on this bill. I do rise in support of H.R. 4437 today.

We do have a border crisis on our hands, and it is time that we do something about it other than talk. The chairmen have done a great job in bringing this forward. Everywhere I go in my district, Democrats, Republicans, everyone is united in the belief that our border enforcement is out of control and we have to give our border agents the tools they need to protect this great Nation.

My constituents see this truly as an issue of national security and of grave importance to our country. It is one we cannot wait to handle. We have to do something to secure those borders.

I am especially pleased to see that the Judiciary Committee has inserted several items on the bill that I had worked on while I was a member of the committee. During the 108 and 109th Congress, I introduced the Federal Contractor Security Act to tackle the problem of illegal entrants working for Federal contractors at critical infrastructure sites, at sites that are sensitive to our national security. And now the bill makes it mandatory for all employers, including Federal contractors, to use the worker verification system.

This is a system that employers can use at no charge, at no charge, and provide the sense of security that is needed by American citizens that the individuals working are indeed who they claim to be.

The legislation removes the guesswork about a worker's status and separates illegal entrants well before a business has invested time and money to train them.

Again, I want to thank Chairman SENSENBRENNER and Chairman KING of New York. I want to thank the leadership for their work and encourage support of H.R. 4437. This is something that is good for business. It is good for our Nation's security.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. FARR).

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

Mr. FARR. Mr. Chairman, I rise in opposition to this very poorly drafted bill. I learned long ago in my legislative career that you should not enact laws that you cannot enforce. This bill has some good provisions, but it also has a lot of bad provisions.

If there was ever a moment, I think, in legislative history of congressional hypocrisy, it has got to be right now. Just a few minutes ago we voted to recognize and support the symbols of Christmas. This bill steps on the spirit of Christmas for 11 million people in America who are now being given a Christmas present, being told they are

''criminals.'' Not only are all the undocumented people made instant criminals, so are their churches, so are their neighbors, and so are the people that support them and employ them.

Mr. Chairman, this bill declares war mostly on Mexicans because they are the vast majority of undocumented people in the United States. They are people that are already here, working, living in our communities. Who are these people? They may be your town heroes. They may be the latest valedictorian in your high school. They might have been the star of your football team or other sports team. They may have been the next scholarship winners. They may be some of America's brightest, our future. And yet now, by caveat, they are criminals.

Some cut your lawn, some clean your house, some harvest your food and that is the food that we pray over. This bill makes criminals out of innocent children, their mothers and their fathers. You cannot enforce this bill, I think, without a revolution. That is why the Chamber of Commerce, the American Bar Association, the Association of Builders and Contractors, the Episcopal Church, the International Association of Firefighters, the Jewish Federation of Greater Philadelphia, and many other areas oppose this legislation.

I ask for a ''no'' vote on a badly drafted bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, just to clarify everything, if someone entered the United States illegally, they have committed a Federal misdemeanor. If they overstayed their visa, they have committed a civil grounds of inadmissibility. So the people who snuck under the fence are already criminals, and what this bill does is criminalize the 40 percent who entered legally and did not go home when they were supposed to. And that is fair and that is equal.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. SHUSTER).

Mr. SHUSTER. Mr. Chairman, I rise today in strong support of H.R. 4437. This legislation is long overdue, and I want to thank Chairman SENSENBRENNER and Chairman KING of New York for their great work in bringing this bill to the floor.

My constituents are fed up with porous borders, lax enforcement, and excuses about why the Federal Government is unable or unwilling to ensure that immigrants entering our country are legal.

This measure provides genuine solutions such as state-of-the-art surveillance technology, 8,000 new border agents, and widespread physical barriers.

The citizens of Altoona, Pennsylvania, experienced the sobering realities of a poorly enforced immigration system when this last August an illegal alien with a prior criminal record of assault, reckless endangerment, and a weapons violation murdered three innocent people. Had the catch and release practice been eliminated and mandatory detention been in place, perhaps this painful tragedy could have been prevented.

Mr. Chairman, this bill's time has come. We cannot continue to allow overwhelming numbers of illegal immigrants to flood our communities without any scrutiny. I urge all of my colleagues to support this commonsense approach that will combat illegal immigration and strengthen our Nation's security.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. BERMAN), a senior member of the Judiciary Committee.

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

Mr. BERMAN. Mr. Chairman, I appreciate the gentleman yielding me the time.

I am told that the chairman of the committee, I was not on the floor, in his comments after our ranking member spoke said, This shows the difference between the Democrats and the Republicans. Democrats are for amnesty. Republicans are not.

I remember back in the campaign in 1968 for President, or one in one of his races for Governor, George Wallace made the comment that, No one was going to out-''seg'' me.

Those kinds of charges and that kind of misuse of language is done by people who know that they are trying to fool the American people into thinking they are doing something.

This bill will never become law. It may pass this House, but it will never become law for the very reasons that it does not take a comprehensive approach to the problem.

The chairman of the Judiciary Committee says it is already illegal to come to this country without permission, without a visa of one kind or another; and he is right. That is why we call them illegal immigrants. And he says, so all we are doing with this bill is dealing with the people who came legally and then overstayed. I guess that is because the first part of it, dealing with the people who came here illegally, has worked so well. That is why every year hundreds of thousands of people are able to cross this border and work in this country. A few do some horrible things. But they come and the law has not made a difference. Unless you take a comprehensive approach, you will never solve the problem.

If what the chairman defines as amnesty is amnesty, then George Bush is for amnesty; JOHN CORNYN, the Senator from Texas, is for amnesty; Senator KYL of Arizona is for amnesty; and the chairman himself by saying that there needs to be a guest worker program eventually is for amnesty, because when the people who came here illegally get to come back into this country, because they have left or they have applied from within this country to work in our fields or our restaurants or other industries that have become heavily reliant on unauthorized workers, we are saying you get to do what you came here to do even though you committed an illegal act.

The fact in 1986 was not amnesty. None of the proposals now for a comprehensive immigration proposal include amnesty because they are all based on meeting certain future obligations, paying fines, continuing to work, coming out of the shadows, going through a background, learning whether or not they have committed any criminal acts other than the entrance here.

At the heart of why this bill will never become law are the reasons that the gentleman from California (Mr. CALVERT) spoke to. In this bill is a very logical employer verification system. It was what was missing from the 1986 bill. It is why the 1986 bill did not work. But everyone knows you can never implement an employer verification system unless you deal with the 11 million people who are now in this country. Because otherwise every grower, every restaurant owner, every hotel, every tourism industry, huge numbers of construction firms are all going to get the answer back on this verification system: the person you have working for you is not here legally; you will have to fire them. They will be closed down.

That will never happen. The employers of this country will never let that pass, because this bill will not even allow us to offer an amendment to make it comprehensive, to accept every one of the provisions, some of them to my way of thinking are draconian and over broad, but accept every one of the provisions of this bill and just add that aspect of the bill that can make for a coherent whole. They will not even let us bring that as an amendment.

I urge that Members of this House rise above the demagoguery that is going on about who stands for what and oppose this bill until we are allowed the chance to vote for a tough, comprehensive bill that does something real about illegal immigration.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLITTLE).

Mr. DOOLITTLE. Mr. Chairman, I thank Chairman SENSENBRENNER and Chairman KING of New York for working on this bill and bringing something very substantial forward for our Members to vote on.

Mr. Chairman, the Federal Government for decades has ignored this problem. And it has become an enormous problem facing the entire Nation, not just the border States.

I am not sure I agree with my friend and colleague, Mr. BERMAN, that a comprehensive bill is actually possible. It is a big, big problem. We have got to

make a start at least. I think this legislation represents a good-faith attempt to begin to deal with the problem. Dealing with that 11 million is extremely difficult. I think at a minimum we need to start to deal with those who continue to enter the country illegally. It is certainly unacceptable for people to enter this country illegally, seek out our taxpayer-financed services, and hand the bill to the taxpayers.

I commend the chairman for putting provisions in the bill that reduce the likelihood of that continued flow of illegals into the country. I particularly like the provisions dealing with the San Diego-type fences in the urban areas. That is very, very important and I think will be effective. I know those are to be considered for approximately a dozen places along the border.

The other thing I like, in fact, several months ago I introduced a bill to end the absurd catch and release policy where our government has been giving tickets, essentially, to people who enter illegally and then letting them go and show up of their own volition. So far about 90,000 people this year have failed to appear in court who entered illegally and received such tickets. I am grateful that the provision to end that was included in the bill. That will make a big difference and will start us down the road to having a more effective border security policy. And I am confident we will have to continue to work together as we address this important issue. Please support this legislation.

Mr. CONYERS. Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 90 seconds to the gentleman from Alabama (Mr. ADERHOLT).

Mr. ADERHOLT. Mr. Chairman, I rise today in support of this legislation, the Border Protection Antiterterrorism, and Illegal Immigration Control Act.

I support this bill for several reasons, but I think one of the things that must be noted is it provides the Federal Government with needed authority to secure the borders.

□ 1715

It also closes the loopholes in current law that illegal immigrants and their facilitators exploit to enter and remain in the United States illegally. It is estimated that more than 11 million people, as it has been brought out here today, enter the U.S. illegally. That number includes those who have stayed over their visa and those who have entered this country illegally in the first place.

Of course, America is a very charitable Nation. We welcome those with open arms who wish to live here, who wish to work here, raise a family here and eventually become naturalized citizens. That is why we have a legal process to do so.

Since September 11, 2001, we as a Nation have had to reevaluate our willingness to have among us so many noncitizens that are here illegally. For the sake of our national security, for the sake of government programs that many of our colleagues on this side also cherish, we must pass a bill to begin to perform our duties to secure our borders.

This bill also facilitates cooperation between border sheriffs and Federal law enforcement by authorizing reimbursements to local sheriffs, along the border, for the cost of enforcing immigration laws and detaining illegal immigrants until transferred to Federal custody. This has been a growing problem, and the clarification provided in this bill and the financial resources are important.

Mr. President, I rise today in support of the Border Protection, Anti-terrorism and Illegal Immigration Control Act. I support this bill because it provides the Federal Government with needed authority to secure our borders. It also closes loopholes in current law that illegal immigrants and their facilitators exploit to enter and remain in the U.S. illegally. It's estimated that there are more than 11 million people in the U.S. here illegally. That number includes those who have overstayed their visas and those who have entered the country illegally.

America is a charitable nation; welcoming those who wish to live, work, raise a family and eventually become naturalized citizens. This is why we have a legal process to do so. Since September 11, 2001 we, as a nation, have had to re-evaluate our willingness to have among us so many non-citizens that are here illegally. For the sake of our national security, and for the sake of the government programs that many of my colleagues on the other side of the aisle cherish, we must pass this bill and begin to perform our duty to secure our borders.

Since the changes will increase the number of illegal aliens in Federal custody, this bill includes provisions to increase the number of beds available to house these illegal aliens. The Department of Homeland Security will expand capacity to house those awaiting court hearings or removal.

I want to thank the Chairman for yielding time and I'll close by asking all of my colleagues to support this bill; it is long overdue and a vital first step towards improving border security.

Mr. CONYERS. Mr. Chairman I yield 2 minutes to the courageous gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, let me thank the gentleman for yielding me the time and for his leadership and for making sure that we in this entire country understand what this so-called immigration reform bill is really about.

I rise in strong opposition to this bill. At best, this legislation is unbalanced; it is harsh, and it is unfair. Quite frankly, I think it is very un-American.

It criminalizes millions of hard-working people simply for being undocumented. It would turn local law enforcement into deputies of the border patrol, and innocent people will be needlessly scrutinized and jailed. I can only imagine how this irresponsible provision will affect racial profiling of Hispanics and other minorities.

This bill also ignores due process and would expand the government's ability to keep noncitizens locked up behind bars if they cannot be deported to their native countries. Jailed immigrants will lose the ability to appeal a deportation order.

Mr. Chairman, these are only a few of the reasons why this bill really makes no sense for our great country. Let us address the real issues of immigration reform that include a clear path to citizenship and commonsense protections for our borders. We need full immigration initiatives that make sense, not these very punitive and very un-American provisions that are included in this bill.

We cannot, and we must not, forget the undeniable history, our history, American history, that we have as a nation of immigrants and the contribution that immigrants have had on our economy, on our diversity and our way of life. This bill, quite frankly, just flies in the face of that history, and it should be rejected.

Mr. Chairman, I want to thank the gentleman again for his leadership and for yielding me the time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. RADANOVICH).

Mr. RADANOVICH. Mr. Chairman, with great respect to both chairmen on this bill, I do understand the importance of this measure and all of the hard work that has gone into it. We do need border security, and we need to beef up our Federal personnel and protect our citizens from terrorist threats.

However, we should not be moving a border bill that imposes penalties on employees and avoids dealing with the undocumented workers who are here now.

I do not support H.R. 4437 because it does not include comprehensive guest worker reform that my constituents desperately want back home in the San Joaquin Valley of California.

In 1986, Congress passed immigration reform. Two major mistakes were made when this bill was passed. Number one, it did not contain a guest worker provision, and number two, it provided amnesty for millions of illegal immigrants.

In passing immigration reform and granting amnesty in 1986, Congress thought that they would stop illegal immigration. Well, they were wrong, because today, we have about 10 million immigrants in our country.

Now we are here once again debating an immigration bill, and there is no guest worker program in the provisions. In this bill, we are penalizing employers without dealing with the millions of illegal workers currently here.

As long as this House continues to avoid the need to include a guest worker program in immigration reform, we will continue to have an illegal immigration problem in the United States.

U.S. border patrols are overwhelmed, and the cost of enforcement has skyrocketed. If we are implementing a guest worker program to provide temporary worker permits and allow workers to go home for part of the year, border enforcement officials could focus their resources on securing the border.

I urge my colleagues to vote against this measure, and it is with great respect to the chairman because it does not contain comprehensive guest worker reform.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of the time.

This debate has a peculiar forgetfulness about where we are. The Republicans have been in control for 5 years, and we keep hearing about what is wrong: There is not enough personnel; there is not enough equipment; we are giving people tickets and letting them go; the whole program is horrible.

Would you explain to me why it has not been corrected before now, and you offer now criminalizing up to 11 million people as a solution? This doesn't make sense.

But, folks, hang on to your hats because tomorrow it could get worse. The distinguished Rules Committee has proposals before them. We do not know what we will get on the floor. Citizenship for people born in the United States, just because their parents were born somewhere else, forfeiture of church property if they provide shelter for illegal immigrants, jail sentences for priests or nuns who help illegal immigrants get food or shelter; these are serious Republican proposals for improving immigration policy of which they have complained without letup since this discussion has begun. The Rules Committee takes these proposals up tomorrow, and we may see them on the floor with recommendations that they become part of this bill.

We don't need it to get worse to know that we don't need this measure. It's going nowhere, and I hope that somebody feels that they are getting some sound-bites out of this because I feel very badly about this important measure.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, I was here in 1986 when the Simpson-Mazzoli bill was passed. I voted against it because I didn't think it was a balanced bill, and I didn't think it was a workable bill, and I think that what has happened in the last 19 years showed that a no vote was the right vote.

That bill was based on the fact that we would solve the illegal alien problem by giving those who are already here amnesty and then we would impose sanctions on employers who hired new illegal aliens. The reason it didn't work, as my friend from California (Mr. DANIEL E. LUNGREN) has stated, is that the employer sanctions were never enforced. As a result, illegal aliens came across the border in increasing floods.

The current system gives an incentive to an employer to hire an illegal alien in an entry-level job that is labor intensive because illegal aliens work for less money than either documented aliens with green cards or United States citizens. As a result, the bad actors in areas like the hotel and restaurant business, agriculture, landscaping and the construction business, are able to have such a competitive economic advantage because of the low wages over those who are trying to do it the right way.

I can understand why the Chamber of Commerce is against this bill because of the employer verification system. I guess if I were lobbying for them, I would be, too, because they have benefited from the low wages, and the low wages that these corporations have benefited from have depressed the wages of honest, hardworking, middle-income American people and those who are trying to get these entry-level jobs who are authorized to work in this country.

The key in this bill is Mr. CALVERT's employer verification system because that will flush out those who hire large numbers of illegal aliens, and they can go into the marketplace and pay a decent wage to people who are legally entitled to work here. I think that this is the main reason why this bill should pass.

We have heard a litany of complaints about all of the enforcement provisions, fences on the border, making a criminal offense overstaying one's visa, giving the sheriffs in border counties the authority to enforce the immigration law which they don't have now. The fact is that those people who are against this bill don't want any changes in the existing system except perhaps amnesty or, excuse me, earned legalization and ultimately citizenship for those who have broken the law.

This bill has our priorities straight. We have to secure the border. We have to provide law enforcement the tools to apprehend those who have broken the law, and we have to force our employers to flush out all the fake documents that are out there that are held by people who are illegally in this country, which is what the verification program proposes to do.

This is a good bill. It is a necessary first step, and if this bill is defeated, as all of those who have been saying no to everything goes down, the consequence is going to be the continuation of the intolerable existing system.

Mr. Speaker, I yield back the balance of my time.

The CHAIRMAN. The Chair now recognizes the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 4437, the Border Protection, Antiterterrorism and Illegal Immigration Control Act of 2005.

The bill before us today incorporates both border security and immigration enforcement provisions and is the result of a strong collaborative effort by the Committee on Homeland Security and the Committee on the Judiciary to address these important issues.

The Committee on Homeland Security began this process last month when we introduced the bill, H.R. 4312, entitled the Border Security and Terrorism Prevention Act of 2005. This measure focused on border security provisions and reflected a truly bipartisan effort among members of my committee to solve lingering problems in our border defenses. I particularly appreciate the strong and able leadership of the gentleman from Mississippi (Mr. THOMPSON), our ranking member, in achieving important goals in this bill. I also want to commend the gentlewoman from California (Ms. LORETTA SANCHEZ). Thanks to their cooperation, we were able to pass H.R. 4312 on a voice vote with absolutely no opposition.

I also want to thank my friend, Chairman SENSENBRENNER, and his staff for their diligence and willingness to cooperate with us in expanding and improving this legislation.

Mr. Chairman, I will focus in my remarks on the border security aspects of the bill because, since September 11, it has become more and more apparent that our borders are in crisis. In addition to whatever social issues there are with immigration or whatever criminal issues there are with immigration, there are now, since September 11 brought home to us dramatically, the terrorism aspects of illegal immigration.

The homeland security provisions of this bill try to, and I believe do, very effectively address the issue of terrorism that must be confronted if we are to survive as a people.

This legislation requires 100 percent coverage of our land and maritime borders, including physical infrastructure, border patrol personnel and the use of all available technology.

□ 1730

It also requires a joint and collaborative effort between the Department of Homeland Security and the Department of Defense to use all available military technology to ensure that our borders are controlled and sealed. Most importantly, I believe, and as importantly as any other provision, it ends the policy of catch and release, which has been discussed in the previous hour; and it mandates expedited removal. We no longer have the luxury; and if we are talking about, I know the gentleman from Michigan before was talking about, who has been in control and who has not been in control, I would be the first to say that we are dealing with a bipartisan problem which is why it requires a bipartisan effort. That was the bill that we attempted to pass out of the Homeland Security Committee, because we have to end such policies as catch and release and expedited removal.

I would hope that, as the debate goes forward, both sides acknowledge the good faith of the others. This is too serious an issue to be trivialized or demagogued. It is too serious an issue to be looked at in any kind of casual way. I listened very carefully to the gentleman from California (Mr. RADANOVICH). I understand his concerns about there not being guest worker provisions in this bill; but I believe that if the American people are to take us seriously, they want to see us address the issue of border control before we go on to any other expansion of rights or any other legalization of those who are here already or even setting in process a motion where we make it easier for workers to come into this country. We have to show we can control the borders before we go further, and that is the purpose of this bill.

Mr. Chairman, let me just say that as the grandson of immigrants who grew up in an immigrant neighborhood in New York City, I yield to no one in my admiration of what immigrants have contributed, are contributing, and must continue to contribute to our country; but it has to be legal immigration. I say that. Some of the things that maybe were looked at or not looked at prior to September 11 can not longer be ignored. They have to be addressed. We have to address head on the issue of illegal immigration because of its ties to international terrorism.

So while I grew up in a neighborhood of immigrants as a child, I also saw many of my neighbors killed on September 11. So neighborhoods have changed; things have changed. What was tolerated before September 11 maybe in some quarters can no longer be tolerated now. We no longer have the luxury of looking the other way. We have to address head on this issue of illegal immigration. That is what this bill is about. Certainly the aspects passed from the Homeland Security Committee, that is what they were about, combating illegal immigration and thereby also undercutting international terrorism.

I would ask the debate go forward in a reasonable way where we can exchange ideas, confront the issues that are confronting our Nation on this issue of illegal immigration.

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

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it used to be said that we are all either Republicans or we are all Democrats, but I wonder what is happening to this country as I look at this bill. But today that principle is long gone, replaced by partisan efforts to satisfy extremist groups. The Democratic members of the committee of Homeland Security, including myself, Ms. SANCHEZ, Ms. LOFGREN, worked tirelessly with my counterpart, Chairman KING, to create a good border security bill that had many, many good provisions; but after that bill left our committee, it fell into partisan hands to satisfy the extremist anti-immigrant groups.

Instead of giving the American people a Christmas present of a bipartisan bill that would secure our borders in a real and fair way, we are giving them a bill that looks more like a gift from an extremist Grinch who stole Christmas and trampled our Constitution on the way. The Judiciary Committee has loaded up our bill with controversial immigration proposals that are now opposed by nearly every reasonable business, immigration, and human rights group in America. I hope my chairman from New York recognizes this.

I know it is difficult, but if you look at the groups that have opposed this piece of legislation, you can understand why it is a bad bill. The Chamber of Commerce opposes this bill. The American Bar Association opposes this bill. The Irish Lobby for Immigration Reform opposes this bill. The U.S. Conference of Catholic Bishops oppose this bill. What reasonable organization is left to support it?

Mr. Chairman, this bill is so ridiculous that, according to the Republican version, Santa Claus himself would be a criminal for trekking from the North Pole to deliver holiday gifts without a visa. This bill is not a step in the right direction. It is time that we pass a real border security bill that is fair and effective, not a partisan bill that does not solve our problem.

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

Mr. KING of New York. Mr. Chairman, the gentleman's reference to Santa Claus shows what a pleasure it is to deal with the gentleman.

Mr. Chairman, at this time I yield 3 minutes to the gentleman from Texas (Mr. MCCAUL) who is a former Federal prosecutor, a member of the Joint Terrorism Task Force, and chairman of the Subcommittee on Investigations.

Mr. MCCAUL of Texas. Mr. Chairman, I would like to thank Chairman KING for his hard work on this much-needed legislation.

Mr. Chairman, before running for Congress, as the chairman indicated, I had a counterterrorism background as a Federal prosecutor in the Justice Department. My jurisdiction included the Mexican border. Based upon this experience, I have a direct understanding of America's need for this comprehensive border security legislation; and I am proud to say out of our committee, Mr. Chairman, it was truly bipartisan.

The Border Security and Terrorism Prevention Act is a result of the United States' grave and perpetual problem with undocumented aliens. An estimated 8 million to 12 million undocumented aliens are here in the United States. Last year alone, over 1 million illegal aliens were apprehended at the border, and the Border Patrol estimates that many more have crossed undetected. In addition, there is evidence to support that al Qaeda would like to exploit our southwest border, and we know that it is vulnerable.

In the post-9/11 world, these figures no longer represent just an immigration problem, but rather one of national security. America's borders are being compromised by our inability to identify those who are coming into our country. This commonsense legislation will work to fix this growing problem and will greatly enhance security along our Nation's borders. If passed, America will begin to establish operational control of its borders and ports and have a national strategy, thereby ensuring a safer and more secure home for all of us.

I am honored to serve on the Homeland Security Committee and to have played a role in the drafting of this important legislation, including the mandatory detention provisions which will end the so-called catch and release policy of undocumented aliens, particularly those from other countries other than Mexico. Unknown OTMs crossing our borders present a dire national security risk, since most of the detained OTMs are immediately released into our streets never to return for their court date. Sadly, the number of OTMs crossing America's border has tripled over the last 3 years.

The second provision that I was proud to have a part in was to reimburse State and local law enforcement agencies for the cost they bear due to the national border security burden. If we have learned anything after 9/11, it is that the Federal Government must work with the State and local law enforcement to prevent terrorism.

It is our duty, indeed it is our responsibility as Members of this distinguished body, to do everything in our power to ensure that another 9/11 never occurs in this country again. This vital piece of legislation will greatly advance our efforts towards preventing terrorists from entering our shores.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong opposition to H.R. 4437. The chairman of the Committee on Homeland Security, the committee on which I serve, is right in saying that we worked on this bill in a very bipartisan way, at least the initial King-Sanchez bill that came to the Homeland Committee. We did it over a period of 2 months. We worked back and forth many of us on our side of the committee with Mr. KING and others, and then we brought a bill to the Homeland Security Committee, a bill that dealt with border security. Border security.

By the way, it was not just the immediate southern border we were talking about; we were talking about issues that are affecting us all, many of the borders and airports and coastal sections, and it included, this border security bill, even land away from the border, in the sense that it comes up to the area I represent. If you are in

Disneyland in my district, you are less than 100 miles away from the California border with Mexico. This bill that we had in Homeland Security would have affected my area.

Now, not everything was great about the Homeland Security bill. In fact, I was very angry at some pieces that managed to get in. But we had a real debate, and we took our time, and we understood what we were talking about. And then this bill was taken over by the Judiciary Committee, usurped, with many, many more pieces put on, pieces that do not make any sense and really are not about border security. They are not about getting rid of the catch and release process that we have right now; they are not about tightening. They are about being mean, mean to immigrants in this community. And not just those who have no documents to be in the United States. This bill dangerously is unfair and penalizes everyday Americans regardless of what their immigration status is.

Under this legislation, the Sensenbrenner bill, it would be a criminal offense, criminal offense, to be in the United States in violation of immigration laws. It would affect millions of legal immigrants, including lawful permanent residents and nonimmigrants who accrue technical violations of immigration regulations, like failing to report a change of address.

Now, I know this because we have been working, we have been thinking, and we have been looking. But many of my colleagues may not understand the impact that the Sensenbrenner bill has on the people of America, legal residents in some cases. People would be criminalized under H.R. 4437.

In addition, this bill criminalizes anyone who assists undocumented immigrants in the United States; and this would include, listen to this, please, it would include churches, other faith-based groups, volunteers that provide food aid, shelter, or other life-saving assistance to members of its community who may not have documents.

Do we really want to clog up the Federal system with decent people who are just trying to be Good Samaritans? Is that what this is about? For you taxpayers, is that what you want to spend your monies on, providing public defenders for everyone we are about to put in jail? And the 11 million, supposed, because we do not even know really how many people there are here without documents, that we are going to criminalize, women and children, where are we going to hold them? Because the mere presence of them being in the United States the day after a bill like this passes would make them felons in this country, according to Sensenbrenner.

So, it is not a good bill. This has not been thought through, the implications and how we handle it. And the money that this would cost is something that America really is not really ready for.

The Sensenbrenner bill also cripples American businesses. All of these people all of a sudden are felons. They are not in. They are not working. And all employers would be forced to use an employment eligibility verification system that, quite frankly, is not capable of handling the increase in volume that this Sensenbrenner bill would require.

The database for the employment eligibility verification system contains widespread flaws and false information, false information, which would show many legal workers as undocumented, depriving legal employees of jobs and employers of the much-needed workers, the reason these people are here.

The U.S. Chamber of Commerce and business groups across America oppose H.R. 4437 because the employers will pay the price for these impractical provisions and because enforcement-only legislation like H.R. 4437 will not create a rational immigration system needed to serve all Americans, businesses, and potential immigrants.

□ 1745

It does not address real comprehensive immigration reform, which is necessary for everybody out there in America who thinks that undocumented workers are a problem. This Sensenbrenner bill will not fix what we have on our hands. You have only to look at demographics to understand we in America need more workers than we can provide. And we need to get them from somewhere. So we need to get back to comprehensive immigration reform, not just closing off borders or hurting people or taking children away from mothers or deporting mothers. This will not solve the problem we have at hand.

And so when we were in the Homeland Security Committee, we were working on border security in the hopes that this would be a good-faith effort to work together in a bipartisan manner and to get the ball rolling to work on more comprehensive reform that would bring about what we need here: Family reunification, good economic conditions for our economy and homeland security.

I urge my colleagues to oppose H.R. 4437. We deserve a comprehensive solution to our immigration problems.

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

Mr. KING of New York. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), the chairman of the Subcommittee on Economic Security, Infrastructure Protection and Cyber Security, and the former attorney general of California.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, there are a number of major provisions in this bill, and let me speak of one that has been referred to on both sides of the aisle, some in support and some not in support.

Section 407 which is the expedited removal section, this was adopted in the markup in the Homeland Security Committee. The question of expedited removal was one that we explored in our subcommittee. The specific context of our hearing involved the growing number of illegal border crossings by what is referred to by the service as ''other than Mexicans'' or ''OTMs.'' Let me explain what this is.

Most people who come across the border illegally from our adjoining countries, either on the north from Canada or on the south from Mexico, accept voluntary departure. They agree to voluntarily go home and agree that they do not go through the various processes involved. We cannot do that with those people who are not from those countries because neither Mexico nor Canada would accept them. So we have to have an acknowledgment from the country from whence they came, their home country, that they are, in fact, residents of those countries or citizens of those countries. That requires us to detain those people for some period of time. That requires detention space, and the subject that has been discussed before, the idea of catch and release was created as a result of insufficient detention space and insufficient resources dedicated to that proposition. After that was revealed by the press earlier this year, the administration responded by trying out a couple of pilot projects in certain sectors. Instead of catch and release, it was retain them and then have expedited removal. They found that to be successful, and so they have expanded it to the entire southern border.

Our bill mandates that not only be a temporary policy but a permanent policy. Yes, it does extend within 100 miles of the border, and it is limited to 14 days. That is, people who have been here less than 14 days, even though the underlying law allows it to be done for a 2-year period of time, it does not limit it to 100 miles from the border. This is a border security bill, and we limit it in that fashion. It is directed at those who have come here.

We even had the incident of a large number of people from Brazil this past year coming up, and we found that not only did they come across the border but instead of running away from our immigration officers, they ran to them. They ran to them to surrender, and they ran to them to surrender so they could be cited so they could actually get the citation which said you have entered this country illegally, you have to show up for your hearing 90 days hence. And 90-some percent did not show up.

My question is, why did the 6 percent show up? If you look at it, we have created a system with every incentive to come back. That has turned around because of the pilot project. What this bill does is mandates it. It is commonsensical. It is the right thing to do. It helps us take a right step in the right direction.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield 3½ minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, Members on both sides of the aisle believe that the government has a right to know who is coming into this country.

Secondly, it would seem to me, once you get past the rhetoric, that we do not accept lawlessness. But I must say to Chairman KING, a man of intellect and compassion, and I will get to that in a second, and my very good friend, I must say to the chairman that, when we look at section 612, denying citizenship to any legal permanent resident who has been unlawfully present in the country at any time in their life, what we are doing is forgetting how Italians and how Irish came into this country.

Now 9/11 did change a lot of things, obviously; no question about that. And it does not mean that we should open the floodgates or close them or build them or not build them. But when we forget how our ancestors got here, many times not in a pristine fashion, this is not of your doing, Mr. Chairman. You can scream to the high moon, but this is not your idea, and even if you put your name on this, I know it is not for sure. We didn't pass this out of the Homeland Security Committee.

And by the way, how many folks are we going to have to hire to do all of this? Who is paying for this?

You have lost your background, and I mean that in a complimentary way. I do not mean that to be a wise guy. What you did just several years ago with the Irish immigrants who came here, when our British friends wanted to pluck them up and throw them out of the country, it was courageous. You cannot deny this in a bill. You cannot deny your heritage. I call on you to look at your heritage.

We are making all immigrants here suspects. I believe, and I think all of us do, that it is a moral imperative for Congress to enact comprehensive immigration reform. Both sides of the aisle agree on that. We need a full and robust approach, one that includes not only strong and effective enforcement provisions but strategies to create new legal channels for future flows of immigrants because they are coming.

Family immigration backlogs. Families, we want to unite families in a legal fashion. This bill does not do that, Mr. Chairman.

Indeed, it fails to address many of the most important elements of immigration reform while imposing harsh, considered punitive, measures. That is why I believe it is a moral imperative to vote this bill down today. I do not think it is wise, and I do not think it is a real plan. Instead of proceeding in a judicious manner that could affectively stem the flow of illegal immigration, we are debating ineffectual enforcement measures that do not increase the safety and security of the American people.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would remind Members to address their remarks to the Chairman of the Committee of the Whole.

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

I, once again, admire the passion of the gentleman from New Jersey and assure the gentleman that I hold in high esteem the contributions immigrants have made, are making and will continue to make to this country. I believe, however, that it is essential that we put it on a legal basis in fairness to those who are coming here legally and also because of the situation that developed after 9/11. Having said that, I have the greatest respect for the gentleman from New Jersey, and he and I, in our own way, will be able to resolve some of our differences.

Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Chairman, I rise today in favor of H.R. 4437. To paraphrase an old Ford commercial, border security is job one for America. Safeguarding the integrity of our borders is an important component of both economic and national security. H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005, represents an important step towards the completion of this job.

H.R. 4437 modernizes and improves our border security operations, allows the Department of Homeland Security to utilize the Department of Defense surveillance assets to monitor activities around the border. It establishes physical barriers to crossing, and it calls for the utilization of new technology, such as unmanned aerial vehicles, UAVs, to ensure that we have 100 percent coverage of the areas in question.

And in order to monitor those coming across at legal check points, it authorizes 100,000 new, full-time port-of-entry inspectors as well as the training of 1,500 additional K–9 units over the next 5 years. This will go a long way towards making sure that people who are not supposed to be here, whether they be undocumented aliens or terrorists or both, do not get here.

The border is a dangerous place. It is a dangerous place to us as a country, as it can be an open door to those wishing to do us harm. But it is also dangerous place for individuals who cross for other reasons. Many women have been murdered along the border, and most of these homicides remain unsolved. People have died in the desert after being exploited by human traffickers, known as coyotes. This bill provides for mandatory minimum sentences for those convicted of alien smuggling. It also has the potential to save many lives.

Because of the enhanced surveillance capabilities provided by the bill, we are more likely to detect individuals who are lost, in distress or who are about to become victims of crime near these border crossings.

For all of the foregoing reasons, I ask that the body pass this important legislation. I commend Chairman KING and Chairman SENSENBRENNER for their leadership on this issue.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GONZALEZ), the chairman of the Hispanic Caucus Task Force.

Mr. GONZALEZ. Mr. Chairman, I thank the gentlewoman from California, and I rise today in opposition to the legislation.

First of all, let us get it straight, this is not about border protection, and it is not about antiterterrorism. If it was, we would be debating the bill that was voted out of Homeland Security. But instead, that bill has been hijacked and now is a vehicle used to promote ineffective and hypocritical so-called illegal immigration control.

Let us start with the obvious. When it comes to the hiring of the undocumented worker, and that is simple: Demand will always determine supply. If you were serious about limiting the number of undocumented workers coming into this country, then significantly increase the fines levied against the employers. This bill does not do that. Make it as easy to criminalize the act of hiring as you do the act of entry into this country; this bill does not do that. Exclude employers that hire undocumented workers from government contracts and foreign subsidies and make sure that is a fact; this bill does not do that.

Overall, we need to stop the hypocrisy, and we need to deal with the reality. It is the hypocrisy of failing to acknowledge that the undocumented worker comes to this country at our behest and that they make this economy work. We should be discussing the legal framework that addresses these realities, that encourages assimilation, becoming one people and one Nation.

□ 1800

I believe many supporters of this bill are concerned with the changing face of this country when what they are doing today and tomorrow will be changing the heart and soul of this country, which matters much more. The nature of those concerns happens to be superficial, just as this legislation is superficial. If this legislation does not fail now before it becomes law, it will fail later after it becomes law. I ask my colleagues, do not vote for failure.

Mr. KING of New York. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia (Mr. LINDER), the chairman of the Subcommittee on Prevention of Nuclear, Chemical and Biological Attacks.

Mr. LINDER. Mr. Chairman, I thank the chairman for yielding this time, and I want to commend both Chairman KING and Chairman SENSENBRENNER for being able to work together and bring this legislation to the floor. This is not a perfect bill, but it is a very, very good start.

Mr. Chairman, I rise in support of H.R. 4437 and urge my colleagues to

join me. While much of our Nation's attention is rightfully focused on hostilities abroad, I am pleased that the House is working to uphold the other half of its responsibility to protect the American people, namely, the prevention of dangers here at home.

It is widely acknowledged that issue one of illegal immigration must be addressed on two major fronts, the first of which being the prevention of illegal entry into the United States, and the second, concentrating on finding, documenting and in most cases deporting illegals already within our borders. The bill before us addresses both of these contentious points.

It appears that protecting our borders has drawn the ire of some, including our neighbors to the south, who have called our effort today ''disgraceful and shameful'' and question whether the economic prosperity of our country will be adversely affected by our actions.

My response is that until they fully grasp the concept that a lack of control at the border allows in not only those seeking a better life in this country but those also seeking to destroy us, I, for one, will respond that the United States has a sovereign right and responsibility to protect its own domestic interests as it sees fit.

I agree with the assessment of many regarding the positive contributions of those from other nations, without whom many components of our economy could be hurt.

But, frankly, today's debate is one of security, not commerce. If we are to believe that our immigration laws simply have no value, as our current policies would have us believe, should we then simply throw them all out, the entire lot of immigration law? I hope not.

The American people want economic prosperity, high-quality goods and low prices, all of which I support. My concerns, however, are very simple. If we fail to secure our borders, to prevent the entry of individuals illegally into this country and to uphold the rule of law, then we waste our time worrying about the strength of our economy, for an attack involving a weapon of mass destruction, carried by a terrorist who brought that weapon across our borders, would certainly destroy it all, and preventing that scenario, which is the mission of my subcommittee, the Homeland Security full committee and the Congress as a whole, should be reason enough to support this bill.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself 3 minutes.

It is interesting that in the face of a massive failure of administration of our border security, the Congress responds not with enhancing the remedies and its personnel so that we can enforce the law, but instead comes up with a bill to dramatically change the law.

I mentioned earlier, we have cited and released individuals who never showed up, 80 percent of the time or better. And what did the administration do? They just kept doing it. That is the definition of insanity, doing the same thing over and over again and expecting a different outcome. Well, changing the law is not going to change the fact that this has been a massive failure of administration. Making 11 million people without their papers aggravated felons is not going to remedy the failure of the administration at the border.

The gentleman from Michigan (Mr. CONYERS) mentioned that there was a provision that could criminalize churches. In fact, it is section 202 in the base bill. It provides that people who assist those who do not have their papers could be guilty of a crime and, in fact, requires the seizure of property. We know that some of our churches that are helping the homeless do not ask for papers when they hand out the soup. In this bill it requires seizure of their church properties.

I want to mention another provision I touched on earlier, and that is section 404 of the bill. It does not make any sense at all when we are talking about the need to secure our borders, which every country has a right and an obligation to do, to reinstate the exclusion of legal persons based on the place they were born.

There is a sad part of American history. In 1882, the 47th Congress of the United States passed a bill called the Chinese Exclusion Act, and that bill haunted this country, really, into 1943. It provided that people from China could not come.

In section 404, we are de facto reinstituting the Chinese Exclusion Act because we are saying that countries that do not cooperate with us, currently the State Department tells me it is China, Vietnam, Ethiopia and Cuba, then we have the ability to exclude people who are born in those countries.

Let me just give you an example. I have a lot of Vietnamese Americans in my district. Do you think the Communist government in Vietnam cares if we do not let a refugee from their country into the United States? Do you think that the communists in China really would be concerned if a Chinese citizen was escaping from China, because they are facing a forced abortion in China? Do you think that enhancing the Communist governments of Cuba, Vietnam and China is really about securing our Nation's borders? I think not.

This bill is defective in so many ways that a wide number of groups have opposed it. The minority leader, Ms. PELOSI, will submit the list for the RECORD.

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

Mr. KING of New York. Mr. Chairman, I yield 4 minutes to the gentleman from Alabama (Mr. ROGERS), the chairman of the Subcommittee on Management, Integration and Oversight.

Mr. ROGERS of Alabama. Mr. Chairman, I rise today in strong support of this bill and in particular the provisions of this bill that help secure our border and protect our homeland.

The bill we are considering today contains many key border security provisions from H.R. 4312, the Border Security and Terrorism Prevention Act of 2005, which was passed recently out of the Homeland Security Committee by a unanimous voice vote.

I would like to note that H.R. 4312 was the first major bill reported by the committee under the chairmanship of Mr. KING, and we appreciate his leadership.

Mr. Chairman, we have nothing less than a crisis situation on our borders. This past August I led a congressional delegation to our southern border with Mexico, and we saw firsthand vast areas without fences and densely populated areas where illegal aliens find their way across our border.

And I would urge you, Mr. Chairman, and our colleagues to refer to these individuals as what they are. They are illegal aliens, not the benign, friendly, undocumented worker phrase. They are illegal aliens.

I was impressed during this visit with the dedication and level of our Border Patrol agents. However, they desperately need more resources.

We also need to make sure that they have more cameras; more vehicles; and in particular, more canine assets.

Section 108 of this bill that we are considering today in particular will strengthen border security by increasing the number of canine detection teams working with our Border Patrol agents. These detection dogs are instrumental in finding concealed humans, explosives, drugs, and bulk cash.

We also need to ensure new border surveillance equipment is functional and cost efficient.

Section 109 of this bill addresses these concerns. It requires that a DHS Inspector General conduct reviews of each contract action over $20 million relating to the new Secure Border Initiative.

With thousands of new Border Patrol agents being hired, we also need to ensure they are trained as cost effectively as possible. Therefore, section 110 of this bill would instruct the GAO to evaluate and review the cost of Border Patrol training.

H.R. 4437 includes many other strong border security provisions that will improve the safety and security of this great Nation.

I commend Chairman KING for his leadership on these issues, and I urge my colleagues to support this legislation.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1½ minutes to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), a member of the Homeland Security Committee.

Mrs. CHRISTENSEN. Mr. Chairman, I too want to commend Chairman KING and Ranking Member THOMPSON for their work on legislation which passed on a voice vote out of our Homeland

Security Committee and which is included in this bill before us today.

Mr. Chairman, securing our Nation's air, land, and sea borders is a difficult, yet critical, task. While H.R. 4437 takes some good steps in addressing this problem, such as authorizing more Border Patrol agents and creating a new Border Patrol unit in my district, it also includes a number of harsh and contentious provisions which makes it impossible for it to receive the same kind of bipartisan support that was achieved in the Homeland Security Committee.

So while I am pleased that the passage of this bill would mean that over 175 miles of unprotected and open borders in the U.S. Virgin Islands, a gateway of choice for smugglers into the United States, would finally receive protection from a newly established Border Patrol unit, I remain deeply concerned that H.R. 4437 would be excessively harmful to immigrants, families, businesses, and communities. It was a much better bill when it left out of the Homeland Security Committee. And I would hope that as we continue the process of moving this bill through Congress, we would find a way to develop a consensus on the final form that the legislation would take, which would protect our borders without doing harm to immigrants and Americans of all backgrounds.

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume and yield to the gentleman from New Jersey (Mr. LOBIONDO), the chairman of the Subcommittee on Coast Guard Maritime Transportation, for the purposes of a colloquy.

Mr. LOBIONDO. Mr. Chairman, I thank the gentleman for yielding this time, and I thank him for engaging in a colloquy to clarify the intent of this bill regarding our Nation's seaports.

Mr. Chairman, I would like to ask you if it is the sentiment of the chairman that this bill does not intend to duplicate or supersede existing policies and strategies that have been developed specifically for the maritime domain as part of the Strategy for Maritime Security or the National Maritime Transportation Security Plan, because these strategies provide a comprehensive framework to enhance maritime domain awareness including activities that may affect or threaten our maritime border security.

Mr. KING of New York. I would say to the gentleman that it is my intent that maritime border security strategies called for in H.R. 4437 should be developed under the framework of the Strategy for Maritime Security and in a way that complements the maritime security strategies that are being implemented under that plan

Mr. LOBIONDO. As the chairman knows, the Coast Guard has been identified as the lead Federal agency with responsibilities over maritime domain awareness. The Coast Guard's efforts to enhance awareness of activities in the maritime domain, in addition to the services role as the lead law enforcement agency in the maritime environment, enhance the Nation's capabilities to maintain security along our maritime borders. The Coast Guard carries out missions every day to interdict illegal immigrants, drugs, and suspect cargo and crew before each reaches the United States.

I ask the chairman if it is his intent to continue this House's support of the Coast Guard's efforts to maintain heightened border security and that this act would not hinder these critical Coast Guard missions.

Mr. KING of New York. Nothing in this act should be understood to divert existing responsibilities for maritime border security or more generally any component of security in the maritime domain from the Coast Guard to any other entities in the Department of Homeland Security.

Mr. LOBIONDO. I thank the chairman for clarifying these very critically important issues regarding our maritime homeland security and the Coast Guard.

Mr. KING of New York. Mr. Chairman, I reserve the balance of my time.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. HINOJOSA).

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

Mr. HINOJOSA. Mr. Chairman, I rise in strong opposition to this ill-conceived and harmful legislation, H.R. 4437. Our immigration laws are in need of a complete overhaul. There are bipartisan proposals on the table, but the majority is not interested in solutions. It is interested in finding its next wedge issue for this 2006 campaign season. Our Nation will suffer as a result.

For the past 20 years we have taken a get-tough enforcement-only approach to this immigration problem, and the result has been the situation we find ourselves in today.

Those of us who represent border districts live on the front lines on the immigration issue. Let me give you a view from where we live. Our schools, hospitals, law enforcement, and social services are being stretched to the limit. At the same time, we have experienced a surge in economic activity and growth. My area has one of the fastest rates of job growth in the Nation.

□ 1815

Immigration is both a challenge and an engine for growth. We need laws that are up to the challenge.

For a perspective from the front lines, listen to the words of John McClung, the president of the Texas Produce Association: ''Attempting to solve our border problems by passing draconian 'enforcement' legislation, absent a credible guest worker program, would be enormously destructive to the economy, unfair to employers, ruinous to our relations with Mexico, and, yes, that really does matter.''

Mr. Chairman, I will submit the full text of this letter into the RECORD.

This bill will not help families. In my district, our caseworkers and our advocacy organizations, on a daily basis, work with families who have been waiting 10 years or more to be reunited with loved ones—a spouse, a sister, a child, a grandparent. The backlogs are enormous, and the system is capricious and error-ridden. Call for information on your immigration case, and the temporary contract worker at the call center with little to no training in immigration rules will give you a different answer every time.

This bill does nothing to fix our immigration system. It is not reality-based. It should be rejected.

TEXAS PRODUCE ASSOCIATION,
*Mission, TX, December 13, 2005*

Hon. RUBEN E. HINOJOSA,
*Washington, DC.*

DEAR REP. HINOJOSA: I am writing the Texas Congressional delegation in the belief that the Congress is perilously close to passing ill conceived immigration reform legislation that will do grave injury to this country, and fail in its objectives.

My office is about five miles from the U.S./Mexico border. My home is about a third of a mile from that border. I am as mindful as any American—more than most—of the surge of illegals into this country, and I certainly understand, and sympathize with, the need most of us feel to return to the rule of law. From the front yard of my house in the rural Rio Grande Valley, I often see groups of illegals trudging down the road. Many times I've watched the Border Patrol agents chase them down, cuff them, and haul them away. I can tell you that there's no satisfaction in it, no sense of the good guys prevailing. Only a sad recognition that this country's immigration laws are a dismal failure by any measure: economic, humanitarian, political. The saving grace is that enough illegals, get through to do most of the jobs that need doing, as disgraceful, flawed and inefficient as our nonsystem may be.

At least, they get through for now. I represent an industry that employs thousands of semi-skilled laborers, and increasingly is unable to find anywhere near an adequate supply of willing workers. Most people don't want to do stoop labor in the fields, no matter the pay scale. They certainly don't want their kids doing it. So we truly need guest workers from Mexico or Central America or wherever. So does the restaurant industry, and the construction industry, and every other industry that requires numbers of semiskilled workers. And what is the U.S. Congress doing about this mess? Preparing, it appears, to make a very bad situation a lot worse.

Most of us get it down here in rural Texas.

Why can't more members of Congress get it?

Is the need to act tough for the media so compelling? Is the ideologue mantra of no amnesty (adjustment of status?) for lawbreakers going to be allowed to jeopardize American agriculture, and conceivably the national economy? Is the fact that these illegals want essential jobs in this country that none of our own citizens will take at any realistic pay rate of no consequence at all because they're ''illegal'' or ''undocumented''?

Attempting to solve our border problems by passing draconian ''enforcement'' legislation, absent a credible guest worker program, would be enormously destructive to the economy, unfair to employers, ruinous to our relations with Mexico (and yes, that really does matter), and ultimately unenforceable. The Sensenbrenner bill just passed out by the Judiciary Committee (H.R. 4437)—the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005—is a grand example. It relies on bludgeoning U.S. employers into submission with fines and administrative procedures, but only after denying them the only source of labor they might realistically have hoped for. As I hope you recognize, it's just one of several one-sided bills designed to appease the ''broken borders'' crowd.

Here's what we're asking. The Sensenbrenner bill needs to be shelved, as do all proposals that do not include a practical alien worker provision. To require electronic verification of employment eligibility without a smart guest laborer program, and without some form of ''amnesty,'' won't succeed. For those who gag on the idea of amnesty, the real question isn't determining how to avoid rewarding scofflaws—the real issue is deciding to avoid punishing this country. The produce industry has long supported the Craig-Kennedy AgJOBS bill (Flake-Kolbe on the House side), and continues to do so. If you and your colleagues can engineer a better bill than Flake-Kolbe, that would be great. If you can't, pass AgJOBS. Either way, please help lead the nation away from a politically expedient catastrophe.

Thank you for your consideration.

JOHN M. MCCLUNG,
*President and CEO.*

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Mr. KING of New York. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Chairman, I would like to thank Chairman KING and Subcommittee Chairman LUNGREN for their leadership in bringing this to the floor.

I have serious problems with some non-Homeland Security parts of this bill, but I want to praise the Homeland Security section because I think they have done a terrific job.

I would like to thank them in particular for two key provisions that we have been working to fix ever since Homeland Security has broken them. One is in section 502, the Office of Air and Marine Operations, AMO; and in section 503 relating to the Native American Customs Patrol Officers known as the Shadow Wolves.

Section 502 relates to the AMO, which has historically been responsible for interdicting drug smuggling airplanes and ''go-fast'' speed boats; for supporting Customs drug investigations and raids as well as migrant interdictions; for providing airspace security in the Nation's capital and at special events like the Olympics; and for providing crucial maritime patrol aircraft, most notably the fleet of P–3 radar planes, for drug interdiction operations in the Caribbean and Eastern Pacific. Now they are being deployed as a picket fence. It makes no sense, and this bill helps to start to fix that before we destroy one of our best units in the United States Government.

In section 503, the Shadow Wolves have fallen victim to the same kind of over-compartmentalized thinking that threatens AMO. The Shadow Wolves are one of the last remaining Customs Patrol Officer units in the country. They control one of the critical points of the border and operate on the Tohono O'odham Indian Reservation in southern Arizona, which has 70 miles of the U.S.-Mexican border running through it.

Here we have a Native American group that has been honored all over the United States and the world, something we need at several other parts of the border, and they want to break them up and make them fit some arbitrary thing, when they are really more like detectives than patrol officers, and put them as part of the Border Patrol. I do not have any axe to grind with the Border Patrol. I think they do a great job. But units like AMO and the Shadow Wolves do not fit this cookie cutter approach in trying to systematize this agency, and this bill fixes that before we lose some of our most effective anti-drug units in our entire government. And I thank the chairman and the subcommittee chairman for finally addressing this question.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. REYES), who had a distinguished career in the Border Patrol before being elected to Congress.

Mr. REYES. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, the well-known comedienne Joan Rivers used to say: Can we talk? And that is what I would like to say tonight, is, can we talk about a terrible bill, a bill that may feel good and make some people think they are voting for border security and to do a better job of monitoring the borders of our Nation but really is not?

We can do much better. This bill reminds me a lot of the automobile that was built by Dr. Seuss that looked like an abomination. This bill has fenders sponsored by Congressman ISSA. It has got a horn and a steering wheel sponsored by somebody else. It has got an engine that belongs to somebody else. And in its totality, it does nothing to address the issues and the problems that we have as a Nation.

It talks about getting tough on smugglers, and do my colleagues know what it does? It criminalizes immediate family members. That means, if an individual is bringing in his wife or his children or his parents, he gets zapped just like that individual that is bringing in people for profit. Terrible.

It talks about mandatory sentencing. That translates, if we are serious about that, to billions of dollars in prison construction. It does nothing for assistant U.S. Attorneys who are going to have to prosecute all these new felons. It does nothing to provide new judges that are going to be needed in this process. And it certainly is silent on U.S. marshals who, today, their vehicles average about 140,000 miles when the replacement suggested mileage is about 95,000.

But, oh, no, we are not doing anything about the things that we really need on the border. We are doing things that are mean spirited, things that are not in keeping with the best traditions of a Nation that was founded by our immigrants. It betrays our legacy. It insults our immigrants. And I will tell my colleagues, Mr. Chairman, we can do much better.

In fact, last week, in my district, I was informed that two young men that had just come back from Iraq, two young men that I have gotten to know because their father a long time ago came into this country as a bracero; he overstayed, raised a family here, and under the provisions and amendments that are proposed in this legislation, those two young men would be ineligible to be U.S. citizens. But, oh, yes, by the way, that is okay that they can go to Iraq and fight for the principles and for the rights of all people in this country.

This is a terrible bill. I am opposed to it. I recommend that all our colleagues oppose it. Let us talk about doing a better job for this country by doing a better job with immigration.

Mr. KING of New York. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE), the new member of the committee, who, also, is back from surgery.

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I rise today in strong support of H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005.

I am proud to be a new member of the Homeland Security Committee and appreciate this opportunity to work with Chairman KING on this legislation.

Every weekend, when I go back home to Florida, I hear from constituents that our country is being overrun by illegal immigrants. Today, we truly show our constituents that Congress is listening to them and that we mean business.

For starters, the bill requires mandatory detention of illegal aliens, eliminating the Department of Homeland Security's dangerous catch-and-release policy. Catch and release does nothing other than allow the Border Patrol to apprehend illegal immigrants then release them with nothing but a flimsy promise that they will return for a deportation hearing. Ha, ha. It does not happen. As Members may guess, 75 percent of them do not show up for their court date and are free to roam throughout our neighborhoods. That policy has existed for far too long. This bill requires that law enforcement hold illegal aliens until they are deported.

I am also pleased that the chairman was able to include some language in the bill that authorizes Homeland Security to engage in competitive contracts with companies to help manage the transportation of illegal aliens. Allowing the Secretary to engage in

these contracts will free up these resources and assist the department as it eliminates the harmful catch-and-release policy.

Mr. Chairman, our Nation's lawmakers did not craft our immigration laws as suggestions or reading material for insomniacs. Our laws were made to ensure proper, secure and legal entry into our country. This bill helps to accomplish exactly that, and I urge my colleagues to support it.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1½ minutes to the gentleman from Maryland (Mr. HOYER), our distinguished whip.

Mr. HOYER. Mr. Chairman, let us set the record straight. This legislation is not real. It is a cynical political ploy.

Do not take my word for it. Grover Norquist, one of your heroes, said this, this morning: ''The good news is that the legislation that is being voted on, even with amendments that would improve it and make it less problematic, is not a piece of legislation that is going to pass the Senate and be signed by the President.'' So we are making political points, not policy.

This bill, even if it did become law, would not solve the real issue that confronts our Nation: the Federal Government's failure to ensure that our borders are secure. Who says that? George Bush, President of the United States, says that.

Let no one be mistaken. Our Nation has a border security problem. And it has an immigration problem. These problems were not created overnight, and they will not be remedied with a misguided, mean-spirited proposal that the majority has put on the floor today. The fact is, Republican inaction has left the United States ill-prepared to prevent or respond to another terrorist attack on our soil. Do not take my word for it. Tom Kean, former Republican Governor, and the 9/11 Commission gave Congress and the White House grades of D and F on the implementation of 17 of the commission's recommendations. This legislation would do little to prevent would-be terrorists from entering our country.

Democrats are for the rule of law. We want to get border security right. But this bill is not about solving problems. It is all about harsh, punitive measures that will not work.

Oppose this legislation.

Mr. Chairman, let's set the record straight: This legislation is a cynical, political charade.

But don't take my word for it. Just listen to Grover Norquist, the President of Americans for Tax Reform and a White House confidante.

This morning he is quoted as saying: ''The good news is that the legislation that is being voted on, even with amendments that would improve it and make it less problematic, is not a piece of legislation that is going to pass the Senate and be signed by the President.''

This bill, even if it did become law, would not solve the real issue that confronts our Nation—the Federal Government's failure to ensure that our borders are secure.

Let no one be mistaken: Our Nation has a border security problem. And, it has an immigration problem.

These problems were not created overnight. And they will not be remedied with the misguided, mean-spirited proposal that the majority has put on this floor today.

The fact is, Republican inaction has left the United States ill-prepared to prevent or respond to another terrorist attack on our soil.

The 9/11 commission just issued a report card that gave Congress and the White House grades of D or F on the implementation of 17 of the Commission's recommendations.

This legislation would do little to prevent would-be terrorists from entering our country.

Democrats are for the rule of law, we want to get border security right.

But this bill is not about solving problems. It is all about harsh, punitive measures that will not work.

This Republican Congress has simply failed to provide the resources that our Federal law enforcement agencies need to get the job done.

And, we certainly do not have the detention space necessary to keep all the undocumented migrants we detain—much less the millions of people that this bill would force us to incarcerate.

So, after allowing this situation to become a crisis, Republicans today offer a purely political proposal that promises a quick-fix, a magic bullet: Make them all criminals—the workers, their neighbors, and their employers.

And, make local and State law enforcement officials do the job of the Federal Government.

Democrats have a different approach. We want to take on this challenge in a comprehensive fashion.

We would do what's necessary to protect our borders, give law enforcement the tools that they need, ensure that our businesses have the workers they require, allow families to stay united, and honor the principles of inclusion and freedom that have always been our hallmark.

I urge my colleagues to vote against this bill.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Mr. Chairman, I thank the subcommittee chairman for yielding me this time to speak on this issue.

I rise to strongly support the reform of our border security and enforcement and strengthening of current law.

My constituents keep asking me: When are we going to do something about illegal immigration? When are we going to take this problem seriously? Our borders must be secure, and our laws must be enforced.

America is a good and a generous Nation. We open our arms to the world. It is that spirit that makes us unique and inviting and vulnerable. And the world has changed, and our Nation is not secure unless our borders are secure. And it ought not be too much to ask to bring accountability to the prevention of illegal immigration. And is that not what it is all about, accountability? Those who break our immigration laws should be held accountable. Those who hire illegal aliens should be held accountable. And those who turn the other way and claim that there is no problem should be held accountable.

Mr. Chairman, we have a large and a growing crises in our country, and it is our responsibility to act on behalf of our constituents and our Nation. Simply put, if our borders are not secure, our Nation is not secure. The time to act is now.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), our distinguished Democratic leader.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman for yielding, and I want to commend her for her tremendous leadership on keeping our borders safe and strong and secure and for moving toward a comprehensive immigration policy.

I also want to thank the ranking member of the Judiciary Committee, Mr. CONYERS; and the ranking member of the Homeland Security Committee, Mr. BENNIE THOMPSON, for their outstanding work in keeping America secure.

Mr. Chairman, the previous speaker said in his opening remarks, When are we going to take this issue seriously, the issue of borders and the issue of immigration?

That is exactly what I would like to know. For a long time now, there have been Members on both sides of the aisle, led by Mr. KOLBE on the Republican side, who have called for comprehensive immigration reform. That would be taking this issue seriously.

We ask the same question of the President. When, Mr. President, are we going to take this issue seriously? And instead of having one bad bill after another come to the floor, we can have comprehensive bipartisan reform. It does exist now in the Kolbe-Gutierrez legislation that is also sponsored in the Senate by Senator MCCAIN and Senator KENNEDY. I want to commend Mr. GUTIERREZ on our side of the aisle for his leadership as well.

Broken borders, that is an oxymoron, something we cannot tolerate. Borders, by their nature, are our definition as a Nation and our protection as a country. Broken borders, they do not exist. We cannot tolerate them.

□ 1830

So let us say from the start that we all in this body, and I know I can speak very firmly for the Democrats, support strong border control, and it must be part and the first part of any comprehensive immigration reform. Our obligation as elected officials is to keep the American people safe, and our borders are one of our early lines of defense to do that. It used to be our first and only line of defense, but in this age of technology, more is possible.

In our caucus, we have a true expert on the issue of border security, the gentleman from Texas, Mr. REYES, who just recently spoke on the floor. He is ready to further these efforts. Over and over, Democratic initiatives to make our borders more secure have been soundly rejected by the majority of the Republicans and the Republican leadership.

Democrats also support enforcing laws, current laws, against those who came here illegally and those who hire illegal immigrants; yet the Bush administration has refused to do just this. There is all of this talk about illegal immigration to the United States and going after those workers who are working here illegally, and we should, but we also must have employer sanctions. Where are these people working? Why are we not enforcing the law against employers who hire illegal, undocumented people here?

The Bush administration has prosecuted only three employer sanctioned cases in the last fiscal year; only three cases. When, yes, when, are we going to take this issue seriously? That is my question, my colleagues.

The point employer clarification provision in this bill, however, would have a big percentage of error built into it because it is so unwise and would put enormous financial burdens on American businesses, again unwisely. It would be discriminatory in questioning the legal status of not only every newcomer to our country but anyone who looked like a newcomer to our country.

Democrats have led the way to meet our urgent homeland security needs as well, not only at our borders but in all aspects identified by the 9/11 Commission; at our ports, at our nuclear facilities, at our chemical plants and rail yards. But Republicans have not done so, even 4 years after 9/11. So if we want to talk about broken borders, as I said earlier, those borders as they define our country geographically, we can also be invaded in ways that go well beyond our borders, and that is why the 9/11 Commission has given the President and the Republican Congress a failing grade.

For the first time in our history, this bill would make it a Federal crime instead of a civil offense to be in the United States in violation of immigration laws or regulations. This provision would turn millions of immigrants currently here into criminals, hindering their ability to acquire any legal status, and would effectively frustrate the proposals that would provide real immigration reform.

Under the guise of an expansive definition of smuggling, it could make criminals out of Catholic priests and nuns, ministers, rabbis and social service workers who provide assistance and acts of charity to those in need. It would impose prison sentences of up to 5 years on those who answer God's call and provide assistance to those in need. This is from the party who claims to promote religious and family values.

I will submit for the record, Mr. Chairman, a list of organizations that are opposing this bill. From the Jewish community, from the Methodist community, from the Presbyterian community, from the Catholic community, from the Lutheran community, from the Arab community, from almost every denomination that you can name; the list goes on and on of religious people of faith who are opposing this legislation.

Mr. Chairman, it simply does not take the immigration and broken borders issue seriously. It does not. It misses the mark completely by its arbitrary provisions, and, again, it misses an opportunity for comprehensive immigration reform.

Mr. Chairman, we all know what we must do. Democrats have long called for strong border security, effective law enforcement and for comprehensive immigration reform, not this punitive, mean-spirited legislation that does nothing to weed out terrorists.

This Republican bill before us is an attempt to belatedly address some border security needs but fails to provide real security, as I said, as envisioned by the 9/11 Commission. It is not comprehensive immigration reform, and that is what we need. Instead, Republicans have proposed a bill that is an abomination of the worst kind. It calls upon the worst political and most craven impulses. It is a failure of leadership. It is a failure of moral leadership.

All in all, what we must do as elected officials, we have the responsibility to make the American people safer and to make America stronger. We can make America stronger, not only at our borders but in upholding our values and our principles.

I want to commend, again, Mr. KOLBE and others who have worked with Mr. GUTIERREZ and others on our side of the aisle to make America safe and strong, because I know that, together, America can do better.

Mr. Chairman, I include for the RECORD the list of organizations opposing this legislation.

LIST OF GROUPS OPPOSED TO BORDER SECURITY BILL

LEAD NATIONAL ORGANIZATIONS

League of United Latin American Citizens (LULAC), Mexican American Legal Defense and Educational Fund (MALDEF), National Council of La Raza—NCLR, National Immigration Forum, American Civil Liberties Union, National Asian Pacific American Legal Consortium, National League of Cities, People For the American Way, NALEO—National Association of Latino, Elected and Appointed Officials, American Jewish Committee, Anti-Defamation League, Catholic Charities USA, Episcopal Church, Episcopal Migration Ministries, Leadership Conference for Civil Rights, American Jewish Community, National Immigration Forum, ACORN, and US Action.

FAITH GROUPS

American Jewish Committee (AJC), Amnesty International USA, Arab Community Center for Economic and Social Services, Arizona Interfaith Network (AIN), Episcopal Migration Ministries, FaithAction, Jesuit Refugee Services, Jesuit Conference of the United States, Jewish Federation of Greater Philadelphia, Justice for Immigrants—Catholic Coalition, Lutheran Immigration and Refugee Service (LIRS), Presbyterian Church USA, National Catholic Association of Diocesan, U.S. Conference of Catholic Bishops, Church World Service/Immigration, Refugee Program, Catholic Charities of Dallas, Inc., Catholic Charities of Des Moines—Iowa, Catholic Charities of the Diocese of Santa Rosa, and Catholic Charities of the Diocese of Stockton.

LABOR

AFL–CIO, Service Employees International Union, American Federation of Teachers, and United-Here.

MINORITY GROUPS

American-Arab Anti-Discrimination Committee, Polish American Association, Asian American Justice Center (AAJC), Asian American Legal Defense and Education Fund, Asian Pacific American Legal Resource Center, Asian Pacific American Community, and Organization of Chinese Americans.

BUSINESS GROUPS

Alliance for Worker Freedom, American Council on International Personnel and Society for Human Resource Management (Joint Letter), American Hotel & Lodging Association, American Nursery & Landscape Association, American Road and Transportation Builders Association, American Trucking Associations, Americans for Tax Reform, Associated Builders and Contractors, Associated General Contractors, Essential Worker Immigration Coalition (EWIC), HR Policy Association, International Foodservice Distributors Association, International Franchise Association, National Association of Home Builders, National Association of Manufacturers, National Club Association, National Council of Chain Restaurants, National Restaurant Association, National Retail Federation, National Roofing Contractors Association, National Utility Contractors Association, Plumbing-Heating-Cooling Contractors—National Association, Retail Industry Leaders Association, Small Business & Entrepreneurship Council, Society of American Florists, The Associated General Contractors of America, U.S. Chamber of Commerce, U.S. Hispanic Chamber of Commerce, U.S. African American Chamber of Commerce, and US-Mexico Chamber of Commerce.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield 1 minute to the gentleman from New Hampshire (Mr. BASS).

Mr. BASS. Mr. Chairman, I thank my friend from California for yielding me time.

Mr. Chairman, I rise in support of this bill. Nothing is more important than good border security for our national security. Nothing is more important than enforcing the law of the land. And we cannot go on indefinitely with immigration laws that nobody pays any attention to. Yes, indeed, this is a bill that is courageous. It is bold. Certainly, it is controversial. But it is a step in the right direction, and it moves this issue forward.

What I am most particularly interested in is the committee's acceptance of a provision that Congressman NORWOOD and I brought to the first responders bill that would allow States to use homeland security funds, State police, local police and so forth, to round up illegal immigrants and deliver them to the Feds. In New Hampshire, we spent over $650,000 in State police funds last year doing Federal duties and $200,000 from the Marine Patrol on the sea coast. I think this is a provision that adds flexibility to a bill that needs to be passed in this Congress.

Mr. Chairman, my constituents and constituents all over the country are crying out for a just law to end this

process of having undocumented illegal aliens working and flaunting the law.

Ms. ZOE LOFGREN of California. Mr. Chairman, we are fortunate in Homeland Security to have two of us who serve both on the Judiciary Committee and Homeland Security Committee, and I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE), the ranking member of the Immigration Subcommittee of the House Judiciary Committee.

Ms. JACKSON-LEE of Texas. Mr. Chairman, what disappoints me most on this legislation is, the men and women that are on the front lines, the Border Patrol agents, are the most left out of this particular legislative vehicle.

Quickly, Mr. Chairman, I will tell you that an amendment that was offered by myself and Mr. THOMPSON, the ranking member, specifically gives tools to those Border Patrol agents, who I believe are the people that are entrusted with the responsibility of securing the borders by the American people.

We do not have aircraft and watercraft, which are valuable tools. We do not have the helicopters that are necessary. We do not have the necessary Border Patrol agents, which in my amendment to H.R. 4044, the bill that we offered, the homeland security legislation, we would have added 10,000 more agents. We would have added provisions about recruitment and retention problems so that we would have an experienced Border Patrol agency.

Mr. Chairman, my friend, Mr. REYES, indicated the importance of a secure homeland with the right kind of personnel. We would have raised the base pay for a journey level Border Patrol agent to a GS–13. We leave out the very men and women on the front lines, and I would hope we will go back and fix this legislation to do that.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I am pleased to yield 1 minute to the gentlewoman from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Chairman, I rise in strong support of this bill. If we fail to secure our borders, we could face an even greater terrorist attack than 9/11. We live in the greatest country on Earth. It is no wonder that so many people from other nations want to live in a land of such opportunity. I certainly do not want to stop people from wanting to live and work in this great country. My paternal grandparents were legal immigrants to America several decades ago. But we have a responsibility to keep this great Nation safe and secure for future generations.

If we continue to neglect our porous borders and the potential harm that can come from that, then we might as well bury the American flag in the sand. Every day that we fail to secure our borders is another day when a hardened criminal or even a terrorist might slip through. We risk the lives of our sons and daughters and risk the longevity of this great Nation.

I am certainly not saying that all of those who have come through our borders illegally are criminals or terrorists, but the possibility of letting in just one who is could cost many American lives and wreak havoc on our way of life.

Securing our borders is not closing them. I applaud Chairman SENSENBRENNER and Chairman KING and their staffs for their tireless efforts on this bill to secure our borders and prevent potential terrorist attacks.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, remember at the height of Katrina, that tragedy, and we heard the words, ''Good job, Brownie.'' Well, we have someone equally qualified now in charge of the immigration function in the Homeland Security Department, and I think it is that level of competence that has led us to the problem that we face today, and that is that we have basically dropped the ball, the administration has dropped the ball at the border. They have permitted thousands, tens of thousands, of individuals to promise to appear and then simply to escape into the country.

This bill does not direct the administration to go find them and deport them or have their matter be heard. We used to, on a regular basis during the first Bush administration, the father Bush and the Clinton administration, persistently go and grab criminals after their sentences were served out in State and local incarceration facilities and deport them. The law provides for that. The ball has been dropped on that. This bill does not direct the administration to go find those folks who should have been taken in, who should have been deported.

Mr. Chairman, I have had some questions about section 404 of the act that I have mentioned previously, and I want to spend a moment on that. Incredibly enough, it provides that legal individuals, permanent residents of the United States, could be precluded, barred from reentry if they leave. Let me give you an example of how it would work.

Say your son falls in love with a gal who was born in Cuba. She becomes a legal permanent resident because your son is an American citizen. They go on vacation to London. They try to come back in. Your son gets in, but his wife, a legal permanent resident of the United States, is refused admission. Why? Because Cuba will not accept people who we deport. Now, do you think Fidel Castro cares whether your daughter-in-law is barred or not? I do not think so.

This is a ridiculous provision, and it is punitive towards people who were born in China, in Vietnam, in Cuba and in Ethiopia. It has nothing to do with securing our borders, but it does have a lot to do with the de facto reinstatement of the Chinese Exclusion Act of 1882 and has a very pernicious, very pernicious result for those who have fled communism in Vietnam and also in Cuba.

People are calling in wondering about this bill. They cannot believe that it is true. But let me explain how other provisions would work. The proposal is that individuals who are here without their proper documents, something none of us approve of, would become aggravated felons under this bill. If you are a 10-year-old and you came in here with your parents, you do not have your papers, under this bill, you are an aggregated felon. This will not make up for the Bush administration's failure at the border.

Mr. KING of New York. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this has been a very lively and interesting debate. I would hope that as we go through the amendments and into tomorrow, we would keep focusing on the fact that everyone here is well-intentioned.

We face a crisis on our borders. We face a national crisis. We face a crisis involving international terrorism, and we must fix it. We must take significant first steps. That is what this bill is.

We can have honest disagreements, but it is wrong, I believe, to be impugning motives, to be suggesting someone is anti-immigrant.

For instance, the gentlewoman from California is talking about section 404. What that does is give the Secretary of Homeland Security the right, in consultation with the Secretary of State, to take action if the Secretary deems it necessary.

□ 1845

That to me is an appropriate power, an appropriate discretionary power to be given to the Secretary of Homeland Security at a time when our homeland security is being threatened. It is irresponsible to not give the Secretary that power, and that is what this is about. It is a power, by the way, which the Secretary of State has had for many years.

As we go forward, let us keep in mind that this country was built by immigrants, that immigrants are essential. They are the life's blood of our Nation. All of us are descendents of immigrants. At the same time, for our country to survive, for our country to be secure, for our country to be safe we must be as certain as we can be that the immigrants entering this country deserve to be in this country, that they are no threat to this country.

As long as we have this mass entrance of millions and millions of illegal immigrants, we do not have that security that we need. We do not have the sense of safety that we need, and we are not protecting ourselves to the extent we must if we are going to avoid having another September 11.

I lost many people in my district on September 11. I do not want another 9/11 commission to come back in several years and say why did you not close

the borders, why did you not allow another 9/11 to go forward, to happen? Why could you not stop another 9/11? Because you did not have the guts to take the tough action.

We are being confronted here by many forces including big business. Big business does not want this. We also have advocacy groups that do not want it. We cannot yield our responsibility to any outside pressure groups, whether they be big business or advocacy groups. I urge the adoption of this legislation as we go through this process.

Mr. HONDA. Mr. Chairman, I rise in strong opposition to this measure.

Border security is a critical component of our nation's security, but we cannot have true border security without addressing comprehensive immigration reform.

As U.S. Homeland Security Department Secretary Chertoff pointed out,

"[t]he problem of immigration is one that's been with this country for 20 years. So we are digging ourselves out of a hole which it took 20 years to dig ourselves into."

During the past twenty years, Congress has been taking an enforcement only approach which has put us in the "hole" that Secretary Chertoff referenced.

If you want to get out of a hole, the first step is to stop digging.

The Border Security bill we have today will only worsen an already broken immigration system and it represents the latest in misguided enforcement only approaches.

In the past few years we have passed the Patriot Act, the Real ID act and now we are further expanding a big brother form of government by taking up this flawed bill.

To fix our immigration system we must uphold American values by reuniting families, providing earned legalization for immigrants who have proven to be law abiding members of society and as the president has said, develop a guest worker program.

Reuniting families is of particular concern for Congressional Asian Pacific American Caucus. Our family preference immigration system has not been updated in more than a decade, and an increasing number of families face periods of separation of up to twenty years.

Family reunification is impeded by immigration backlogs and by outdated quota systems. The backlog for processing children of permanent residents to come to the U.S. is unconscionable if we are a nation that truly believes in family values.

Earned legalization is important to the many Asian Americans who are here working hard, paying taxes and need a chance to adjust their status.

A fair, efficient and sensible guest worker program is also needed to provide a labor supply for American employers.

Again, the real solution requires a comprehensive approach, not a border enforcement only measure.

H.R. 4437, a bill that deals with enforcement only, ignores the reality of our current immigration challenges and will not be an effective way to address the security of our nation and the well being of our people.

The time has come for Congress to make immigration reform a priority.

Congress is long overdue in passing immigration laws that meet the real needs of families and businesses while reflecting America's tradition of embracing the contributions of immigrants.

Mr. CANNON. Mr. Chairman, I rise today to support HR 4437, the Border Protection, Antiterrorism and Illegal Immigration Control Act.

The debate over our nation's immigration policy has steadily moved from the back of the newspaper to the front page. I should know. I've been working on this issue since I first came to the House of Representatives in 1996.

Americans are rightly concerned about the security and the integrity of our nation's borders because the very system designed to stem the flow of illegal immigrants into our country is broken. Current statistics estimate that we now have at least 10 million illegal aliens in this country.

Mr. Chairman, if we are going to fix this system, it is important that we fix it in the right way, comprehensively, so that we are not back debating this issue within a year.

We need a system that will encourage well-intentioned, contributing aliens out of the shadows so they can be identified. Standing on the soap box, spouting fire and brimstone is not going to do that, but laws implementing a guest worker program will.

From 1990 to 2000, the number of U.S. Border Patrol agents nearly tripled, but illegal immigration increased by as much as 5.5 million. Increasing enforcement resources to keep out willing immigrant workers, as we did throughout the 1990s, has obviously failed.

Mr. Chairman, as most are well aware, I have long stated that enforcement, border security and a guest worker program are the pieces of the puzzle that need to be linked together to allow us to effectively control our border. A broader strategy that includes both enforcement and the creation of adequate legal channels for immigration serves our nation's interests.

Our immigration laws and policies must reflect the realities we face today. Our economy demands workers, but our national security demands that we identify those lurking in the shadows.

An editorial that ran on KSL-TV of Utah last week stated: "Steps must be taken to stop the torrential northward flow of illegal workers. As that is accomplished, attention can focus on rationally dealing with the millions of illegal immigrants already here. A realistic temporary worker program, in some form, must be part of the effort."

Mr. Chairman, KSL has it right. Enhanced enforcement must be a priority for immigration policy, but as part of today's debate, we must realize that we owe it to our constituents to resolve all the issues that contribute to true immigration reform and that includes a guest worker program.

I would like to note that the Mexican government and their President Vincente Fox have taken steps to work cooperatively with the United States to protect our southern border. What often goes unnoticed in the immigration debate is Mexico's efforts to reign in organized crime, stymie drug trafficking and the ongoing cooperation between our Attorney Generals to combat narcotics, illegal immigration and related violence on the border. The OASISS, a prosecution program launched by our countries this year to stop human smuggling by criminal rackets, has helped stem the illegal flow of persons, but there is more to do. President Fox has shown himself to be an ally of America's national and economic security by standing up to the dictators of Latin America, like Hugo Chavez, and this should not go unnoticed.

I encourage my colleagues to support this bill. Broader immigration reform has been outlined by President Bush, and there are ideas in both Houses of Congress that will restore public confidence in a safe and secure immigration system.

I stand committed to seeing comprehensive immigration reform passed out of Congress and sent to the President for his signature. That is what America wants and needs.

I would like to thank Chairman SENSENBRENNER for his tireless work on this issue. I support this bill as the first step in the process towards true immigration reform.

Mr. MARKEY. Mr. Chairman, rise in strong opposition to this bill, which fails to provide the strengthened border security our nation needs to deter terrorists while also leaving many of our internal immigration problems unresolved. This bill claims to address the problem of illegal immigration, but it offers an enforcement-only solution, where a comprehensive strategy is needed. I planned to offer two amendments to improve this bill, Mr. Speaker, but the Republican-controlled Rules Committee refused to permit them to be debated and voted on today on the House Floor. Many of my colleagues also were blocked from offering important amendments.

Shutting out more than 100 amendments certainly represents serious "sins of omission" by this Republican Congress. There are also many "sins of commission" tucked into this bill. For example, the bill:

Subjects members of churches and other humanitarian organizations to criminal penalties of up to 5 years in prison if they provide food, shelter, or health care to undocumented immigrants, even if they are in desperate or life-threatening circumstances; and the bill

Reclassifies 11 million undocumented immigrants—including children—as aggravated felons who could be arrested and imprisoned for more than a year if they are caught.

These provisions do not make us safer. Mr. Chairman, and they do not reflect the values of our nation.

The first amendment I planned to offer today would have tightened security on the millions of cargo containers that enter our country from overseas, from Mexico and from Canada. Seven million cargo containers arrive at U.S. ports every year. These containers represent an important component of our economy, providing consumers with an enormous array of choices. In Massachusetts, the port of Boston—which became an international cargo port in 1630 and is the oldest continually active major port in the Western Hemisphere—handles 1.3 million tons of general cargo and 12.8 million tons of bulk fuel cargos every year. Clearly, such global commerce is critical to the economic health of our country.

At the same, however, cargo containers represent tempting targets for terrorists. Arms control expert Graham Allison has said that "more likely than not", there will be terrorist attack using a nuclear bomb in our country. He has described the detonation of a nuclear explosive device in a cargo container in one of our ports as a nightmare scenario for our country. Steven Flynn, a senior fellow at the Council on Foreign Relations and former officer in the Coast Guard, wrote in his book

America the Vulnerable about ''catastrophic consequences of terror in a box'' delivered by a cargo ship to one of our ports. [Page 84].

To balance the need to participate in the global economy and the security concerns associated with the millions of cargo containers entering our ports every year, the Department of Homeland Security's Customs and Border Security division developed the Customs-Trade Partnership Against Terrorism (C–TPAT). Under C–TPAT, shippers commit to improving the security of their cargo shipments, and in return, they receive a range of benefits from our government.

Specifically, if shippers provide information about their operations to Customs and Border Protection, their goods are less likely to be inspected at the border. They basically receive an ''E-Z Pass'' from our government, sort of like drivers who speed right through toll booths without having to stop.

The problem is that Customs and Border Protection grants these special benefits without verifying that the security information provided by the shippers—is reliable, accurate and effective. According to the GAO, Customs and Border Protection has conducted validations at the facilities of only 11 percent of all the C–TPAT members. [''Key Cargo Security Programs Can be Improved,'' May 26, 2005]

Basically, the C–TPAT program really is a ''STAND PAT'' program. It takes a complacent posture towards port security by giving companies the benefit of speedy approval at the border without checking to make sure that promised security measures actually are in place at their facilities.

Customs and Border Program also has a related program, called ''FAST'', which stands for Free and Secure Trade program. The FAST program requires that trucking companies subject their drivers to background checks and participate in the C–TPAT program. Again, the problem is that the truckers get waved through the FAST lane, but the trucking companies' facilities are rarely, if ever, inspected to validate that the security policies they've promised to implement are fact or fiction.

This makes the FAST program, really the ''FAST ONE'' program, since truckers are pulling a fast one on our country by getting benefits without having to demonstrate the promised security policies.

My amendment would have required Customs and Border Protection to verify the security measures at the facilities of each member of the C–TPAT and FAST programs within one year of the enactment of this bill and twice a year thereafter. Moreover, the amendment would require Customs and Border Protection to establish policies if members do not live up to their obligations under the C–TPAT and FAST programs.

Now, some of my colleagues may argue that we simply do not have the resources to conduct these validations. Or real validations would bring global commerce to a grinding halt.

The numbers simply do not support this assertion. Customs and Border Protection has approximately 100 inspectors to conduct validations, and there are approximately 11,000 ''STAND PAT'' and ''FAST ONE'' members.

If each inspector performed only about 2 validations per week, all the facilities could be validated in less than a year—within 45 weeks or so.

When it comes to these two programs, we should follow the Reagan Doctrine of cargo inspection and Trust and Verify that the shippers are performing as promised.

The second amendment I would have offered today, if the Republican-controlled Rules Committee it in order, deals with the issue of torture of detainees. Mr. Chairman, this issue has received considerable attention recently—and for good reason—but we cannot have a full and open debate today on the House Floor because the Republican majority has shut out my amendment.

Mr. Chairman, my amendment provides that if an alien is apprehended at or between a port of entry or along the interational land or maritime borders of the United States, and is then detained pursuant to the new authorities set forth in Section 301 of the bill, than that alien shall not be transferred or rendered to any country if there are substantial grounds to believe that the alien would be in danger of being tortured, or of being subjected to cruel, humiliating or degrading treatment or punishment.

The Convention Against Torture already bars the practice of torture, or of rendering persons to countries where they are likely to face torture or other forms of cruel, humiliating or degrading treatment. This treaty was signed by the United States during the Reagan Administration, and ratified by the Senate in 1994.

Despite our commitments under this treaty and the statements made by the Administration emphasizing that the U.S. is emphatically and unambiguously against the use of torture, reports keep growing of the U.S. sending detainees to countries where they are likely to face torture, including to countries notorious for human rights violations. This practice known as ''Extraordinary Rendition,'' and amounts to nothing more than Outsourcing Torture.

Article 3 of the Convention Against Torture explicitly requires parties to refrain from sending persons to countries where they are likely be tortured.

In order to be able to argue that it is meeting this obligation under the Convention, the Bush Administration has been engaging in a piece of legalistic fiction. The Administration obtains ''diplomatic assurances'' that the transferred detainee will not be tortured, and then based on these assurances, it argues that our obligation under the Convention has been satisfied because there is no longer a substantial likelihood that the person we are sending to one of these known torturing countries will, in fact, be tortured.

In other words, our government is relying on ''diplomatic assurances'' or promises from countries like Egypt or Syria that they will not torture transferred detainees. Based on the word of Syria or Libya, our government is arguing that our obligations under the Convention Against Torture are satisfied. Apparently, the Bush Administration's motto here is ''In Syria We Trust''.

This is outrageous. Is there any Member who thinks that we should accept the word of Syria and Libya—longtime human rights violators?

Here is how the State Department's annual human rights report describes typical Syrian methods of interrogation:

''administering electrical shocks, pulling out fingernails, forcing objects into the rectum, . . .''

My amendment reaffirmed our commitment to the Convention Against Torture. It said that we should not transfer aliens who have tried to enter this country to other countries where they are likely to face torture. It said that we should not rely on ''diplomatic assurances'' from torturers that they will refrain from engaging in torture. Torture mocks the core values on which our nation was founded. And it endangers our men and women in uniform who we send abroad to fight for our freedom.

We should not be sending aliens who have sought entry into this country, and who have been apprehended and detained by the U.S., to other countries where they are likely to be tortured and then pretend to stand against torture. This is wrong.

Mr. Chairman, the Rules Committee made in order only 15 of the more than 120 amendments submitted to the Committee. These amendments could have substantially improved the bill on the Floor today. Without these perfecting amendments, I cannot support this flawed bill, and I urge my colleagues to vote ''No.''

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise today in strong opposition to H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. I too am committed to protecting our borders and strengthening our immigration policies. However, this bill does neither.

Instead of offering necessary comprehensive immigration reform, this bill simply continues the same failed policies of the past. Over the last decade, from Fiscal Year 1993 to Fiscal Year 2004, the number of Border Patrol officers tripled from 3,965 to 10,835 agents, and spending on border enforcement quintupled from $740 million to $3.8 billion per year. In that same time frame, the number of undocumented immigrants in the U.S. doubled from 4.5 million to 9.3 million. Clearly our current policies have failed to stop the flow of illegal immigration. Yet this bill simply offers more of the same failed remedies to our immigration problems.

Furthermore, this bill contains several unacceptable provisions. Please allow me to outline a few of the most egregious of these.

First, by expanding mandatory detention, this bill would allow women and children seeking asylum to be held in jails or prison-like detention centers while their immigration proceedings are pending even though they are no threat to our national security. Imprisoning these asylum seekers who often times are trying to escape brutalities back home violates the integrity of what our nation stands for and undermines our history of due process of law.

Second, this bill unfairly denies admission to immigrants who legally come to the U.S. from countries that do not accept the re-entry of their citizens. This means that, even though our State Department has approved their visas, legal immigrants and refugees from communist countries such as Vietnam, China and Somalia would be refused entry into the U.S. and forced to return to the oppressive regimes they are trying to escape.

Third, this bill takes valuable time and resources away from urgent police responsibilities, such as dealing with murder, rape, and gang activity by empowering state and local police to enforce immigration laws which is currently the responsibility of the Department of Homeland Security.

Fourth, this bill would classify as aggravated felons children who through no fault of their

own are brought here illegally by their parents. While I support cracking down on criminal aliens, I cannot support the criminalization of innocent children and thus deny them the opportunity to advance their lives in the future.

Fifth, this bill can weaken our fight against terrorism by permitting Homeland Security Grant Funds to be diverted from critical personnel such as our first responders. The State Homeland Security Grant Program has already been cut in half from $1.1 billion to $550 million. Our state and local governments cannot afford further shrinking of these critical funds if they are to protect us in the event of another terrorist attack.

Finally, this bill would expand the controversial process of removing individuals from our country without a fair hearing. This flawed procedure, known as expedited removal, has already resulted in the wrongful deportation of refugees who faced torture and death when they were returned to their native countries. Rather than fix this unjust procedure and protect these vulnerable individuals, this provision further denies them due process of law.

Our great nation serves as a model for democracy, fairness, and the rule of law. Unfortunately, this bill takes us away from these ideals upon which our nation was founded. I urge my colleagues to join me in defeating this dangerous bill.

Mr. MORAN of Virginia. Mr. Chairman, I rise today in opposition to H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. Rather than take a hard look at our immigration system, this legislation uses broad strokes targeting both legal and undocumented immigrants and would make felons of nonprofits working to care for the underserved in our communities.

The American public knows that our immigration system is broken. Polls show that two-thirds of the country believes that our system needs to be fixed. But instead of working to assemble a comprehensive package to fix our Nation's immigration system, we are being given this bill that has no chance of being enacted, that is intent on punishing immigrants, and relies more on rhetoric than real solutions.

What we need is a comprehensive approach that deals not just with border security, but with employers and the undocumented immigrants who are supporting our economy by working in jobs Americans refuse to take. This legislation is a punitive, heavy-handed measure that would not in any shape reform immigration, but would only make matters worse.

First and foremost, this bill seeks to criminalize both legal and illegal immigrants. Current law holds that undocumented immigrants face civil charges and may be subject to fines and deportation if found to be living here illegally. This legislation would change those civil charges to a criminal felony, ensnaring not only undocumented immigrants but also people who are here legally but have not notified the Government of technical changes in their status, such as an address change. These people, here legally and working hard to support their families in low wage jobs, could face up to a year in prison under the bill's provisions.

Many of the working immigrants who are here illegally perform jobs that U.S. citizens simply do not want or will not take. They are mainly in service and agricultural jobs, which are a vital part of our economy. Punishing those people, who contribute greatly to our economy, rather than providing some form of guest worker visa program, is penny wise but pound foolish. We should be in the business of helping them gain a pathway to legal status rather than locking them up.

One of the most deleterious provisions of this legislation is the section that would make it a crime for a U.S. citizen to help an undocumented immigrant, even if this is done unknowingly. Under the expanded definition of smuggling, a citizen could be prosecuted for simply driving a neighbor to the grocery store or hospital emergency room.

Such a provision risks criminalizing the work of nonprofits and religious organizations, whose sole purpose is to help human beings in need. Many organizations work on behalf of refugees and asylum seekers, helping them navigate their way through the Byzantine immigration process. Because our immigration system is so complicated, it is possible that asylum seekers are in the United States illegally for a short time. Any citizen who helps people who have fled their home country because they feared for their lives could be prosecuted under the wording of this bill. This is totally unacceptable and runs counter to the values that have made our country great. The United States is a beacon for democracy and has always been a refuge for people seeking freedom. From the first settlers who were escaping religious persecution, to Europeans escaping Communist regimes, accepting the huddled masses yearning to be free has been a part of our Nation's genetic code.

Mr. Chairman, President Kennedy once stated, "Everywhere immigrants have enriched and strengthened the fabric of American life." This can be seen in all aspects of our society from advances in science and medicine to great works of art and literature. If this legislation is passed, the fabric of our Nation could be permanently altered.

Mr. KING of New York. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute printed in the bill, modified by the amendment printed in part A of House Report 109–347, is adopted. The bill, as amended, shall be considered as an original bill for the purpose of further amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute, as modified, is as follows:

H.R. 4437

*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 "Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005".*

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

*Sec. 1. Short title; table of contents.*
*Sec. 2. State defined.*
*Sec. 3. Sense of Congress on setting a manageable level of immigration.*

*TITLE I—SECURING UNITED STATES BORDERS*

*Sec. 101. Achieving operational control on the border.*
*Sec. 102. National strategy for border security.*
*Sec. 103. Implementation of cross-border security agreements.*
*Sec. 104. Biometric data enhancements.*
*Sec. 105. One face at the border initiative.*
*Sec. 106. Secure communication.*
*Sec. 107. Port of entry inspection personnel.*
*Sec. 108. Canine detection teams.*
*Sec. 109. Secure border initiative financial accountability.*
*Sec. 110. Border patrol training capacity review.*
*Sec. 111. Airspace security mission impact review.*
*Sec. 112. Repair of private infrastructure on border.*
*Sec. 113. Border Patrol unit for Virgin Islands.*
*Sec. 114. Report on progress in tracking travel of Central American gangs along international border.*
*Sec. 115. Collection of data.*
*Sec. 116. Deployment of radiation detection portal equipment at United States ports of entry.*
*Sec. 117. Consultation with businesses and firms.*

*TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE*

*Sec. 201. Definition of aggravated felony.*
*Sec. 202. Alien smuggling and related offenses.*
*Sec. 203. Improper entry by, or presence of, aliens.*
*Sec. 204. Reentry of removed aliens.*
*Sec. 205. Mandatory sentencing ranges for persons aiding or assisting certain reentering aliens.*
*Sec. 206. Prohibiting carrying or using a firearm during and in relation to an alien smuggling crime.*
*Sec. 207. Clarifying changes.*
*Sec. 208. Voluntary departure reform.*
*Sec. 209. Deterring aliens ordered removed from remaining in the United States unlawfully and from unlawfully returning to the United States after departing voluntarily.*
*Sec. 210. Establishment of a special task force for coordinating and distributing information on fraudulent immigration documents.*

*TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT*

*Sec. 301. Joint strategic plan for United States border surveillance and support.*
*Sec. 302. Border security on protected land.*
*Sec. 303. Border security threat assessment and information sharing test and evaluation exercise.*
*Sec. 304. Border Security Advisory Committee.*
*Sec. 305. Permitted use of Homeland Security grant funds for border security activities.*
*Sec. 306. Center of excellence for border security.*
*Sec. 307. Sense of Congress regarding cooperation with Indian Nations.*

*TITLE IV—DETENTION AND REMOVAL*

*Sec. 401. Mandatory detention for aliens apprehended at or between ports of entry.*
*Sec. 402. Expansion and effective management of detention facilities.*
*Sec. 403. Enhancing transportation capacity for unlawful aliens.*
*Sec. 404. Denial of admission to nationals of country denying or delaying accepting alien.*
*Sec. 405. Report on financial burden of repatriation.*
*Sec. 406. Training program.*
*Sec. 407. Expedited removal.*
*Sec. 408. GAO study on deaths in custody.*

*TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES*

*Sec. 501. Enhanced border security coordination and management.*

*Sec. 502. Office of Air and Marine Operations.*
*Sec. 503. Shadow Wolves transfer.*

*TITLE VI—TERRORIST AND CRIMINAL ALIENS*

*Sec. 601. Removal of terrorist aliens.*
*Sec. 602. Detention of dangerous aliens.*
*Sec. 603. Increase in criminal penalties.*
*Sec. 604. Precluding admissibility of aggravated felons and other criminals.*
*Sec. 605. Precluding refugee or asylee adjustment of status for aggravated felonies.*
*Sec. 606. Removing drunk drivers.*
*Sec. 607. Designated county law enforcement assistance program.*
*Sec. 608. Rendering inadmissible and deportable aliens participating in criminal street gangs; detention; ineligibility from protection from removal and asylum.*
*Sec. 609. Naturalization reform.*
*Sec. 610. Expedited removal for aliens inadmissible on criminal or security grounds.*
*Sec. 611. Technical correction for effective date in change in inadmissibility for terrorists under REAL ID Act.*
*Sec. 612. Bar to good moral character.*
*Sec. 613. Strengthening definitions of ''aggravated felony'' and ''conviction''.*
*Sec. 614. Deportability for criminal offenses.*

*TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION*

*Sec. 701. Employment eligibility verification system.*
*Sec. 702. Employment eligibility verification process.*
*Sec. 703. Expansion of employment eligibility verification system to previously hired individuals and recruiting and referring.*
*Sec. 704. Basic pilot program.*
*Sec. 705. Hiring halls.*
*Sec. 706. Penalties.*
*Sec. 707. Report on Social Security card-based employment eligibility verification.*
*Sec. 708. Effective date.*

*TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION*

*Sec. 801. Board of Immigration Appeals removal order authority.*
*Sec. 802. Judicial review of visa revocation.*
*Sec. 803. Reinstatement.*
*Sec. 804. Withholding of removal.*
*Sec. 805. Certificate of reviewability.*
*Sec. 806. Waiver of rights in nonimmigrant visa issuance.*

***SEC. 2. STATE DEFINED.***

*In titles I, III, IV, and V of this Act, the term ''State'' has the meaning given it in section 2(14) of the Homeland Security Act of 2002 (6 U.S.C. 101(14)).*

***SEC. 3. SENSE OF CONGRESS ON SETTING A MANAGEABLE LEVEL OF IMMIGRATION.***

*It is the sense of Congress that the immigration and naturalization policy shall be designed to enhance the economic, social and cultural well-being of the United States of America.*

## *TITLE I—SECURING UNITED STATES BORDERS*

***SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.***

*(a) IN GENERAL.—The Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—*

*(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras;*

*(2) physical infrastructure enhancements to prevent unlawful entry by aliens into the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers;*

*(3) hiring and training as expeditiously as possible additional Border Patrol agents authorized under section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458); and*

*(4) increasing deployment of United States Customs and Border Protection personnel to areas along the international land and maritime borders of the United States where there are high levels of unlawful entry by aliens and other areas likely to be impacted by such increased deployment.*

*(b) OPERATIONAL CONTROL DEFINED.—In this section, the term ''operational control'' means the prevention of the entry into the United States of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.*

***SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.***

*(a) SURVEILLANCE PLAN.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan shall include the following:*

*(1) An assessment of existing technologies employed on such borders.*

*(2) A description of whether and how new surveillance technologies will be compatible with existing surveillance technologies.*

*(3) A description of how the United States Customs and Border Protection is working, or is expected to work, with the Directorate of Science and Technology of the Department of Homeland Security to identify and test surveillance technology.*

*(4) A description of the specific surveillance technology to be deployed.*

*(5) The identification of any obstacles that may impede full implementation of such deployment.*

*(6) A detailed estimate of all costs associated with the implementation of such deployment and continued maintenance of such technologies.*

*(7) A description of how the Department of Homeland Security is working with the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.*

*(b) NATIONAL STRATEGY FOR BORDER SECURITY.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a National Strategy for Border Security to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States. The Secretary shall update the Strategy as needed and shall submit to the Committee on Homeland Security of the House of Representatives, not later than 30 days after each such update, the updated Strategy. The National Strategy for Border Security shall include the following:*

*(1) The implementation timeline for the surveillance plan described in subsection (a).*

*(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at points along the international land and maritime borders of the United States.*

*(3) A risk assessment of all ports of entry to the United States and all portions of the international land and maritime borders of the United States with respect to—*

*(A) preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and*

*(B) protecting critical infrastructure at or near such ports of entry or borders.*

*(4) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.*

*(5) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.*

*(6) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations with respect to how the Department of Homeland Security can improve coordination with such authorities, to enable border security enforcement to be carried out in an efficient and effective manner.*

*(7) A prioritization of research and development objectives to enhance the security of the international land and maritime borders of the United States.*

*(8) A description of ways to ensure that the free flow of legitimate travel and commerce of the United States is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.*

*(9) An assessment of additional detention facilities and bed space needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States in accordance with the National Strategy for Border Security required under this subsection and the mandatory detention requirement described in section 401 of this Act.*

*(10) A description of how the Secretary shall ensure accountability and performance metrics within the appropriate agencies of the Department of Homeland Security responsible for implementing the border security measures determined necessary upon completion of the National Strategy for Border Security.*

*(11) A timeline for the implementation of the additional security measures determined necessary as part of the National Strategy for Border Security, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, and resource estimates and allocations.*

*(c) CONSULTATION.—In creating the National Strategy for Border Security described in subsection (b), the Secretary shall consult with—*

*(1) State, local, and tribal authorities along the international land and maritime borders of the United States; and*

*(2) an appropriate cross-section of private sector and nongovernmental organizations with relevant expertise.*

*(d) PRIORITY OF NATIONAL STRATEGY.—The National Strategy for Border Security described in subsection (b) shall be the controlling document for security and enforcement efforts related to securing the international land and maritime borders of the United States.*

*(e) IMMEDIATE ACTION.—Nothing in this section shall be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States pursuant to section 101 of this Act or any other provision of law.*

*(f) REPORTING OF IMPLEMENTING LEGISLATION.—After submittal of the National Strategy for Border Security described in subsection (b) to the Committee on Homeland Security of the House of Representatives, such Committee shall*

*promptly report to the House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.*

*(g) APPROPRIATE CONGRESSIONAL COMMITTEE.—For purposes of this title, the term ''appropriate congressional committee'' has the meaning given it in section 2(2) of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).*

***SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY AGREEMENTS.***

*(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees (as defined in section 102(g)) a report on the implementation of the cross-border security agreements signed by the United States with Mexico and Canada, including recommendations on improving cooperation with such countries to enhance border security.*

*(b) UPDATES.—The Secretary shall regularly update the Committee on Homeland Security of the House of Representatives concerning such implementation.*

***SEC. 104. BIOMETRIC DATA ENHANCEMENTS.***

*Not later than October 1, 2006, the Secretary of Homeland Security shall—*

*(1) in consultation with the Attorney General, enhance connectivity between the IDENT and IAFIS fingerprint databases to ensure more expeditious data searches; and*

*(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note).*

***SEC. 105. ONE FACE AT THE BORDER INITIATIVE.***

*Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report—*

*(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;*

*(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;*

*(3) providing a breakdown of the number of inspectors who were—*

*(A) personnel of the United States Customs Service before the date of the establishment of the Department of Homeland Security;*

*(B) personnel of the Immigration and Naturalization Service before the date of the establishment of the Department;*

*(C) personnel of the Department of Agriculture before the date of the establishment of the Department; or*

*(D) hired after the date of the establishment of the Department;*

*(4) describing the training time provided to each employee on an annual basis for the various training components of the One Face at the Border Initiative; and*

*(5) outlining the steps taken by the Department to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions under the One Face at the Border Initiative.*

***SEC. 106. SECURE COMMUNICATION.***

*The Secretary of Homeland Security shall, as expeditiously as practicable, develop and implement a plan to ensure clear and secure two-way communication capabilities—*

*(1) among all Border Patrol agents conducting operations between ports of entry;*

*(2) between Border Patrol agents and their respective Border Patrol stations;*

*(3) between Border Patrol agents and residents in remote areas along the international land border who do not have mobile communications, as the Secretary determines necessary; and*

*(4) between all appropriate Department of Homeland Security border security agencies and State, local, and tribal law enforcement agencies.*

***SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.***

*In each of fiscal years 2007 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty port of entry inspectors. There are authorized to be appropriated to the Secretary such sums as may be necessary for each such fiscal year to hire, train, equip, and support such additional inspectors under this section.*

***SEC. 108. CANINE DETECTION TEAMS.***

*In each of fiscal years 2007 through 2011, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 25 percent above the number of such positions for which funds were allotted for the preceding fiscal year the number of trained detection canines for use at United States ports of entry and along the international land and maritime borders of the United States.*

***SEC. 109. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.***

*(a) IN GENERAL.—The Inspector General of the Department of Homeland Security shall review each contract action related to the Department's Secure Border Initiative having a value greater than $20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and timelines. The Inspector General shall complete a review under this subsection with respect to a contract action—*

*(1) not later than 60 days after the date of the initiation of the action; and*

*(2) upon the conclusion of the performance of the contract.*

*(b) REPORT BY INSPECTOR GENERAL.—Upon completion of each review described in subsection (a), the Inspector General shall submit to the Secretary of Homeland Security a report containing the findings of the review, including findings regarding any cost overruns, significant delays in contract execution, lack of rigorous departmental contract management, insufficient departmental financial oversight, bundling that limits the ability of small business to compete, or other high risk business practices.*

*(c) REPORT BY SECRETARY.—Not later than 30 days after the receipt of each report required under subsection (b), the Secretary of Homeland Security shall submit to the appropriate congressional committees (as defined in section 102(g)) a report on the findings of the report by the Inspector General and the steps the Secretary has taken, or plans to take, to address the problems identified in such report.*

*(d) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General, an additional amount equal to at least five percent for fiscal year 2007, at least six percent for fiscal year 2008, and at least seven percent for fiscal year 2009 of the overall budget of the Office for each such fiscal year is authorized to be appropriated to the Office to enable the Office to carry out this section.*

***SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.***

*(a) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the basic training provided to Border Patrol agents by the Department of Homeland Security to ensure that such training is provided as efficiently and cost-effectively as possible.*

*(b) COMPONENTS OF REVIEW.—The review under subsection (a) shall include the following components:*

*(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how the curriculum has changed since September 11, 2001.*

*(2) A review and a detailed breakdown of the costs incurred by United States Customs and Border Protection and the Federal Law Enforcement Training Center to train one new Border Patrol agent.*

*(3) A comparison, based on the review and breakdown under paragraph (2) of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar law enforcement training programs provided by State and local agencies, non-profit organizations, universities, and the private sector.*

*(4) An evaluation of whether and how utilizing comparable non-Federal training programs, proficiency testing to streamline training, and long-distance learning programs may affect—*

*(A) the cost-effectiveness of increasing the number of Border Patrol agents trained per year and reducing the per agent costs of basic training; and*

*(B) the scope and quality of basic training needed to fulfill the mission and duties of a Border Patrol agent.*

***SEC. 111. AIRSPACE SECURITY MISSION IMPACT REVIEW.***

*Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report detailing the impact the airspace security mission in the National Capital Region (in this section referred to as the ''NCR'') will have on the ability of the Department of Homeland Security to protect the international land and maritime borders of the United States. Specifically, the report shall address:*

*(1) The specific resources, including personnel, assets, and facilities, devoted or planned to be devoted to the NCR airspace security mission, and from where those resources were obtained or are planned to be obtained.*

*(2) An assessment of the impact that diverting resources to support the NCR mission has or is expected to have on the traditional missions in and around the international land and maritime borders of the United States.*

***SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.***

*(a) IN GENERAL.—Subject to the amount appropriated in subsection (d) of this section, the Secretary of Homeland Security shall reimburse property owners for costs associated with repairing damages to the property owners' private infrastructure constructed on a United States Government right-of-way delineating the international land border when such damages are—*

*(1) the result of unlawful entry of aliens; and*

*(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.*

*(b) VALUE OF REIMBURSEMENTS.—Reimbursements for submitted damages as outlined in subsection (a) shall not exceed the value of the private infrastructure prior to damage.*

*(c) REPORTS.—Not later than six months after the date of the enactment of this Act and every subsequent six months until the amount appropriated for this section is expended in its entirety, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report that details the expenditures and circumstances in which those expenditures were made pursuant to this section.*

*(d) AUTHORIZATION OF APPROPRIATIONS.—There shall be authorized to be appropriated an initial $50,000 for each fiscal year to carry out this section.*

***SEC. 113. BORDER PATROL UNIT FOR VIRGIN ISLANDS.***

*Not later than September 30, 2006, the Secretary of Homeland Security shall establish at*

*least one Border Patrol unit for the Virgin Islands of the United States.*

**SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDER.**

*Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives on the progress of the Department of Homeland Security in tracking the travel of Central American gangs across the international land border of the United States and Mexico.*

**SEC. 115. COLLECTION OF DATA.**

*Beginning on October 1, 2006, the Secretary of Homeland Security shall annually compile data on the following categories of information:*

*(1) The number of unauthorized aliens who require medical care taken into custody by Border Patrol officials.*

*(2) The number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials encounter, and refer to local hospitals or other health facilities.*

*(3) The number of unauthorized aliens with serious injuries or medical conditions who arrive at United States ports of entry and subsequently are admitted into the United States for emergency medical care, as reported by United States Customs and Border Protection.*

*(4) The number of unauthorized aliens described in paragraphs (2) and (3) who subsequently are taken into custody by the Department of Homeland Security after receiving medical treatment.*

**SEC. 116. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.**

*(a) DEPLOYMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall deploy radiation portal monitors at all United States ports of entry and facilities as determined by the Secretary to facilitate the screening of all inbound cargo for nuclear and radiological material.*

*(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the Department's progress toward carrying out the deployment described in subsection (a).*

*(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out subsection (a) such sums as may be necessary for each of fiscal years 2006 and 2007.*

**SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.**

*With respect to the Secure Border Initiative and for the purposes of strengthening security along the international land and maritime borders of the United States, the Secretary of Homeland Security shall conduct outreach to and consult with members of the private sector, including business councils, associations, and small, minority-owned, women-owned, and disadvantaged businesses to—*

*(1) identify existing and emerging technologies, best practices, and business processes;*

*(2) maximize economies of scale, cost-effectiveness, systems integration, and resource allocation; and*

*(3) identify the most appropriate contract mechanisms to enhance financial accountability and mission effectiveness of border security programs.*

## TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE

**SEC. 201. DEFINITION OF AGGRAVATED FELONY.**

*(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—*

*(1) in subparagraph (N), by striking ''paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling)'' and inserting ''section 274(a)'' and by adding a semicolon at the end;*

*(2) in subparagraph (O), by striking ''section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph'', and inserting ''section 275 or section 276 for which the term of imprisonment was at least one year'';*

*(3) in subparagraph (U), by inserting before ''an attempt'' the following: ''soliciting, aiding, abetting, counseling, commanding, inducing, procuring or''; and*

*(4) by striking all that follows subparagraph (U) and inserting the following:*

*''The term applies—*

*''(i) to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years;*

*''(ii) even if the length of the term of imprisonment is based on recidivist or other enhancements;*

*''(iii) to an offense described in this paragraph even if the statute setting forth the offense of conviction sets forth other offenses not described in this paragraph, unless the alien affirmatively shows, by a preponderance of evidence and using public records related to the conviction, including court records, police records and presentence reports, that the particular facts underlying the offense do not satisfy the generic definition of that offense; and*

*''(iv) regardless of whether the conviction was entered before, on, or after September 30, 1996, and notwithstanding any other provision of law (including any effective date).''.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to offenses that occur before, on, or after the date of the enactment of this Act.*

**SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.**

*(a) IN GENERAL.—Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended to read as follows:*

*''ALIEN SMUGGLING AND RELATED OFFENSES*

*''SEC. 274. (a) CRIMINAL OFFENSES AND PENALTIES.—*

*''(1) PROHIBITED ACTIVITIES.—Whoever—*

*''(A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to or enter the United States;*

*''(B) assists, encourages, directs, or induces a person to come to or enter the United States at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, regardless of whether such person has official permission or lawful authority to be in the United States, knowing or in reckless disregard of the fact that such person is an alien;*

*''(C) assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;*

*''(D) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, where the transportation or movement will aid or further in any manner the person's illegal entry into or illegal presence in the United States;*

*''(E) harbors, conceals, or shields from detection a person in the United States knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States;*

*''(F) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from one country to another or on the high seas, under circumstances in which the person is in fact seeking to enter the United States without official permission or lawful authority; or*

*''(G) conspires or attempts to commit any of the preceding acts,*

*shall be punished as provided in paragraph (2), regardless of any official action which may later be taken with respect to such alien.*

*''(2) CRIMINAL PENALTIES.—A person who violates the provisions of paragraph (1) shall—*

*''(A) except as provided in subparagraphs (D) through (H), in the case where the offense was not committed for commercial advantage, profit, or private financial gain, be imprisoned for not more than 5 years, or fined under title 18, United States Code, or both;*

*''(B) except as provided in subparagraphs (C) through (H), where the offense was committed for commercial advantage, profit, or private financial gain—*

*''(i) in the case of a first violation of this subparagraph, be imprisoned for not more than 20 years, or fined under title 18, United States Code, or both; and*

*''(ii) for any subsequent violation, be imprisoned for not less than 3 years nor more than 20 years, or fined under title 18, United States Code, or both;*

*''(C) in the case where the offense was committed for commercial advantage, profit, or private financial gain and involved 2 or more aliens other than the offender, be imprisoned for not less than 3 nor more than 20 years, or fined under title 18, United States Code, or both;*

*''(D) in the case where the offense furthers or aids the commission of any other offense against the United States or any State, which offense is punishable by imprisonment for more than 1 year, be imprisoned for not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;*

*''(E) in the case where any participant in the offense created a substantial risk of death or serious bodily injury to another person, including—*

*''(i) transporting a person in an engine compartment, storage compartment, or other confined space;*

*''(ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation; or*

*''(iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner,*

*be imprisoned not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;*

*''(F) in the case where the offense caused serious bodily injury (as defined in section 1365 of title 18, United States Code, including any conduct that would violate sections 2241 or 2242 of title 18, United States Code, if the conduct occurred in the special maritime and territorial jurisdiction of the United States) to any person, be imprisoned for not less than 7 nor more than 30 years, or fined under title 18, United States Code, or both;*

*''(G) in the case where the offense involved an alien who the offender knew or had reason to believe was an alien—*

*''(i) engaged in terrorist activity (as defined in section 212(a)(3)(B)); or*

*''(ii) intending to engage in such terrorist activity,*

*be imprisoned for not less than 10 nor more than 30 years, or fined under title 18, United States Code, or both; and*

*''(H) in the case where the offense caused or resulted in the death of any person, be punished by death or imprisoned for not less than 10*

*years, or any term of years, or for life, or fined under title 18, United States Code, or both.*

*''(3) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.*

*''(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—*

*''(1) IN GENERAL.—Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in paragraph (2), shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.*

*''(2) ALIEN DESCRIBED.—A alien described in this paragraph is an alien who—*

*''(A) is an unauthorized alien (as defined in section 274A(h)(3)); and*

*''(B) has been brought into the United States in violation of subsection (a).*

*''(c) SEIZURE AND FORFEITURE.—*

*''(1) IN GENERAL.—Any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.*

*''(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security.*

*''(d) AUTHORITY TO ARREST.—No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.*

*''(e) ADMISSIBILITY OF EVIDENCE.—*

*''(1) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to come to, enter, reside, remain, or be in the United States or that such alien had come to, entered, resided, remained or been present in the United States in violation of law:*

*''(A) Any order, finding, or determination concerning the alien's status or lack thereof made by a federal judge or administrative adjudicator (including an immigration judge or an immigration officer) during any judicial or administrative proceeding authorized under the immigration laws or regulations prescribed thereunder.*

*''(B) An official record of the Department of Homeland Security, Department of Justice, or the Department of State concerning the alien's status or lack thereof.*

*''(C) Testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack thereof.*

*''(2) VIDEOTAPED TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination at the deposition and the deposition otherwise complies with the Federal Rules of Evidence.*

*''(f) DEFINITIONS.—For purposes of this section:*

*''(1) The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise obtained in violation of law, nor does it include authority that has been sought but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside, remain, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.*

*''(2) The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.''.*

*(b) CLERICAL AMENDMENT.—The item relating to section 274 in the table of contents of such Act is amended to read as follows:*

*''Sec. 274. Alien smuggling and related offenses.''.*

***SEC. 203. IMPROPER ENTRY BY, OR PRESENCE OF, ALIENS.***

*Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended—*

*(1) in the section heading, by inserting ''UNLAWFUL PRESENCE;'' after ''IMPROPER TIME OR PLACE;'';*

*(2) in subsection (a)—*

*(A) by striking ''Any alien'' and inserting ''Except as provided in subsection (b), any alien'';*

*(B) by striking ''or'' before (3);*

*(C) by inserting after ''concealment of a material fact,'' the following: ''or (4) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder,''; and*

*(D) by striking ''6 months'' and inserting ''one year and a day'';*

*(3) in subsection (c)—*

*(A) by striking ''5 years'' and inserting ''10 years''; and*

*(B) by adding at the end the following: ''An offense under this subsection continues until the fraudulent nature of the marriage is discovered by an immigration officer.'';*

*(4) in subsection (d)—*

*(A) by striking ''5 years'' and inserting ''10 years'';*

*(B) by adding at the end the following: ''An offense under this subsection continues until the fraudulent nature of the commercial enterprise is discovered by an immigration officer.''; and*

*(5) by adding at the end the following new subsections:*

*''(e)(1) Any alien described in paragraph (2)—*

*''(A) shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both, if the offense described in such paragraph was committed subsequent to a conviction or convictions for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony); or*

*''(B) shall be fined under title 18, United States Code, imprisoned not more than 20 years, or both, if such offense was committed subsequent to a conviction for commission of an aggravated felony.*

*''(2) An alien described in this paragraph is an alien who—*

*''(A) enters or attempts to enter the United States at any time or place other than as designated by immigration officers;*

*''(B) eludes examination or inspection by immigration officers;*

*''(C) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or*

*''(D) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder.*

*''(3) The prior convictions in subparagraph (A) or (B) of paragraph (1) are elements of those crimes and the penalties in those subparagraphs shall apply only in cases in which the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is an aggravated felony or other qualifying crime, and the criminal trial for a violation of this section shall not be bifurcated.*

*''(4) An offense under subsection (a) or paragraph (1) of this subsection continues until the alien is discovered within the United States by immigration officers.*

*''(f) For purposes of this section, the term 'attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.''.*

***SEC. 204. REENTRY OF REMOVED ALIENS.***

*Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended—*

*(1) in subsection (a)—*

*(A) in paragraph (2), by striking all that follows ''United States'' the first place it appears and inserting a comma;*

*(B) in the matter following paragraph (2), by striking ''imprisoned not more than 2 years,'' and inserting ''imprisoned for a term of not less than 1 year and not more than 2 years,'';*

*(C) by adding at the end the following: ''It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien's reembarkation at a place outside the United States or an alien's application for admission from foreign contiguous territory, the Secretary of Homeland Security has expressly consented to the alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.'';*

*(2) in subsection (b)—*

*(A) in paragraph (1), by striking ''imprisoned not more than 10 years,'' and insert ''imprisoned for a term of not less than 5 years and not more than 10 years,'';*

*(B) in paragraph (2), by striking ''imprisoned not more than 20 years,'' and insert ''imprisoned for a term of not less than 10 years and not more than 20 years,'';*

*(C) in paragraph (3), by striking ''. or'' and inserting ''; or'';*

*(D) in paragraph (4), by striking ''imprisoned for not more than 10 years,'' and insert ''imprisoned for a term of not less than 5 years and not more than 10 years,''; and*

*(E) by adding at the end the following: ''The prior convictions in paragraphs (1) and (2) are elements of enhanced crimes and the penalties under such paragraphs shall apply only where the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime and the criminal trial for a violation of either such paragraph shall not be bifurcated.'';*

*(3) in subsections (b)(3), (b)(4), and (c), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'' each place it appears;*

*(4) in subsection (c), by striking ''242(h)(2)'' and inserting ''241(a)(4)''; and*

*(5) by adding at the end the following new subsection:*

*''(e) For purposes of this section, the term 'attempts to enter' refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.''.*

***SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS AIDING OR ASSISTING CERTAIN REENTERING ALIENS.***

*Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) is amended—*

*(1) by striking ''Any person'' and inserting ''(a) Subject to subsection (b), any person''; and*

*(2) by adding at the end the following:*

*''(b)(1) Any person who knowingly aids or assists any alien violating section 276(b) to reenter the United States, or who connives or conspires with any person or persons to allow, procure, or permit any such alien to reenter the United States, shall be fined under title 18, United States Code, imprisoned for a term imposed under paragraph (2), or both.*

*''(2) The term of imprisonment imposed under paragraph (1) shall be within the range to which the reentering alien is subject under section 276(b).''.*

***SEC. 206. PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.***

*Section 924(c) of title 18, United States Code, is amended—*

*(1) in paragraphs (1)(A) and (1)(D)(ii), by inserting '', alien smuggling crime,'' after ''crime of violence'' each place it appears; and*

*(2) by adding at the end the following new paragraph:*

*''(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, or 1328).''.*

***SEC. 207. CLARIFYING CHANGES.***

*(a) EXCLUSION BASED ON FALSE CLAIM OF NATIONALITY.—*

*(1) IN GENERAL.—Section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)) is amended—*

*(A) in the heading, by inserting ''OR NATIONALITY'' after ''CITIZENSHIP''; and*

*(B) by inserting ''or national'' after ''citizen'' each place it appears.*

*(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to acts occurring before, on, or after such date.*

*(b) SHARING OF INFORMATION.—Section 290(b) of such Act (8 U.S.C. 1360(b)) is amended—*

*(1) by inserting '', or as to any person seeking any benefit or privilege under the immigration laws,'' after ''United States'';*

*(2) by striking ''Service'' and inserting ''Secretary of Homeland Security''; and*

*(3) by striking ''Attorney General'' and inserting ''Secretary''.*

*(c) EXCEPTIONS AUTHORITY.—Section 212(a)(3)(B)(ii) of such Act (8 U.S.C. 1182(a)(3)(B)(ii)) is amended by striking ''Subclause (VII)'' and inserting ''Subclause (IX)''.*

***SEC. 208. VOLUNTARY DEPARTURE REFORM.***

*(a) ENCOURAGING ALIENS TO DEPART VOLUNTARILY.—*

*(1) AUTHORITY.—Subsection (a) of section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) is amended—*

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

*''(1) IN LIEU OF REMOVAL PROCEEDINGS.—The Secretary of Homeland Security may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).'';*

*(B) by striking paragraph (3);*

*(C) by redesignating paragraph (2) as paragraph (3);*

*(D) by inserting after paragraph (1) the following new paragraph:*

*''(2) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—After removal proceedings under section 240 are initiated, the Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, prior to the conclusion of such proceedings before an immigration judge, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).''; and*

*(E) in paragraph (4), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)''.*

*(2) VOLUNTARY DEPARTURE PERIOD.—Such section is further amended—*

*(A) in subsection (a)(3), as redesignated by paragraph (1)(C)—*

*(i) by amending subparagraph (A) to read as follows:*

*''(A) IN LIEU OF REMOVAL.—Subject to subparagraph (C), permission to depart voluntarily under paragraph (1) shall not be valid for a period exceeding 120 days. The Secretary of Homeland Security may require an alien permitted to depart voluntarily under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.'';*

*(ii) in subparagraph (B), by striking ''subparagraphs (C) and (D)(ii)'' and inserting ''subparagraphs (D) and (E)(ii)'';*

*(iii) in subparagraphs (C) and (D), by striking ''subparagraph (B)'' and inserting ''subparagraph (C)'' each place it appears;*

*(iv) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and*

*(v) by inserting after subparagraph (A) the following new subparagraph:*

*''(B) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to depart voluntarily under paragraph (2) shall not be valid for a period exceeding 60 days, and may be granted only after a finding that the alien has established that the alien has the means to depart the United States and intends to do so. An alien permitted to depart voluntarily under paragraph (2) must post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive posting of a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will be a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.''; and*

*(B) in subsection (b)(2), by striking ''60 days'' and inserting ''45 days''.*

*(3) VOLUNTARY DEPARTURE AGREEMENTS.—Subsection (c) of such section is amended to read as follows:*

*''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—*

*''(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure will be granted only as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.*

*''(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security in the exercise of discretion may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).*

*''(3) FAILURE TO COMPLY WITH AGREEMENT AND EFFECT OF FILING TIMELY APPEAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including a failure to timely post any required bond), the alien automatically becomes ineligible for the benefits of the agreement, subject to the penalties described in subsection (d), and subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b). However, if an alien agrees to voluntary departure but later files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences thereof, but the alien may not again be granted voluntary departure while the alien remains in the United States.''.*

*(4) ELIGIBILITY.—Subsection (e) of such section is amended to read as follows:*

*''(e) ELIGIBILITY.—*

*''(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to depart voluntarily under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.*

*''(2) ADDITIONAL LIMITATIONS.—The Secretary of Homeland Security may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class or classes of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) for any class or classes of aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court may review any regulation issued under this subsection.''.*

*(b) AVOIDING DELAYS IN VOLUNTARY DEPARTURE.—*

*(1) ALIEN'S OBLIGATION TO DEPART WITHIN THE TIME ALLOWED.—Subsection (c) of section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), as amended by subsection (a), is further amended by adding at the end the following new paragraph:*

*''(4) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.''.*

*(2) NO TOLLING.—Subsection (f) of such section is amended by adding at the end the following new sentence: ''Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.''.*

*(c) PENALTIES FOR FAILURE TO DEPART VOLUNTARILY.—*

*(1) PENALTIES FOR FAILURE TO DEPART.—Subsection (d) of section 240B of the Immigration and Nationality Act (8 U.S.C. 229c) is amended to read as follows:*

*''(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the following provisions apply:*

*''(1) CIVIL PENALTY.—*

*''(A) IN GENERAL.—The alien will be liable for a civil penalty of $3,000.*

*''(B) SPECIFICATION IN ORDER.—The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.*

*''(C) COLLECTION.—If the Secretary of Homeland Security thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law.*

*''(D) INELIGIBILITY FOR BENEFITS.—An alien will be ineligible for any benefits under this title until any civil penalty under this subsection is paid.*

*''(2) INELIGIBILITY FOR RELIEF.—The alien will be ineligible during the time the alien remains in*

*the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249.*

*''(3) REOPENING.—*

*''(A) IN GENERAL.—Subject to subparagraph (B), the alien will be ineligible to reopen a final order of removal which took effect upon the alien's failure to depart, or the alien's violation of the conditions for voluntary departure, during the period described in paragraph (2).*

*''(B) EXCEPTION.—Subparagraph (A) does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture.*

*The order permitting the alien to depart voluntarily under this section shall inform the alien of the penalties under this subsection.''.*

*(2) IMPLEMENTATION OF EXISTING STATUTORY PENALTIES.—The Secretary of Homeland Security shall implement regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act, as amended by paragraph (1).*

*(d) EFFECTIVE DATES.—*

*(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of the enactment of this Act.*

*(2) EXCEPTION.—The amendment made by subsection (b)(2) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is entered on or after such date.*

***SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY AND FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.***

*(a) INADMISSIBLE ALIENS.—Paragraph (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—*

*(1) in subparagraph (A)(i), by striking ''within 5 years of'' and inserting ''before, or within 5 years of,''; and*

*(2) in subparagraph (A)(ii) by striking ''within 10 years of'' and inserting ''before, or within 10 years of,''.*

*(b) FAILURE TO DEPART, APPLY FOR TRAVEL DOCUMENTS, OR APPEAR FOR REMOVAL OR CONSPIRACY TO PREVENT OR HAMPER DEPARTURE.—Section 274D of such Act (8 U.S.C. 1324d) is amended—*

*(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and*

*(2) by adding at the end the following new subsection:*

*''(c) INELIGIBILITY FOR RELIEF.—*

*''(1) IN GENERAL.—Subject to paragraph (2), unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal pursuant to a motion to reopen during the time the alien remains in the United States and for a period of 10 years after the alien's departure.*

*''(2) EXCEPTION.—Paragraph (1) does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture.''.*

*(c) DETERRING ALIENS FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.—Section 275(a) of such Act (8 U.S.C. 1325(a)) is amended by inserting ''or following an order of voluntary departure'' after ''a subsequent commission of any such offense''.*

*(d) EFFECTIVE DATES.—*

*(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal, whether the removal order was entered before, on, or after such date.*

*(2) VOLUNTARY DEPARTURE.—The amendment made by subsection (c) shall take effect on the date of the enactment of this Act and shall apply with respect to conduct occurring on or after such date.*

***SEC. 210. ESTABLISHMENT OF A SPECIAL TASK FORCE FOR COORDINATING AND DISTRIBUTING INFORMATION ON FRAUDULENT IMMIGRATION DOCUMENTS.***

*(a) IN GENERAL.—The Secretary of Homeland Security shall establish a task force (to be known as the Task Force on Fraudulent Immigration Documents) to carry out the following:*

*(1) Collect information from Federal, State, and local law enforcement agencies, and Foreign governments on the production, sale, and distribution of fraudulent documents intended to be used to enter or to remain in the United States unlawfully.*

*(2) Maintain that information in a comprehensive database.*

*(3) Convert the information into reports that will provide guidance for government officials on identifying fraudulent documents being used to enter or to remain in the United States unlawfully.*

*(4) Develop a system for distributing these reports on an ongoing basis to appropriate Federal, State, and local law enforcement agencies.*

*(b) DISTRIBUTION OF INFORMATION.—Distribute the reports to appropriate Federal, State, and local law enforcement agencies on an ongoing basis.*

## *TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT*

***SEC. 301. JOINT STRATEGIC PLAN FOR UNITED STATES BORDER SURVEILLANCE AND SUPPORT.***

*(a) IN GENERAL.—The Secretary of Homeland Security and the Secretary of Defense shall develop a joint strategic plan to use the authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist with the surveillance activities of the Department of Homeland Security conducted at or near the international land and maritime borders of the United States.*

*(b) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall submit to Congress a report containing—*

*(1) a description of the use of Department of Defense equipment to assist with the surveillance by the Department of Homeland Security of the international land and maritime borders of the United States;*

*(2) the joint strategic plan developed pursuant to subsection (a);*

*(3) a description of the types of equipment and other support to be provided by the Department of Defense under the joint strategic plan during the one-year period beginning after submission of the report under this subsection; and*

*(4) a description of how the Department of Homeland Security and the Department of Defense are working with the Department of Transportation on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.*

*(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse comitatus under section 1385 of title 18, United States Code.*

***SEC. 302. BORDER SECURITY ON PROTECTED LAND.***

*(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of the Interior, shall evaluate border security vulnerabilities on land directly adjacent to the international land border of the United States under the jurisdiction of the Department of the Interior related to the prevention of the entry of terrorists, other unlawful aliens, narcotics, and other contraband into the United States.*

*(b) SUPPORT FOR BORDER SECURITY NEEDS.—Based on the evaluation conducted pursuant to subsection (a), the Secretary of Homeland Security shall provide appropriate border security assistance on land directly adjacent to the international land border of the United States under the jurisdiction of the Department of the Interior, its bureaus, and tribal entities.*

***SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.***

*Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall design and carry out a national border security exercise for the purposes of—*

*(1) involving officials from Federal, State, territorial, local, tribal, and international governments and representatives from the private sector;*

*(2) testing and evaluating the capacity of the United States to anticipate, detect, and disrupt threats to the integrity of United States borders; and*

*(3) testing and evaluating the information sharing capability among Federal, State, territorial, local, tribal, and international governments.*

***SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.***

*(a) ESTABLISHMENT OF COMMITTEE.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall establish an advisory committee to be known as the Border Security Advisory Committee (in this section referred to as the ''Committee'').*

*(b) DUTIES.—The Committee shall advise the Secretary on issues relating to border security and enforcement along the international land and maritime border of the United States.*

*(c) MEMBERSHIP.—The Secretary shall appoint members to the Committee from the following:*

*(1) State and local government representatives from States located along the international land and maritime borders of the United States.*

*(2) Community representatives from such States.*

*(3) Tribal authorities in such States.*

***SEC. 305. PERMITTED USE OF HOMELAND SECURITY GRANT FUNDS FOR BORDER SECURITY ACTIVITIES.***

*(a) REIMBURSEMENT.—The Secretary of Homeland Security may allow the recipient of amounts under a covered grant to use those amounts to reimburse itself for costs it incurs in carrying out any activity that—*

*(1) relates to the enforcement of Federal laws aimed at preventing the unlawful entry of persons or things into the United States, including activities such as detecting or responding to such an unlawful entry or providing support to another entity relating to preventing such an unlawful entry;*

*(2) is usually a Federal duty carried out by a Federal agency; and*

*(3) is carried out under agreement with a Federal agency.*

*(b) USE OF PRIOR YEAR FUNDS.—Subsection (a) shall apply to all covered grant funds received by a State, local government, or Indian tribe at any time on or after October 1, 2001.*

*(c) COVERED GRANTS.—For purposes of subsection (a), the term ''covered grant'' means grants provided by the Department of Homeland Security to States, local governments, or Indian tribes administered under the following programs:*

*(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.*

*(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.*

*(3) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.*

**SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECURITY.**

*(a) ESTABLISHMENT.—The Secretary of Homeland Security shall establish a university-based Center of Excellence for Border Security following the merit-review processes and procedures and other limitations that have been established for selecting and supporting University Programs Centers of Excellence.*

*(b) ACTIVITIES OF THE CENTER.—The Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities, and consequences posed by United States borders and border control systems. The activities shall include the conduct of research, the examination of existing and emerging border security technology and systems, and the provision of education, technical, and analytical assistance for the Department of Homeland Security to effectively secure the borders.*

**SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION WITH INDIAN NATIONS.**

*It is the sense of Congress that—*

*(1) the Department of Homeland Security should strive to include as part of a National Strategy for Border Security recommendations on how to enhance Department cooperation with sovereign Indian Nations on securing our borders and preventing terrorist entry, including, specifically, the Department should consider whether a Tribal Smart Border working group is necessary and whether further expansion of cultural sensitivity training, as exists in Arizona with the Tohono O'odham Nation, should be expanded elsewhere; and*

*(2) as the Department of Homeland Security develops a National Strategy for Border Security, it should take into account the needs and missions of each agency that has a stake in border security and strive to ensure that these agencies work together cooperatively on issues involving Tribal lands.*

## TITLE IV—DETENTION AND REMOVAL

**SEC. 401. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.**

*(a) IN GENERAL.—Beginning on October 1, 2006, an alien who is attempting to illegally enter the United States and who is apprehended at a United States port of entry or along the international land and maritime border of the United States shall be detained until removed or a final decision granting admission has been determined, unless the alien—*

*(1) is permitted to withdraw an application for admission under section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)) and immediately departs from the United States pursuant to such section; or*

*(2) is paroled into the United States by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit in accordance with section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).*

*(b) REQUIREMENTS DURING INTERIM PERIOD.—Beginning 60 days after the date of the enactment of this Act and before October 1, 2006, an alien described in subsection (a) may be released with a notice to appear only if—*

*(1) the Secretary of Homeland Security determines, after conducting all appropriate background and security checks on the alien, that the alien does not pose a national security risk; and*

*(2) the alien provides a bond of not less than $5,000.*

*(c) RULES OF CONSTRUCTION.—*

*(1) ASYLUM AND REMOVAL.—Nothing in this section shall be construed as limiting the right of an alien to apply for asylum or for relief or deferral of removal based on a fear of persecution.*

*(2) TREATMENT OF CERTAIN ALIENS.—The mandatory detention requirement in subsection (a) does not apply to any alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations.*

**SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.**

*Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—*

*(1) all available detention facilities operated or contracted by the Department of Homeland Security; and*

*(2) all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention.*

**SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.**

*(a) IN GENERAL.—The Secretary of Homeland Security is authorized to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.*

*(b) CRITERIA FOR SELECTION.—Notwithstanding any other provision of law, to enter into a contract under paragraph (1), a private entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The Secretary shall select from such applications those entities which offer, in the determination of the Secretary, the best combination of service, cost, and security.*

**SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.**

*Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended to read as follows:*

*''(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.''.*

**SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRIATION.**

*Not later than October 31 of each year, the Secretary of Homeland Security shall submit to the Secretary of State and Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual residence, including details relating to cost per country. The Secretary shall include in each such report the recommendations of the Secretary to more cost effectively repatriate such aliens.*

**SEC. 406. TRAINING PROGRAM.**

*Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security—*

*(1) review and evaluate the training provided to Border Patrol agents and port of entry inspectors regarding the inspection of aliens to determine whether an alien is referred for an interview by an asylum officer for a determination of credible fear;*

*(2) based on the review and evaluation described in paragraph (1), take necessary and appropriate measures to ensure consistency in referrals by Border Patrol agents and port of entry inspectors to asylum officers for determinations of credible fear.*

**SEC. 407. EXPEDITED REMOVAL.**

*(a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)(iii)) is amended—*

*(1) in subclause (I), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'' each place it appears; and*

*(2) by adding at the end the following new subclause:*

*''(III) EXCEPTION.—Notwithstanding subclauses (I) and (II), the Secretary of Homeland Security shall apply clauses (i) and (ii) of this subparagraph to any alien (other than an alien described in subparagraph (F)) who is not a national of a country contiguous to the United States, who has not been admitted or paroled into the United States, and who is apprehended within 100 miles of an international land border of the United States and within 14 days of entry.''.*

*(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended by striking ''who arrives by aircraft at a port of entry'' and inserting '', and who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to all aliens apprehended on or after such date.*

**SEC. 408. GAO STUDY ON DEATHS IN CUSTODY.**

*The Comptroller General of the United States, within 6 months after the date of the enactment of this Act, shall submit to Congress a report on the deaths in custody of detainees held on immigration violations by the Secretary of Homeland Security. The report shall include the following information with respect to any such deaths and in connection therewith:*

*(1) Whether any crimes were committed by personnel of the Department of Homeland Security.*

*(2) Whether any such deaths were caused by negligence or deliberate indifference by such personnel.*

*(3) Whether Department practice and procedures were properly followed and obeyed.*

*(4) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.*

*(5) Whether reports of such deaths were made under the Deaths in Custody Act.*

## TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

**SEC. 501. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.**

*The Secretary of Homeland Security shall ensure full coordination of border security efforts among agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner. In particular, the Secretary of Homeland Security shall—*

*(1) oversee and ensure the coordinated execution of border security operations and policy;*

*(2) establish a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, customs and trade, immigration, human smuggling, human trafficking, and other issues of concern to both United States Immigration and Customs Enforcement and United States Customs and Border Protection;*

*(3) establish Department of Homeland Security task forces (to include other Federal, State, Tribal and local law enforcement agencies as appropriate) as necessary to better coordinate border enforcement and the disruption and dismantling of criminal organizations engaged in cross-border smuggling, money laundering, and immigration violations;*

*(4) enhance coordination between the border security and investigations missions within the Department by requiring that, with respect to cases involving violations of the customs and immigration laws of the United States, United States Customs and Border Protection coordinate with and refer all such cases to United States Immigration and Customs Enforcement;*

*(5) examine comprehensively the proper allocation of the Department's border security related resources, and analyze budget issues on the basis of Department-wide border enforcement goals, plans, and processes;*

*(6) establish measures and metrics for determining the effectiveness of coordinated border enforcement efforts; and*

*(7) develop and implement a comprehensive plan to protect the northern and southern land borders of the United States and address the different challenges each border faces by—*

*(A) coordinating all Federal border security activities;*

*(B) improving communications and data sharing capabilities within the Department and with other Federal, State, local, tribal, and foreign law enforcement agencies on matters relating to border security; and*

*(C) providing input to relevant bilateral agreements to improve border functions, including ensuring security and promoting trade and tourism.*

***SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.***

*(a) ESTABLISHMENT.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is amended by adding at the end the following new section:*

***"SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.***

*''(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the 'Office').*

*''(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.*

*''(c) MISSIONS.—*

*''(1) PRIMARY MISSION.—The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.*

*''(2) SECONDARY MISSION.—The secondary mission of the Office shall be to assist other agencies to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.*

*''(d) AIR AND MARINE OPERATIONS CENTER.—*

*''(1) IN GENERAL.—The Office shall operate and maintain the Air and Marine Operations Center in Riverside, California, or at such other facility of the Office as is designated by the Secretary.*

*''(2) DUTIES.—The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.*

*''(e) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.*

*''(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.*

*''(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever practicable for the purpose of timely coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.*

*''(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority of the Administrator of the Federal Aviation Administration to oversee, regulate, and control the safe and efficient use of the airspace of the United States.''.*

*(b) TECHNICAL AND CONFORMING AMENDMENTS.—*

*(1) ADDITIONAL ASSISTANT SECRETARY.—Section 103(a)(9) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)(9)) is amended by striking ''12'' and inserting ''13''.*

*(2) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act (6 U.S.C. 101) is amended by inserting after the item relating to section 430 the following new item:*

*''Sec. 431. Office of Air and Marine Operations.''.*

***SEC. 503. SHADOW WOLVES TRANSFER.***

*(a) TRANSFER OF EXISTING UNIT.—Not later that 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to United States Immigration and Customs Enforcement all functions (including the personnel, assets, and liabilities attributable to such functions) of the Customs Patrol Officers unit operating on the Tohono O'odham Indian reservation (commonly known as the ''Shadow Wolves'' unit).*

*(b) ESTABLISHMENT OF NEW UNITS.—The Secretary is authorized to establish within United States Immigration and Customs Enforcement additional units of Customs Patrol Officers in accordance with this section, as appropriate.*

*(c) DUTIES.—The Customs Patrol Officer unit transferred pursuant to subsection (a), and additional units established pursuant to subsection (b), shall operate on Indian lands by preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.*

*(d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A Customs Patrol Officer in a unit described in this section shall receive equivalent pay as a special agent with similar competencies within United States Immigration and Customs Enforcement pursuant to the Department of Homeland Security's Human Resources Management System established under section 841 of the Homeland Security Act (6 U.S.C. 411).*

*(e) SUPERVISORS.—Each unit described in this section shall be supervised by a Chief Customs Patrol Officer, who shall have the same rank as a resident agent-in-charge of the Office of Investigations within United States Immigration and Customs Enforcement.*

## *TITLE VI—TERRORIST AND CRIMINAL ALIENS*

***SEC. 601. REMOVAL OF TERRORIST ALIENS.***

*(a) EXPANSION OF REMOVAL.—*

*(1) Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended—*

*(A) in subparagraph (A)—*

*(i) by striking ''Attorney General may not'' and inserting ''Secretary of Homeland Security may not'';*

*(ii) by inserting ''or the Secretary'' after ''if the Attorney General''; and*

*(B) in subparagraph (B)—*

*(i) by inserting ''or the Secretary of Homeland Security'' after ''if the Attorney General'';*

*(ii) by striking ''or'' in clause (iii);*

*(iii) by striking the period at the end of clause (iv) and inserting ''; or'';*

*(iv) by inserting after clause (iv) the following new clause:*

*''(v) the alien is described in any subclause of section 212(a)(3)(B)(i) or section 212(a)(3)(F), unless, in the case only of an alien described in subclause (IV) or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.''; and*

*(v) in the third sentence, by inserting ''or the Secretary of Homeland Security'' after ''Attorney General''; and*

*(vi) by striking the last sentence.*

*(2) Section 208(b)(2)(A)(v) of such Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—*

*(A) by striking ''subclause (I), (II), (III), (IV), or (VI)'' and inserting ''any subclause'';*

*(B) by striking ''237(a)(4)(B)'' and inserting ''212(a)(3)(F)''; and*

*(C) by inserting ''or (IX)'' after ''subclause (IV)''.*

*(3) Section 240A(c)(4) of such Act (8 U.S.C. 1229b(c)(4)) is amended—*

*(A) by striking ''inadmissible under'' and inserting ''described in''; and*

*(B) by striking ''deportable under'' and inserting ''described in''.*

*(4) Section 240B(b)(1)(C) of such Act (8 U.S.C. 1229c(b)(1)(C)) is amended by striking ''deportable under'' and inserting ''described in''.*

*(5) Section 249 of such Act (8 U.S.C. 1259)) is amended—*

*(A) by striking ''inadmissible under'' and inserting ''described in''; and*

*(B) in paragraph (d), by striking ''deportable under'' and inserting ''described in''.*

*(b) RETROACTIVE APPLICATION.—The amendments made by this section shall take effect on the date of enactment of this Act and sections 208(b)(2)(A), 240A, 240B, 241(b)(3), and 249 of the Immigration and Nationality Act, as so amended, shall apply to—*

*(1) all aliens in removal, deportation, or exclusion proceedings;*

*(2) all applications pending on or filed after the date of the enactment of this Act; and*

*(3) with respect to aliens and applications described in paragraph (1) or (2), acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after the date of the enactment of this Act.*

***SEC. 602. DETENTION OF DANGEROUS ALIENS.***

*(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1231) is amended—*

*(1) in subsection (a), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'' each place it appears;*

*(2) in subsection (a)(1)(B), by adding after and below clause (iii) the following:*

*''If, at that time, the alien is not in the custody of the Secretary (under the authority of this Act), the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled, and shall begin anew on the date of the alien's return to the custody of the Secretary.'';*

*(3) by amending clause (ii) of subsection (a)(1)(B) to read as follows:*

*''(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the date the stay of removal is no longer in effect.'';*

*(4) by amending subparagraph (C) of subsection (a)(1) to read as follows:*

*''(C) SUSPENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspires or acts to prevent the alien's removal subject to an order of removal.'';*

*(5) in subsection (a)(2), by adding at the end the following: ''If a court orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary in the exercise of discretion may detain the alien during the pendency of such stay of removal.'';*

*(6) in subsection (a)(3), by amending subparagraph (D) to read as follows:*

*''(D) to obey reasonable restrictions on the alien's conduct or activities, or perform affirmative acts, that the Secretary prescribes for the alien, in order to prevent the alien from absconding, or for the protection of the community, or for other purposes related to the enforcement of the immigration laws.'';*

*(7) in subsection (a)(6), by striking ''removal period and, if released,'' and inserting ''removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien'';*

*(8) by redesignating paragraph (7) of subsection (a) as paragraph (10) and inserting after paragraph (6) of such subsection the following new paragraphs:*

*''(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary, in the Secretary's discretion, may parole the alien under section 212(d)(5) of this Act and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.*

*''(8) APPLICATION OF ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—The procedures described in subsection (j) shall only apply with respect to an alien who—*

*''(A) was lawfully admitted the most recent time the alien entered the United States or has otherwise effected an entry into the United States, and*

*''(B) is not detained under paragraph (6).*

*''(9) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision pursuant to paragraphs (6), (7), or (8) or subsection (j) shall be available exclusively in habeas corpus proceedings instituted in the United States District Court for the District of Columbia, and only if the alien has exhausted all administrative remedies (statutory and regulatory) available to the alien as of right.''; and*

*(9) by adding at the end the following new subsection:*

*''(j) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—*

*''(1) APPLICATION.—The procedures described in this subsection apply in the case of an alien described in subsection (a)(8).*

*''(2) ESTABLISHMENT OF A DETENTION REVIEW PROCESS FOR ALIENS WHO FULLY COOPERATE WITH REMOVAL.—*

*''(A) IN GENERAL.—The Secretary shall establish an administrative review process to determine whether the aliens should be detained or released on conditions for aliens who—*

*''(i) have made all reasonable efforts to comply with their removal orders;*

*''(ii) have complied with the Secretary's efforts to carry out the removal orders, including making timely application in good faith for travel or other documents necessary to the alien's departure, and*

*''(iii) have not conspired or acted to prevent removal.*

*''(B) DETERMINATION.—The Secretary shall make a determination whether to release an alien after the removal period in accordance with paragraphs (3) and (4). The determination—*

*''(i) shall include consideration of any evidence submitted by the alien and the history of the alien's efforts to comply with the order of removal, and*

*''(ii) may include any information or assistance provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the alien.*

*''(3) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD .—*

*''(A) INITIAL 90 DAY PERIOD.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).*

*''(B) EXTENSION.—*

*''(i) IN GENERAL.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien beyond the 90 days authorized in subparagraph (A) if the conditions described in subparagraph (A), (B), or (C) of paragraph (4) apply.*

*''(ii) RENEWAL.—The Secretary may renew a certification under paragraph (4)(A) every six months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under such paragraph.*

*''(iii) DELEGATION.—Notwithstanding section 103, the Secretary may not delegate the authority to make or renew a certification described in clause (ii), (iii), or (v) of paragraph (4)(B) below the level of the Assistant Secretary for Immigration and Customs Enforcement.*

*''(iv) HEARING.—The Secretary may request that the Attorney General provide for a hearing to make the determination described in clause (iv)(II) of paragraph (4)(B).*

*''(4) CONDITIONS FOR EXTENSION.—The conditions for continuation of detention are any of the following:*

*''(A) The Secretary determines that there is a significant likelihood that the alien—*

*''(i) will be removed in the reasonably foreseeable future; or*

*''(ii) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien's failure or refusal to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including making timely application in good faith for travel or other documents necessary to the alien's departure, or conspiracies or acts to prevent removal.*

*''(B) The Secretary certifies in writing any of the following:*

*''(i) In consultation with the Secretary of Health and Human Services, the alien has a highly contagious disease that poses a threat to public safety.*

*''(ii) After receipt of a written recommendation from the Secretary of State, the release of the alien is likely to have serious adverse foreign policy consequences for the United States.*

*''(iii) Based on information available to the Secretary (including available information from the intelligence community, and without regard to the grounds upon which the alien was ordered removed), there is reason to believe that the release of the alien would threaten the national security of the United States.*

*''(iv) The release of the alien will threaten the safety of the community or any person, the conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and—*

*''(I) the alien has been convicted of one or more aggravated felonies described in section 101(a)(43)(A) or of one or more crimes identified by the Secretary by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such crimes, for an aggregate term of imprisonment of at least five years; or*

*''(II) the alien has committed one or more crimes of violence and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future.*

*''(v) The release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and the alien has been convicted of at least one aggravated felony.*

*''(C) Pending a determination under subparagraph (B), so long as the Secretary has initiated the administrative review process no later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).*

*''(5) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary in the exercise of discretion may impose conditions on release as provided in subsection (a)(3).*

*''(6) REDETENTION.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to cooperate in the alien's removal from the United States, or if, upon reconsideration, the Secretary determines that the alien can be detained under paragraph (1). Paragraphs (6) through (8) of subsection (a) shall apply to any alien returned to custody pursuant to this paragraph, as if the removal period terminated on the day of the redetention.*

*''(7) CERTAIN ALIENS WHO EFFECTED ENTRY.—If an alien has effected an entry into the United States but has neither been lawfully admitted nor physically present in the United States continuously for the 2-year period immediately prior to the commencement of removal proceedings under this Act or deportation proceedings against the alien, the Secretary in the exercise of discretion may decide not to apply subsection (a)(8) and this subsection and may detain the alien without any limitations except those imposed by regulation.''.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as amended, shall apply to—*

*(1) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of enactment of this Act; and*

*(2) acts and conditions occurring or existing before, on, or after the date of enactment of this Act.*

***SEC. 603. INCREASE IN CRIMINAL PENALTIES.***

*Section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended—*

*(1) in subsection (a)(1)—*

*(A) in the matter before subparagraph (A), by inserting ''or 212(a)'' after ''section 237(a)''; and*

*(B) by striking ''imprisoned not more than four years'' and inserting ''imprisoned for not less than six months or more than five years''; and*

*(2) in subsection (b)—*

*(A) by striking ''not more than $1,000'' and inserting ''under title 18, United States Code''; and*

*(B) by striking ''for not more than one year'' and inserting ''for not less than six months or more than five years (or 10 years if the alien is a member of any class described in paragraph (1)(E), (2), (3), or (4) of section 237(a)''.*

***SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED FELONS AND OTHER CRIMINALS.***

*(a) EXCLUSION BASED ON FRAUDULENT DOCUMENTATION.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended—*

*(1) in subclause (I), by striking ''or'' at the end;*

*(2) in subclause (II), by adding ''or'' at the end; and*

*(3) by inserting after subclause (II) the following new subclause:*

*''(III) a violation (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code,''.*

*(b) EXCLUSION BASED ON AGGRAVATED FELONY, UNLAWFUL PROCUREMENT OF CITIZENSHIP, AND CRIMES OF DOMESTIC VIOLENCE.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following new subparagraphs:*

*''(J) AGGRAVATED FELONY.—Any alien who is convicted of an aggravated felony at any time is inadmissible.*

*''(K) UNLAWFUL PROCUREMENT OF CITIZENSHIP.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) subsection (a) or (b) of section 1425 of title 18, United States Code is inadmissible.*

*''(L) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS; CRIMES AGAINST CHILDREN.—*

*''(i) DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE.—*

*''(I) IN GENERAL.—Subject to subclause (II), any alien who at any time is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible.*

*''(II) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—Subclause (I) shall not apply to any alien described in section 237(a)(7)(A).*

*''(III) CRIME OF DOMESTIC VIOLENCE DEFINED.—For purposes of subclause (I), the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.*

*''(ii) VIOLATORS OF PROTECTION ORDERS.—*

*''(I) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or person for whom the protection order was issued is inadmissible.*

*''(II) PROTECTION ORDER DEFINED.—For purposes of subclause (I), the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.''.*

*(c) WAIVER AUTHORITY.—Section 212(h) of such Act (8 U.S.C. 1182(h)) is amended—*

*(1) by striking ''The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)'' and inserting ''The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or such Secretary, waive the application of subparagraph (A)(i)(I), (A)(i)(III), (B), (D), (E), (K), and (L) of subsection (a)(2)'';*

*(2) in paragraphs (1)(A) and (1)(B) and the last sentence, by inserting ''or the Secretary'' after ''Attorney General'' each place it appears;*

*(3) in paragraph (2), by striking ''Attorney General, in his discretion,'' and inserting ''Attorney General or the Secretary of Homeland Security, in the discretion of the Attorney General or such Secretary,'';*

*(4) in paragraph (2), by striking ''as he'' and inserting ''as the Attorney General or the Secretary'';*

*(5) in the second sentence, by striking ''criminal acts involving torture'' and inserting ''criminal acts involving torture, or an aggravated felony''; and*

*(6) in the third sentence, by striking ''if either since the date of such admission the alien has been convicted of an aggravated felony or the alien'' and inserting ''if since the date of such admission the alien''.*

*(d) CONSTRUCTION.—The amendments made by this section shall not be construed to create eligibility for relief from removal under section 212(c) of the Immigration and Nationality Act, as in effect before its repeal by section 304(b) of the Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208), where such eligibility did not exist before these amendments became effective.*

*(e) EFFECTIVE DATE.—The amendments made by this section shall apply to—*

*(1) any act that occurred before, on, or after the date of the enactment of this Act; and*

*(2) to all aliens who are required to establish admissibility on or after the such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.*

***SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT OF STATUS FOR AGGRAVATED FELONIES.***

*(a) IN GENERAL.—Section 209(c) of the Immigration and Nationality Act (8 U.S.C. 1159(c)) is amended by adding at the end the following: ''However, an alien who is convicted of an aggravated felony is not eligible for a waiver or for adjustment of status under this section.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—*

*(1) to any act that occurred before, on, or after the date of the enactment of this Act; and*

*(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.*

***SEC. 606. REMOVING DRUNK DRIVERS.***

*(a) IN GENERAL.—Section 101(a)(43)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is amended by inserting '', including a third drunk driving conviction, regardless of the States in which the convictions occurred, and regardless of whether the offenses are deemed to be misdemeanors or felonies under State or Federal law,'' after ''offense)''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to convictions entered before, on, or after such date.*

***SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT ASSISTANCE PROGRAM.***

*(a) DESIGNATED COUNTIES ADJACENT TO THE SOUTHERN BORDER OF THE UNITED STATES DEFINED.—In this section, the term ''designated counties adjacent to the southern international border of the United States'' includes a county any part of which is within 25 miles of the southern international border of the United States.*

*(b) AUTHORITY.—*

*(1) IN GENERAL.—Any Sheriff or coalition or group of Sheriffs from designated counties adjacent to the southern international border of the United States may transfer aliens detained or in the custody of the Sheriff who are not lawfully present in the United States to appropriate Federal law enforcement officials, and shall be promptly paid for the costs of performing such transfers by the Attorney General for any local or State funds previously expended or proposed to be spent by that Sheriff or coalition or group of Sheriffs.*

*(2) PAYMENT OF COSTS.—Payment of costs under paragraph (1) shall include payment for costs of detaining, housing, and transporting aliens who are not lawfully present in the United States or who have unlawfully entered the United States at a location other than a port of entry and who are taken into custody by the Sheriff.*

*(3) LIMITATION TO FUTURE COSTS.—In no case shall payment be made under this section for costs incurred before the date of the enactment of this Act.*

*(4) ADVANCE PAYMENT OF COSTS.—The Attorney General shall make an advance payment under this section upon a certification of anticipated costs for which payment may be made under this section, but in no case shall such an advance payment cover a period of costs of longer than 3 months.*

*(c) DESIGNATED COUNTY LAW ENFORCEMENT ACCOUNT.—*

*(1) SEPARATE ACCOUNT.—Reimbursement or pre-payment under subsection (b) shall be made promptly from funds deposited into a separate account in the Treasury of the United States to be entitled the ''Designated County Law Enforcement Account''.*

*(2) AVAILABILITY OF FUNDS.—All deposits into the Designated County Law Enforcement Account shall remain available until expended to the Attorney General to carry out the provisions of this section.*

*(3) PROMPTLY DEFINED.—For purposes of this section, the term ''promptly'' means within 60 days.*

*(d) FUNDS FOR THE DESIGNATED COUNTY LAW ENFORCEMENT ACCOUNT.—Only funds designated, authorized, or appropriated by Congress may be deposited or transferred to the Designated County Law Enforcement Account. The Designated County Law Enforcement Account is authorized to receive up to $100,000,000 per year.*

*(e) USE OF FUNDS.—*

*(1) IN GENERAL.—Funds provided under this section shall be payable directly to participating Sheriff's offices and may be used for the transfers described in subsection (b)(1), including the costs of personnel (such as overtime pay and costs for reserve deputies), costs of training of such personnel, equipment, and, subject to paragraph (2), the construction, maintenance, and operation of detention facilities to detain aliens who are unlawfully present in the United States. For purposes of this section, an alien who is unlawfully present in the United States shall be deemed to be a Federal prisoner beginning upon determination by Federal law enforcement officials that such alien is unlawfully*

*present in the United States, and such alien shall, upon such determination, be deemed to be in Federal custody. In order for costs to be eligible for payment, the Sheriff making such application shall personally certify under oath that all costs submitted in the application for reimbursement or advance payment meet the requirements of this section and are reasonable and necessary, and such certification shall be subject to all State and Federal laws governing statements made under oath, including the penalties of perjury, removal from office, and prosecution under State and Federal law.*

*(2) LIMITATION.—Not more than 20 percent of the amount of funds provided under this section may be used for the construction or renovation of detention or similar facilities.*

*(f) DISPOSITION AND DELIVERY OF DETAINED ALIENS.—All aliens detained or taken into custody by a Sheriff under this section and with respect to whom Federal law enforcement officials determine are unlawfully present in the United States, shall be immediately delivered to Federal law enforcement officials. In accordance with subsection (e)(1), an alien who is in the custody of a Sheriff shall be deemed to be a Federal prisoner and in Federal custody.*

*(g) REGULATIONS.—The Attorney General shall issue, on an interim final basis, regulations not later than 60 days after the date of the enactment of this Act—*

*(1) governing the distribution of funds under this section for all reasonable and necessary costs and other expenses incurred or proposed to be incurred by a Sheriff or coalition or group of Sheriffs under this section; and*

*(2) providing uniform standards that all other Federal law enforcement officials shall follow to cooperate with such Sheriffs and to otherwise implement the requirements of this section.*

*(h) EFFECTIVE DATE.—The provisions of this section shall take effect on its enactment. The promulgation of any regulations under subsection (g) is not a necessary precondition to the immediate deployment or work of Sheriffs personnel or corrections officers as authorized by this section. Any reasonable and necessary expenses or costs authorized by this section and incurred by such Sheriffs after the date of the enactment of this Act but prior to the date of the promulgation of such regulations are eligible for reimbursement under the terms and conditions of this section.*

*(i) AUDIT.—All funds paid out under this section are subject to audit by the Inspector General of the Department of Justice and abuse or misuse of such funds shall be vigorously investigated and prosecuted to the full extent of Federal law.*

*(j) SUPPLEMENTAL FUNDING.—All funds paid out under this section must supplement, and may not supplant, State or local funds used for the same or similar purposes.*

***SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE ALIENS PARTICIPATING IN CRIMINAL STREET GANGS; DETENTION; INELIGIBILITY FROM PROTECTION FROM REMOVAL AND ASYLUM.***

*(a) INADMISSIBLE.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)), as amended by section 604(b), is further amended by adding at the end the following:*

*''(M) CRIMINAL STREET GANG PARTICIPATION.—*

*''(i) IN GENERAL.—Any alien is inadmissible if the alien has been removed under section 237(a)(2)(F), or if the consular officer or the Secretary of Homeland Security knows, or has reasonable ground to believe that the alien—*

*''(I) is a member of a criminal street gang and has committed, conspired, or threatened to commit, or seeks to enter the United States to engage solely, principally, or incidentally in, a gang crime or any other unlawful activity; or*

*''(II) is a member of a criminal street gang designated under section 219A.*

*''(ii) CRIMINAL STREET GANG DEFINED.—For purposes of this subparagraph, the term 'criminal street gang' means a formal or informal group or association of 3 or more individuals, who commit 2 or more gang crimes (one of which is a crime of violence, as defined in section 16 of title 18, United States Code) in 2 or more separate criminal episodes in relation to the group or association.*

*''(iii) GANG CRIME DEFINED.—For purposes of this subparagraph, the term 'gang crime' means conduct constituting any Federal or State crime, punishable by imprisonment for one year or more, in any of the following categories:*

*''(I) A crime of violence (as defined in section 16 of title 18, United States Code).*

*''(II) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or burglary.*

*''(III) A crime involving the manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemical (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).*

*''(IV) Any conduct punishable under section 844 of title 18, United States Code (relating to explosive materials), subsection (d), (g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of such title) or is a serious drug offense (as defined in section 924(e)(2)(A)), (i), (j), (k), (o), (p), (q), (u), or (x) of section 922 of such title (relating to unlawful acts), or subsection (b), (c), (g), (h), (k), (l), (m), or (n) of section 924 of such title (relating to penalties), section 930 of such title (relating to possession of firearms and dangerous weapons in Federal facilities), section 931 of such title (relating to purchase, ownership, or possession of body armor by violent felons), sections 1028 and 1029 of such title (relating to fraud and related activity in connection with identification documents or access devices), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).*

*''(V) Any conduct punishable under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of this Act.''.*

*(b) DEPORTABLE.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:*

*''(F) CRIMINAL STREET GANG PARTICIPATION.—*

*''(i) IN GENERAL.—Any alien is deportable who—*

*''(I) is a member of a criminal street gang and is convicted of committing, or conspiring, threatening, or attempting to commit, a gang crime; or*

*''(II) is determined by the Secretary of Homeland Security to be a member of a criminal street gang designated under section 219A.*

*''(ii) DEFINITIONS.—For purposes of this subparagraph, the terms 'criminal street gang' and 'gang crime' have the meaning given such terms in section 212(a)(2)(M).''.*

*(c) DESIGNATION OF CRIMINAL STREET GANGS.—*

*(1) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:*

*''DESIGNATION OF CRIMINAL STREET GANGS*

*''SEC. 219A. (a) DESIGNATION.—*

*''(1) IN GENERAL.—The Attorney General is authorized to designate a group or association as a criminal street gang in accordance with this subsection if the Attorney General finds that the group or association meets the criteria described in section 212(a)(2)(M)(ii)(I).*

*''(2) PROCEDURE.—*

*''(A) NOTICE.—*

*''(i) TO CONGRESSIONAL LEADERS.—Seven days before making a designation under this subsection, the Attorney General shall notify the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1) with respect to that group or association, and the factual basis therefor.*

*''(ii) PUBLICATION IN FEDERAL REGISTER.—The Attorney shall publish the designation in the Federal Register seven days after providing the notification under clause (i).*

*''(B) EFFECT OF DESIGNATION.—*

*''(i) A designation under this subsection shall take effect upon publication under subparagraph (A)(ii).*

*''(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.*

*''(3) RECORD.—In making a designation under this subsection, the Attorney General shall create an administrative record.*

*''(4) PERIOD OF DESIGNATION.—*

*''(A) IN GENERAL.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (b).*

*''(B) REVIEW OF DESIGNATION UPON PETITION.—*

*''(i) IN GENERAL.—The Attorney General shall review the designation of a criminal street gang under the procedures set forth in clauses (iii) and (iv) if the designated gang or association files a petition for revocation within the petition period described in clause (ii).*

*''(ii) PETITION PERIOD.—For purposes of clause (i)—*

*''(I) if the designated gang or association has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or*

*''(II) if the designated gang or association has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.*

*''(iii) PROCEDURES.—Any criminal street gang that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the gang is warranted.*

*''(iv) DETERMINATION.—*

*''(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Attorney General shall make a determination as to such revocation.*

*''(II) PUBLICATION OF DETERMINATION.—A determination made by the Attorney General under this clause shall be published in the Federal Register.*

*''(III) PROCEDURES.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).*

*''(C) OTHER REVIEW OF DESIGNATION.—*

*''(i) IN GENERAL.—If in a 5-year period no review has taken place under subparagraph (B), the Attorney General shall review the designation of the criminal street gang in order to determine whether such designation should be revoked pursuant to paragraph (6).*

*''(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Attorney General. The results of such review and the applicable procedures shall not be reviewable in any court.*

''(iii) PUBLICATION OF RESULTS OF REVIEW.—The Attorney General shall publish any determination made pursuant to this subparagraph in the Federal Register.

''(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

''(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

''(A) IN GENERAL.—The Attorney General may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Attorney General finds that the circumstances that were the basis for the designation have changed in such a manner as to warrant revocation.

''(B) PROCEDURE.—The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

''(7) EFFECT OF REVOCATION.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

''(8) USE OF DESIGNATION IN HEARING.—If a designation under this subsection has become effective under paragraph (2)(B) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any hearing.

''(b) JUDICIAL REVIEW OF DESIGNATION.—

''(1) IN GENERAL.—Not later than 30 days after publication of the designation in the Federal Register, a group or association designated as a criminal street gang may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.

''(2) BASIS OF REVIEW.—Review under this subsection shall be based solely upon the administrative record.

''(3) SCOPE OF REVIEW.—The Court shall hold unlawful and set aside a designation the court finds to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

''(B) contrary to constitutional right, power, privilege, or immunity;

''(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

''(D) lacking substantial support in the administrative record taken as a whole; or

''(E) not in accord with the procedures required by law.

''(4) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

''(c) RELEVANT COMMITTEE DEFINED.—As used in this section, the term 'relevant committees' means the Committees on the Judiciary of the House of Representatives and of the Senate.''.

(2) CLERICAL AMENDMENT.—The table of contents of such Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 219 the following:

''Sec. 219A. Designation of criminal street gangs.''.

(d) MANDATORY DETENTION OF CRIMINAL STREET GANG MEMBERS.—

(1) IN GENERAL.—Section 236(c)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)(D)) is amended—

(A) by inserting ''or 212(a)(2)(M)'' after ''212(a)(3)(B)''; and

(B) by inserting ''237(a)(2)(F) or'' before ''237(a)(4)(B)''.

(2) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by paragraph (1).

(3) EFFECTIVE DATE.—This subsection and the amendments made by this subsection are effective as of the date of enactment of this Act and shall apply to aliens detained on or after such date.

(e) INELIGIBILITY OF ALIEN STREET GANG MEMBERS FROM PROTECTION FROM REMOVAL AND ASYLUM.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting ''who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is'' after ''to an alien''.

(2) INELIGIBILITY FOR ASYLUM.—Section 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is amended—

(A) in clause (v), by striking ''or'' at the end;

(B) by redesignating clause (vi) as clause (vii); and

(C) by inserting after clause (v) the following:

''(vi) the alien is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) (relating to participation in criminal street gangs); or''.

(3) DENIAL OF REVIEW OF DETERMINATION OF INELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is amended by adding at the end the following:

''(C) LIMITATION ON JUDICIAL REVIEW.—There shall be no judicial review of any finding under subparagraph (B) that an alien is in described in section 208(b)(2)(A)(vi).''.

(4) EFFECTIVE DATE.—The amendments made by this subsection are effective on the date of enactment of this Act and shall apply to all applications pending on or after such date.

(f) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section are effective as of the date of enactment and shall apply to all pending cases in which no final administrative action has been entered.

**SEC. 609. NATURALIZATION REFORM.**

(a) BARRING TERRORISTS FROM NATURALIZATION.—Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end the following new subsection:

''(g) No person shall be naturalized who the Secretary of Homeland Security determines, in the Secretary's discretion, to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and shall be binding upon, and unreviewable by, any court exercising jurisdiction under the immigration laws over any application for naturalization, regardless whether such jurisdiction to review a decision or action of the Secretary is de novo or otherwise.''.

(b) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—The last sentence of section 318 of such Act (8 U.S.C. 1429) is amended—

(1) by striking ''shall be considered by the Attorney General'' and inserting ''shall be considered by the Secretary of Homeland Security or any court'';

(2) by striking ''pursuant to a warrant of arrest issued under the provisions of this or any other Act:'' and inserting ''or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced:''; and

(3) by striking ''upon the Attorney General'' and inserting ''upon the Secretary of Homeland Security''.

(c) PENDING DENATURALIZATION OR REMOVAL PROCEEDINGS.—Section 204(b) of such Act (8 U.S.C. 1154(b)) is amended by adding at the end the following: ''No petition shall be approved pursuant to this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indirectly) result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.''.

(d) CONDITIONAL PERMANENT RESIDENTS.—Section 216(e) and section 216A(e) of such Act (8 U.S.C. 1186a(e), 1186b(e)) are each amended by inserting before the period at the end the following: '', if the alien has had the conditional basis removed under this section''.

(e) DISTRICT COURT JURISDICTION.—Section 336(b) of such Act (8 U.S.C. 1447(b)) is amended to read as follows:

''(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary for the Secretary's determination on the application.''.

(f) CONFORMING AMENDMENTS.—Section 310(c) of such Act (8 U.S.C. 1421(c)) is amended—

(1) by inserting '', no later than the date that is 120 days after the Secretary's final determination'' before ''seek''; and

(2) by striking the second sentence and inserting the following: ''The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character, whether an alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed on or after, such date.

**SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS.**

(a) IN GENERAL.—Section 238(b) of the Immigration and Nationality Act (8 U.S.C. 1228(b)) is amended–

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security in the exercise of discretion''; and

(B) by striking ''set forth in this subsection or'' and inserting ''set forth in this subsection, in lieu of removal proceedings under'';

(2) in paragraph (3), by striking ''paragraph (1) until 14 calendar days'' and inserting ''paragraph (1) or (3) until 7 calendar days'';

(3) by striking ''Attorney General'' each place it appears in paragraphs (3) and (4) and inserting ''Secretary of Homeland Security'';

(4) in paragraph (5)—

(A) by striking ''described in this section'' and inserting ''described in paragraph (1) or (2)''; and

(B) by striking ''the Attorney General may grant in the Attorney General's discretion'' and

*inserting ''the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding'';*

*(5) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and*

*(6) by inserting after paragraph (2) the following new paragraph:*

*''(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who*

*''(A) has not been admitted or paroled;*

*''(B) has not been found to have a credible fear of persecution pursuant to the procedures set forth in section 235(b)(1)(B); and*

*''(C) is not eligible for a waiver of inadmissibility or relief from removal.''.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date*

***SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE IN CHANGE IN INADMISSIBILITY FOR TERRORISTS UNDER REAL ID ACT.***

*Effective as if included in the enactment of Public Law 109–13, section 103(d)(1) of the REAL ID Act of 2005 (division B of such Public Law) is amended by inserting '', deportation, and exclusion'' after ''removal''.*

***SEC. 612. BAR TO GOOD MORAL CHARACTER.***

*(a) IN GENERAL.—Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—*

*(1) by inserting after paragraph (1) the following new paragraph:*

*''(2) one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the Attorney General, to have been at any time an alien described in section 212(a)(3) or section 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and which shall be binding upon any court regardless of the applicable standard of review;'';*

*(2) in paragraph (8), by inserting '', regardless whether the crime was classified as an aggravated felony at the time of conviction'' after ''(as defined in subsection (a)(43))''; and*

*(3) by striking the sentence following paragraph (9) and inserting the following: ''The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary and the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.''.*

*(b) AGGRAVATED FELONY EFFECTIVE DATE.—Section 509(b) of the Immigration Act of 1990 (Public Law 101–649), as amended by section 306(a)(7) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102–232) is amended to read as follows:*

*''(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 29, 1990, and shall apply to convictions occurring before, on, or after such date.''.*

*(c) TECHNICAL CORRECTION TO THE INTELLIGENCE REFORM ACT.—Effective as if included in the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), section 5504(2) of such Act is amended by striking ''adding at the end'' and inserting ''inserting immediately after paragraph (8)''.*

*(d) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other benefit or relief or any other case or matter under the immigration laws pending on, or filed on or after, such date.*

***SEC. 613. STRENGTHENING DEFINITIONS OF ''AGGRAVATED FELONY'' AND ''CONVICTION''.***

*(a) IN GENERAL.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—*

*(1) by amending subparagraph (A) of paragraph (43) to read as follows:*

*''(A) murder, manslaughter, homicide, rape, or any sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;''; and*

*(2) in paragraph (48)(A), by inserting after and below clause (ii) the following:*

*''Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.''.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to any act that occurred before, on, or after the date of the enactment of this Act and shall apply to any matter under the immigration laws pending on, or filed on or after, such date.*

***SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.***

*(a) IN GENERAL.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—*

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

*(2) in clause (iii), by inserting ''or'' at the end; and*

*(3) by inserting after clause (iii) the following new clause:*

*''(iv) of a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code,''.*

*(b) DEPORTABILITY; CRIMINAL OFFENSES.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended by section 608(b), is amended by adding at the end the following new subparagraph:*

*''(G) SOCIAL SECURITY AND IDENTIFICATION FRAUD.—Any alien who at any time after admission is convicted of a violation of (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code is deportable.''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any act that occurred before, on, or after the date of the enactment of this Act, and to all aliens who are required to establish admissibility on or after such date and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.*

## *TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION*

***SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.***

*(a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended by adding at the end the following:*

*''(7) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—*

*''(A) IN GENERAL.—The Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—*

*''(i) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed; and*

*''(ii) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.*

*''(B) INITIAL RESPONSE.—The verification system shall provide verification or a tentative nonverification of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing verification or tentative nonverification, the verification system shall provide an appropriate code indicating such verification or such nonverification.*

*''(C) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONVERIFICATION.—In cases of tentative nonverification, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final verification or nonverification within 10 working days after the date of the tentative nonverification. When final verification or nonverification is provided, the verification system shall provide an appropriate code indicating such verification or nonverification.*

*''(D) DESIGN AND OPERATION OF SYSTEM.—The verification system shall be designed and operated—*

*''(i) to maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information;*

*''(ii) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;*

*''(iii) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and*

*''(iv) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—*

*''(I) the selective or unauthorized use of the system to verify eligibility;*

*''(II) the use of the system prior to an offer of employment; or*

*''(III) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.*

*''(E) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such verification or nonverification) except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.*

''(F) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and alien identification or authorization number which are provided in an inquiry against such information maintained by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

''(ii) When a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number, the Secretary of Homeland Security shall conduct an investigation, within the time periods specified in subparagraphs (B) and (C), in order to ensure that no fraudulent use of a social security account number has taken place. If the Secretary has selected a designee to establish and administer the verification system, the designee shall notify the Secretary when a single employer has submitted to the verification system pursuant to paragraph (3)(A) the identical social security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical social security account number, in a manner which indicates the possible fraudulent use of that number. The designee shall also provide the Secretary with all pertinent information, including the name and address of the employer or employers who submitted the relevant social security account number, the relevant social security account number submitted by the employer or employers, and the relevant name and date of birth of the employee submitted by the employer or employers.

''(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subparagraph (C).

''(H) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, nothing in this paragraph shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this paragraph for any other purpose other than as provided for.

''(ii) NO NATIONAL IDENTIFICATION CARD.—Nothing in this paragraph shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

''(I) FEDERAL TORT CLAIMS ACT.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this subparagraph.

''(J) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION.—No person or entity shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the employment eligibility verification mechanism established under this paragraph.''.

(b) REPEAL OF PROVISION RELATING TO EVALUATIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

**SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.**

Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (a)(3), by inserting ''(A)'' after ''DEFENSE.—'', and by adding at the end the following:

''(B) FAILURE TO SEEK AND OBTAIN VERIFICATION.—In the case of a person or entity in the United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

''(i) FAILURE TO SEEK VERIFICATION.—

''(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(7), seeking verification of the identity and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring, the date specified in subsection (b)(8)(B) for previously hired individuals, or before the recruiting or referring commences, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

''(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

''(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (b)(7)(B) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.'';

(2) by amending subparagraph (A) of subsection (b)(1) to read as follows:

''(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Secretary by regulation, that it has verified that the individual is not an unauthorized alien by—

''(i) obtaining from the individual the individual's social security account number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under paragraph (2), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

''(ii)(I) examining a document described in subparagraph (B); or (II) examining a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and, if the document bears an expiration date, that expiration date has not elapsed. If an individual provides a document (or combination of documents) that reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and is sufficient to meet the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce another document.'';

(3) in subsection (b)(1)(D)—

(A) in clause (i), by striking ''or such other personal identification information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section''; and

(B) in clause (ii), by inserting before the period ''and that contains a photograph of the individual'';

(4) in subsection (b)(2), by adding at the end the following: ''The individual must also provide that individual's social security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under this paragraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.''; and

(5) by amending paragraph (3) of subsection (b) to read as follows:

''(3) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

''(A) IN GENERAL.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must—

''(i) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual or the date of the completion of verification of a previously hired individual and ending—

''(I) in the case of the recruiting or referral of an individual, three years after the date of the recruiting or referral;

''(II) in the case of the hiring of an individual, the later of—

''(aa) three years after the date of such hiring; or

''(bb) one year after the date the individual's employment is terminated; and

''(III) in the case of the verification of a previously hired individual, the later of—

''(aa) three years after the date of the completion of verification; or

''(bb) one year after the date the individual's employment is terminated;

''(ii) make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in subsection (b)(8)(B), or before the recruiting or referring commences; and

''(iii) may not commence recruitment or referral of the individual until the person or entity receives verification under subparagraph (B)(i) or (B)(iii).

''(B) VERIFICATION.—

''(i) VERIFICATION RECEIVED.—If the person or other entity receives an appropriate verification of an individual's identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a final verification of such identity and work eligibility of the individual.

''(ii) TENTATIVE NONVERIFICATION RECEIVED.—If the person or other entity receives a tentative nonverification of an individual's identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does

*not contest the nonverification within the time period specified, the nonverification shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a tentative nonverification. If the individual does contest the nonverification, the individual shall utilize the process for secondary verification provided under paragraph (7). The nonverification will remain tentative until a final verification or nonverification is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonverification becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.*

*''(iii) FINAL VERIFICATION OR NONVERIFICATION RECEIVED.—If a final verification or nonverification is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a verification or nonverification of identity and work eligibility of the individual.*

*''(iv) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.*

*''(v) CONSEQUENCES OF NONVERIFICATION.—*

*''(I) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonverification regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.*

*''(II) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under subclause (I), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.*

*''(vi) CONTINUED EMPLOYMENT AFTER FINAL NONVERIFICATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonverification, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).''.*

***SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM TO PREVIOUSLY HIRED INDIVIDUALS AND RECRUITING AND REFERRING.***

*(a) APPLICATION TO RECRUITING AND REFERRING.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—*

*(1) in subsection (a)(1)(A), by striking ''for a fee'';*

*(2) in subsection (a)(1), by amending subparagraph (B) to read as follows:*

*''(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).'';*

*(3) in subsection (a)(2) by striking ''after hiring an alien for employment in accordance with paragraph (1),'' and inserting ''after complying with paragraph (1),''; and*

*(4) in subsection (a)(3), as amended by section 702, is further amended by striking ''hiring,'' and inserting ''hiring, employing,'' each place it appears.*

*(b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of such Act (8 U.S.C. 1324a(b)), as amended by section 701(a), is amended by adding at the end the following new paragraph:*

*''(8) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM FOR PREVIOUSLY HIRED INDIVIDUALS.—*

*''(A) ON A VOLUNTARY BASIS.—Beginning on the date that is 2 years after the date of the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 and until the date specified in subparagraph (B)(iii), a person or entity may make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the person or entity, as long as it is done on a nondiscriminatory basis.*

*''(B) ON A MANDATORY BASIS.—*

*''(i) A person or entity described in clause (ii) must make an inquiry as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date three years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.*

*''(ii) A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), but only to the extent of such individuals.*

*''(iii) All persons and entities other than those described in clause (ii) must make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date six years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.''.*

***SEC. 704. BASIC PILOT PROGRAM.***

*Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''at the end of the 11-year period beginning on the first day the pilot program is in effect'' and inserting ''two years after the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005''.*

***SEC. 705. HIRING HALLS.***

*Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following new paragraph:*

*''(4) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term 'refer' means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Generally, only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section the term 'recruit' means the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Generally, only persons or entities recruiting for remunerations (whether on a retainer or contingency basis) are included in the definition. However, union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.''.*

***SEC. 706. PENALTIES.***

*Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—*

*(1) in subsection (e)(4)—*

*(A) in subparagraph (A), in the matter before clause (i), by inserting '', subject to paragraph (10),'' after ''in an amount'';*

*(B) in subparagraph (A)(i), by striking ''not less than $250 and not more than $2,000'' and inserting ''not less than $5,000'';*

*(C) in subparagraph (A)(ii), by striking ''not less than $2,000 and not more than $5,000'' and inserting ''not less than $10,000'';*

*(D) in subparagraph (A)(iii), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $25,000''; and*

*(E) by amending subparagraph (B) to read as follows:*

*''(B) may require the person or entity to take such other remedial action as is appropriate.'';*

*(2) in subsection (e)(5)—*

*(A) by inserting '', subject to paragraph (10),'' after ''in an amount'';*

*(B) by striking ''$100'' and inserting ''$1,000'';*

*(C) by striking ''$1,000'' and inserting ''$25,000'';*

*(D) by striking ''the size of the business of the employer being charged, the good faith of the employer'' and inserting ''the good faith of the employer being charged''; and*

*(E) by adding at the end the following sentence: ''Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).'';*

*(3) by adding at the end of subsection (e) the following new paragraph:*

*''(10) MITIGATION OF CIVIL MONEY PENALTIES FOR SMALLER EMPLOYERS.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring by an employer, the dollar amounts otherwise specified in the respective paragraph shall be reduced as follows:*

*''(A) In the case of an employer with an average of fewer than 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced by 60 percent.*

*''(B) In the case of an employer with an average of at least 26, but fewer than 101, full-time equivalent employees (as so defined), the amounts shall be reduced by 40 percent.*

*''(C) In the case of an employer with an average of at least 101, but fewer than 251, full-time equivalent employees (as so defined), the amounts shall be reduced by 20 percent.*

*The last sentence of paragraph (4) shall apply under this paragraph in the same manner as it applies under such paragraph.''.*

*(4) by amending paragraph (1) of subsection (f) to read as follows:*

*''(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1) or (2) shall be fined*

*not more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.''; and*

*(5) in subsection (f)(2), by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.*

***SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EMPLOYMENT ELIGIBILITY VERIFICATION.***

*(a) REPORT.—*

*(1) IN GENERAL.—Not later than than 9 months after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Treasury, the Secretary of Homeland Security, and the Attorney General, shall submit a report to Congress that includes an evaluation of the following requirements and changes:*

*(A) A requirement that social security cards that are made of a durable plastic or similar material and that include an encrypted, machine-readable electronic identification strip and a digital photograph of the individual to whom the card is issued, be issued to each individual (whether or not a United States citizen) who—*

*(i) is authorized to be employed in the United States;*

*(ii) is seeking employment in the United States; and*

*(iii) files an application for such card, whether as a replacement of an existing social security card or as a card issued in connection with the issuance of a new social security account number.*

*(B) The creation of a unified database to be maintained by the Department of Homeland Security and comprised of data from the Social Security Administration and the Department of Homeland Security specifying the work authorization of individuals (including both United States citizens and noncitizens) for the purpose of conducting employment eligibility verification.*

*(C) A requirement that all employers verify the employment eligibility of all new hires using the social security cards described in subparagraph (A) and a phone, electronic card-reading, or other mechanism to seek verification of employment eligibility through the use of the unified database described in subparagraph (B).*

*(2) ITEMS INCLUDED IN REPORT.—The report under paragraph (1) shall include an evaluation of each of the following:*

*(A) Projected cost, including the cost to the Federal government, State and local governments, and the private sector.*

*(B) Administrability.*

*(C) Potential effects on—*

*(i) employers;*

*(ii) employees, including employees who are United States citizens as well as those that are not citizens;*

*(iii) tax revenue; and*

*(iv) privacy.*

*(D) The extent to which employer and employee compliance with immigration laws would be expected to improve.*

*(E) Any other relevant information.*

*(3) ALTERNATIVES.—The report under paragraph (1) also shall examine any alternatives to achieve the same goals as the requirements and changes described in paragraph (1) but that involve lesser cost, lesser burden on those affected, or greater ease of administration.*

*(b) INSPECTOR GENERAL REVIEW.—Not later than 3 months after the report is submitted under subsection (a), the Inspector General of the Social Security Administration, in consultation with the Inspectors General of the Department of Treasury, the Department of Homeland Security, and the Department of Justice, shall send to the Congress an evaluation of the such report.*

***SEC. 708. EFFECTIVE DATE.***

*This title and the amendments made by this title shall take effect on the date of enactment of this Act, except that the requirements of persons and entities to comply with the employment eligibility verification process takes effect on the date that is two years after such date.*

***SEC. 710. LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.***

*The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this title or the amendments made by this title, but only to the extent (extent for the purpose of carrying out section 707) the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.*

## *TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION*

***SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL ORDER AUTHORITY.***

*(a) IN GENERAL.—Section 101(a)(47) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(47)) is amended to read as follows:*

*''(47)(A) The term 'order of removal' means the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the Attorney General or the Secretary of Homeland Security has delegated the responsibility for determining whether an alien is removable, concluding that the alien is removable or ordering removal.*

*''(B) The order described under subparagraph (A) shall become final upon the earliest of—*

*''(i) a determination by the Board of Immigration Appeals affirming such order;*

*''(ii) the entry by the Board of Immigration Appeals of such order;*

*''(iii) the expiration of the period in which any party is permitted to seek review of such order by the Board of Immigration Appeals;*

*''(iv) the entry by an immigration judge of such order, if appeal is waived by all parties; or*

*''(v) the entry by another administrative officer of such order, at the conclusion of a process as authorized by law other than under section 240.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to ordered entered before, on, or after such date.*

***SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.***

*(a) IN GENERAL.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by amending the last sentence to read as follows: ''Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to visa revocations effected before, on, or after such date.*

***SEC. 803. REINSTATEMENT.***

*(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:*

*''(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—*

*''(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed;*

*''(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application for such relief may have been filed; and*

*''(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.*

*Reinstatement under this paragraph shall not require proceedings before an immigration judge under section 240 or otherwise.''.*

*(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following new subsection:*

*''(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—*

*''(1) IN GENERAL.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, or subsection (a)(2)(D) of this section, no court shall have jurisdiction to review any cause or claim arising from or relating to any reinstatement under section 241(a)(5) (including any challenge to the reinstated order), except as provided in paragraph (2) or (3).*

*''(2) CHALLENGES IN COURT OF APPEALS FOR DISTRICT OF COLUMBIA TO VALIDITY OF THE SYSTEM, ITS IMPLEMENTATION, AND RELATED INDIVIDUAL DETERMINATIONS.—*

*''(A) IN GENERAL.—Judicial review of determinations under section 241(a)(5) and its implementation is available in an action instituted in the United States Court of Appeals for the District of Columbia Circuit, but shall be limited, except as provided in subparagraph (B), to the following determinations:*

*''(i) Whether such section, or any regulation issued to implement such section, is constitutional.*

*''(ii) Whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General or the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this Act or is otherwise in violation of a statute or the Constitution.*

*''(B) RELATED INDIVIDUAL DETERMINATIONS.—If a person raises an action under subparagraph (A), the person may also raise in the same action the following issues:*

*''(i) Whether the petitioner is an alien.*

*''(ii) Whether the petitioner was previously ordered removed or deported, or excluded.*

*''(iii) Whether the petitioner has since illegally entered the United States.*

*''(C) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.*

*''(3) INDIVIDUAL DETERMINATIONS UNDER SECTION 242(a).—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a) of this section, but shall be limited to determinations of—*

*''(A) whether the petitioner is an alien;*

*''(B) whether the petitioner was previously ordered removed, deported, or excluded; and*

*''(C) whether the petitioner has since illegally entered the United States.*

*''(4) SINGLE ACTION.—A person who files an action under paragraph (2) may not file a separate action under paragraph (3). A person who files an action under paragraph (3) may not file an action under paragraph (2).''.*

*(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated on or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.*

***SEC. 804. WITHHOLDING OF REMOVAL.***

*(a) IN GENERAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C 1231(b)(3)) is amended—*

*(1) in subparagraph (A), by adding at the end the following: ''The burden of proof is on the alien to establish that the alien's life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat.''; and*

*(2) in subparagraph (C), by striking ''In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A)'' and inserting ''For purposes of this paragraph''.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 101(c) of the REAL ID Act of 2005 (division B of Public Law 109–13).*

***SEC. 805. CERTIFICATE OF REVIEWABILITY.***

*(a) ALIEN'S BRIEF.—Section 242(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is amended to read as follows:*

*''(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.''.*

*(b) CERTIFICATE OF REVIEWABILITY.—Section 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended by adding at the end the following new subparagraphs:*

*''(D) CERTIFICATE.—*

*''(i) After the alien has filed the alien's brief, the petition for review shall be assigned to a single court of appeals judge.*

*''(ii) Unless that court of appeals judge or a circuit justice issues a certificate of reviewability, the petition for review shall be denied and the government shall not file a brief.*

*''(iii) A certificate of reviewability may issue under clause (ii) only if the alien has made a substantial showing that the petition for review is likely to be granted.*

*''(iv) The court of appeals judge or circuit justice shall complete all action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge or circuit justice was assigned the petition for review, unless an extension is granted under clause (v).*

*''(v) The judge or circuit justice may grant, on the judge's or justice's own motion or on the motion of a party, an extension of the 60-day period described in clause (iv) if—*

*''(I) all parties to the proceeding agree to such extension; or*

*''(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.*

*''(vi) If no certificate of reviewability is issued before the end of the period described in clause (iv), including any extension under clause (v), the petition for review shall be deemed denied, any stay or injunction on petitioner's removal shall be dissolved without further action by the court or the government, and the alien may be removed.*

*''(vii) If a certificate of reviewability is issued under clause (ii), the Government shall be afforded an opportunity to file a brief in response to the alien's brief. The alien may serve and file a reply brief not later than 14 days after service of the Government's brief, and the court may not extend this deadline except upon motion for good cause shown.*

*''(E) NO FURTHER REVIEW OF THE COURT OF APPEALS JUDGE'S DECISION NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The single court of appeals judge's decision not to issue a certificate of reviewability, or the denial of a petition under subparagraph (D)(vi), shall be the final decision for the court of appeals and shall not be reconsidered, reviewed, or reversed by the court of appeals through any mechanism or procedure.''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions filed on or after the date that is 60 days after the date of the enactment of this Act.*

***SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.***

*(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following new paragraph:*

*''(3) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—*

*''(A) to review or appeal under this Act of an immigration officer's determination as to the inadmissibility of the alien at the port of entry into the United States; or*

*''(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to visas issued on or after the date that is 90 days after the date of the enactment of this Act.*

The Acting CHAIRMAN. No further amendment to the committee amendment is in order except those printed in part B of the report. Each further 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, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

PART B AMENDMENT NO. 1 OFFERED BY MR. CARTER

Mr. CARTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 1 printed in House Report 109–347 offered by Mr. CARTER of Texas:

In section 106, in the matter preceding paragraph (1), strike ''communication capabilities'' and insert ''communication capabilities, including the specific use of satellite communications''.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. CARTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

This amendment would ensure that the Secretary of Homeland Security would look at all technical solutions to find the best solution for effective two-way communication on the United States border. By specifically requiring the Department of Homeland Security to include satellite communications as part of this solution to curing the inefficiencies of existing communication on the border, Congress would be ensuring the consideration of the only proven communication tool that can maintain the constant connection to the Border Patrol officers in the field, thereby saving their lives and providing homeland security seamlessly and flawlessly.

In many instances during the recent natural disasters of hurricanes Katrina and Rita, satellite technology was the only reliable method of communication. Moreover, this technology has been used extensively by the U.S. military in inhospitable and remote areas of Afghanistan and Iraq. Satellite communication has proven its worth.

During the Katrina disaster, I had a conversation with the gentleman from Nevada (Mr. PORTER) about going down with a load of provisions to help folks down there. When he arrived at the town, I do not remember the name of the town, he ask if they had talked to FEMA and they said, yes, they gave us a phone number to call, but, unfortunately, our cell phones do not work, and our land lines are down so there is no telephone in this town.

Mr. PORTER had his satellite phone with him. He shared his satellite phone with those disaster victims, and they were able to communicate with FEMA.

Given the unique characteristics of our border area, satellite technology would be specifically useful in alleviating many of the communication problems that currently exist and can be done in a very cost-effective way to the U.S. taxpayer. This amendment ensures that all available options would be considered instead of limiting the Border Patrol to outmoded and frequently ineffective technology.

I ask my colleagues to support this amendment because it will greatly enhance the U.S. Border Patrol's ability to protect our Nation's borders and provide for their individual safety.

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

The Acting CHAIRMAN. Who claims time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, although I do not oppose the amendment, I would note that we will support this amendment, and I would also like to yield 2 minutes to the gentleman from Texas (Mr. GENE GREEN).

Mr. GENE GREEN of Texas. Mr. Chairman, I rise today in support of my Texas colleague's amendment, but against the bill with reservations. There are many aspects of this bill that I support. I believe we should improve security along the border. Every nation in the world should control their borders and know who is crossing their borders. That is why I co-sponsored the Border Security Act last Congress with our former colleague Jim Turner.

I believe we should prevent immigration officials from having to catch and release detainees because there are not enough detention beds and holding facilities. That is why I co-sponsored legislation with the gentleman from Texas (Mr. ORTIZ) and the gentleman from Texas (Mr. REYES) that would give us the number of beds we need.

However, I cannot support this bill in its current form.

Under this bill, approximately 11 million people in this country would become aggravated felons. If you think we have catch and release problems now, wait until we have an additional 11 million felons that have to be detained under this legislation. There are not enough prisons to handle these numbers. I cannot imagine our country loading box cars with the estimated 10 to 12 million people who do not have documents showing they are legal. This brings visions of deportation and Nazi Germany and Stalin and the Soviet Union.

Currently, 40 percent of immigration detainees are held in Department of Homeland Security facilities; 60 percent of these detainees are in local jails under contract with the Federal Government. The Federal Government needs to take responsibility for holding all of these detainees, much less the concern we have about an additional 11 million.

It is estimated by making all these people felons there are approximately 3 million U.S. citizen children that would be impacted by having their parents or guardians detained or deported. This is something we need to review closely and make sure we are not making life harder for children that are U.S. citizens who happen to be born to undocumented parents.

Finally, this bill closes the door to the courthouse for many immigrants. Without judicial review, we cannot be certain that our laws are being enforced appropriately. I believe in increasing protection along our borders, realistically addressing the current undocumented population; but I also oppose a new guest worker program.

Mr. CARTER. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, let me commend the gentleman from Texas (Mr. CARTER) for this very fine amendment. It is important to the bill. It is a well-intentioned and well-drawn amendment. I am willing to accept the amendment.

I thank the gentleman for his thoughtful consideration and for all that he does on this very, very vital issue.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as I mentioned earlier, I do not oppose the amendment. Land line and cellular telecommunications can be severely disrupted in a time of natural disaster, and it is important to have satellite communications available so that they are a reliable alternative for first responders and others involved in natural disasters.

However, I would note that while I will be happy to vote ''aye'' on the amendment; we do not actually need this amendment to have the use of satellite communications. That is something that the administration could have done on its own. There are some other things that they ought to be doing that would really make a difference.

The U.S. Border Patrol needs additional agents, and we need new training for those agents. We need 2,000 additional agents in ICE and 250 additional detention officers. U.S. Marshals need 250 additional personnel and $50 million for vehicles, communications equipment, and miscellaneous equipment. U.S. Attorneys, we need 100 additional personnel on the southwest border and $30 million for additional office space. Why? We have talked about detention beds, but the issue is we need to be able to process these cases, not just hold people. We needs to bring charges against them, those who have an arguable claim, and then adjudicate that claim: either deport them or find that their claim is a valid one.

We need additional immigration judges. We need 2,500 additional enforcement personnel in the Coast Guard, and we need 25,000 detention beds. We need 1,000 investigators for fraudulent schemes and documents. We need at least 100 helicopters and 250 power boats for the Border Patrol and at least one police-type motor vehicle for every three agents for the Border Patrol. We need enough portable computers for every Border Patrol motor vehicle. We need hand-held global positioning systems for each Border Patrol agent.

We need night vision equipment for all Border Patrol agents working during hours of darkness. We need enough body armor appropriate for the climate and risks faced by individual Border Patrol agents. We need to reestablish the Border Patrol anti-smuggling unit. And we need to establish specialized criminal investigator occupations: one for the investigation of violations of immigration law, another for customs laws, and a third for ag laws.

We need to require foreign language training for all our officers in the Department of Homeland Security who come into contact with aliens who cross the border illegally.

Yes, this amendment is worth supporting, but we do not really need it to get satellite communications. We do need, however, to authorize the equipment and the personnel so we can enforce the laws at America's borders both north and south. Unfortunately, the underlying bill before us does not do that. It is not a real enforcement measure.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. CARTER).

The amendment was agreed to.

PART B AMENDMENT NO. 2 OFFERED BY MR. GOHMERT

Mr. GOHMERT. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 2 printed in House Report 109–347 offered by Mr. GOHMERT of Texas:

At the end of section 109, add the following new subsection:

(e) ACTION BY INSPECTOR GENERAL.—In the event the Inspector General becomes aware of any improper conduct or wrongdoing in accordance with the contract review required under subsection (a), the Inspector General shall, as expeditiously as practicable, refer information related to such improper conduct or wrongdoing to the Secretary of Homeland Security or other appropriate official in the Department of Homeland Security for purposes of evaluating whether to suspend or debar the contractor.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. GOHMERT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to thank Chairman KING of New York and Chairman SENSENBRENNER for their hard work on this important legislation. Some have said it seemed like it was spur of the moment, but those of us who have spent hundreds of hours on this issue this year know otherwise and took it up in committee and subcommittee. I would also like to thank Mr. DREIER for allowing me to bring this amendment up in the Rules Committee.

I will be brief, since my amendment is pretty straightforward. This amendment will help ensure that the Federal Government is doing business with ethical contractors. Section 109 of the bill requires the Inspector General to review contracts over $20 million. This review is to be sure that the contracts were properly competed.

My amendment adds a subsection that says that during this review if the Inspector General discovers any wrongdoing or misconduct, the Inspector General will refer this information to the Secretary of Homeland Security for the purpose of evaluating whether suspension or debarrment is warranted.

Some Members may be familiar with the Darlene Druyun case. She was a top Air Force acquisition official who awarded billions of dollars' worth of contract to one particular defense contractor and all the while she was negotiating with that same defense contractor for a job for herself and her daughter. The officials at the company that negotiated her employment and she, herself, were debarred.

Some are familiar with Representative Cunningham. He did wrong, and he will and should be punished accordingly; but the contractors who competed illegally and unethically should also suffer.

This amendment helps address issues such as this as it requires the Inspector General to go forward with information

to the Secretary to evaluate for possible debarrment or suspension. Suspension and debarrment are less costly to the government than criminal or civil remedies that involve the Department of Justice. In addition, companies learn from the process and as a result they create innovative compliance and ethics programs.

Contracting with ethical companies ultimately saves taxpayers' dollars and gives us more quality for the money. For that reason and to that end I humbly offer this amendment.

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

□ 1900

The Acting CHAIRMAN (Mr. SIMPSON). Does the gentlewoman from California claim the time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition; although I do not oppose the amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman is recognized.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of this amendment. The Department of Homeland Security IG has exposed improper conduct or wrongdoing of contractors who maintain Federal contracts with the department, and I think this amendment is along the lines of trying to make sure that the American taxpayers are not going to get ripped off like they have been in the past.

Take a look at the level of fraud in contracting that has occurred in the Middle East, in Iraq; I mean, hundreds of thousand of dollars of stolen money and the stories that are coming out of the taxpayers being ripped off by contractors in the gulf region after Hurricane Katrina. We know that the record is not a good one in terms of this administration choosing contractors who will not cheat us. So I do think it is important to have this amendment, and I commend the Congressman for bringing this forward.

In June, the Homeland Security Committee heard testimony from Joel Gallay who is the acting Inspector General of GSA. Mr. Gallay provided a detailed account of significant deficiencies he discovered in evaluating the efficacy of ISIS, and of particular concern to the IG was the procurement of remote surveillance equipment, the lack of progress in implementing the system and what he called the chronic inattention to the proper administration of the contract.

The IG wrote that the program was severely hampered by ineffective management that led to waste, and the report showed deficiencies in the ISIS contract management and in the training of government officials responsible for implementing the program.

Now, it is unfortunate that we need this amendment. We would like to think that our administration would not be inept; that they would have accountability; that they would know how to administer; and they would not have this rip-off of taxpayers that has been identified to the committee repeatedly. Unfortunately, that appears not to be the case, and therefore, I do support this amendment to try and stop this rip-off of the taxpayers.

As the philosopher George Santayana cautioned, Those who do not learn from history are condemned to repeat it.

I hope that this amendment will be adopted, and that will help us from continuing to see the rip-off of American taxpayers in the arena of the Department of Homeland Security.

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

Mr. GOHMERT. Mr. Chairman, I yield myself such time as I may consume.

I appreciate my colleague from California's support on this amendment, and as I think she knows, this is an issue that knows no party boundaries, and so I am proud to stand with those who want to end this, and that would include Chairman KING.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me time, and let me express my strong support for this amendment and thank the gentleman from Texas (Mr. GOHMERT) for the contribution he has made, for the dedication he brings to this issue.

I also would say, parenthetically, if someone with his accent and my accent are supporting this bill, it shows how extensive and wide-ranging the support is for this bill. It shows that all Americans, from one end of the country to the other, one accent to the other, stand behind a bill which is good, an amendment which really adds substantially to the bill and does provide the level of integrity and honesty and interaction that we need.

With that, I express my strong support for the gentleman's amendment.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I would just note that the gentleman from Mississippi (Mr. THOMPSON), the ranking member of our full committee, worked very hard on this in collaboration with the majority. I would like to thank him for his extraordinary efforts on this, along with that of the author and the chairman.

As I say, we support this, although it is a sad day that it is so needed because of the poor administration at the department overall.

Mr. Chairman, I yield back the balance of my time.

Mr. GOHMERT. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. GOHMERT).

The amendment was agreed to.

PART B AMENDMENT NO. 3 OFFERED BY MR. SAM JOHNSON OF TEXAS

Mr. SAM JOHNSON of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 3 printed in House Report 109–347 offered by Mr. SAM JOHNSON of Texas:

At the end of title I, insert the following:

**SEC. 118. SENSE OF CONGRESS REGARDING ENFORCEMENT OF IMMIGRATION LAWS.**

(a) FINDINGS.—Congress finds the following:

(1) A primary duty of the Federal Government is to secure the homeland and ensure the safety of United States citizens and lawful residents.

(2) As a result of the terrorist attacks on September 11, 2001, perpetrated by al Qaida terrorists on United States soil, the United States is engaged in a Global War on Terrorism.

(3) According to the National Commission on Terrorist Attacks Upon the United States, up to 15 of the 9/11 hijackers could have been intercepted or deported through more diligent enforcement of immigration laws.

(4) Four years after those attacks, there is still a failure to secure the borders of the United States against illegal entry.

(5) The failure to enforce immigration laws in the interior of the United States means that illegal aliens face little or no risk of apprehension or removal once they are in the country.

(6) If illegal aliens can enter and remain in the United States with impunity, so, too, can terrorists enter and remain while they plan, rehearse, and then carry out their attacks.

(7) The failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching catastrophic or harmful attacks on United States soil.

(8) There are numerous immigration laws that are currently not being enforced.

(9) Law enforcement officers are often discouraged from enforcing the law by superiors.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President, the Attorney General, Secretary of State, Secretary of Homeland Security, and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the United States, as enacted by Congress.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Texas (Mr. SAM JOHNSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield myself 4 minutes.

Listen up. According to the 9/11 Commission, up to 15 hijackers should have been deported, but our immigration laws are not being enforced.

We cannot sit here as a body that makes laws and just watch them collect dust as our enemies plot against us.

My amendment expresses a sense of Congress that immigration laws enacted by Congress must be enforced.

This amendment sends a simple message from the Congress to the administration: Enforce the law.

We can debate how to solve the illegal immigration problem until we are blue in the face, and I see some very blue faces around the room, but if the laws we enact are not being enforced, then it is just a bunch of hot air.

I have got a four-page list of immigration laws in front of me that are currently being ignored. This is unacceptable. This non-enforcement must end. The United States Congress must demand it right now.

Let me give my colleagues a couple of examples. In 2002, we enacted a law requiring implementation of a system known as Chimera. This means there will be information sharing from Federal databases in the intelligence community to any Federal official considering an immigrant's admissibility or deportability. Well, you knew as you heard information sharing, it is not happening.

Did you know we have a law forbidding public colleges from giving in-State tuition to illegals unless they offer it to every citizen in the United States? It is going on in nine States. Federal law is being violated, and guess what, the Federal Government's doing nothing about it.

Do you know that all registered aliens are required to notify DHS within 10 days of changing address? Failure to do so is a deportable offense. This has tremendous national security value, and it is not being enforced.

In 1996, we made a law requiring the Department of State to suspend all visas to any country who refuses to receive a national who has been deported from the United States. So, hypothetically, if China would not accept people we are deporting back to China, which they are, then the Federal Government is not allowed to issue anymore visas to people coming from China. Who here thinks we are not giving visas to people from China?

The list goes on and on. I will submit it for the RECORD at this point.

IMMIGRATION LAWS THE ADMINISTRATION IS NOT ENFORCING

ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT OF 2002

Integration of all databases and data systems maintained by [DHS] that process or contain information on aliens (§202).

DHS has no plan to accomplish this.

Implementation of an interoperable electronic data system (also known as the ''Chimera'' system) to provide current and immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is needed to determine whether to issue a visa or to determine the admissibility or deportability of an alien (§202).

Chimera is to incorporate the integrated alien data system;

information in Chimera must be readily and easily accessible—

to any consular officer responsible for the issuance of visas;

to any Federal official responsible for determining an alien's admissibility to or deportability from the United States; and

to any Federal law enforcement or intelligence officer determined by regulation to be responsible for the investigation or identification of aliens.

DHS has no plan to accomplish this.

Make interoperable all security databases relevant to making determinations of admissibility under section 212 of the Immigration and Nationality Act (§302).

DHS has no plan to accomplish this.

Not later than October 26, 2004, DHS and the State Department shall issue to aliens only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers (§303).

DHS still issues easily counterfeited temporary cards until a more secure card is mailed to the alien.

Not later than October 26, 2004, the Attorney General, in consultation with the Secretary of State, shall install at all ports of entry of the United States equipment and software (i.e., machine readers) to allow biometric comparison and authentication of all United States visas and other travel and entry documents issued to aliens, and passports (§303).

About 500 readers have been put in place in only some POEs, and all are in secondary, rather than primary, inspection.

Beginning upon implementation of Chimera, not later than 72 hours after receiving notification of the loss or theft of a United States or foreign passport, DHS and State, as appropriate, shall enter into Chimera the corresponding identification number for every lost or stolen passport (§308).

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

An alien presenting a border crossing identification card (i.e., a laser visa) is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien (§104).

The Administration exempted Mexico from participation in US–VISIT, so biometrics are not being verified and border crossing cards are merely inspected visually.

Process all aliens through US–VISIT (the automated entry-exit control system) so as to ''collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States'' (§110).

Only about 20 percent of nonimmigrants are being processed through the entry part of US–VISIT; the other 80 percent of nonimmigrants have been exempted; immigrants (lawful permanent residents) also have been exempted; and the exit part of the system is still being tested in pilots at a handful of POEs.

Aliens who have resided illegally in the United States for more than six months but less than one year and voluntarily departed are barred from re-entry for three years; aliens who have resided illegally in the United States for more than one year are barred from re-entry for ten years (§301).

Only about 12,000 aliens were subjected to these bars on re-entry during the first four years after this provision took effect: it is estimated that the bars could have been applied to up to 2.5 million aliens during that period.

Mandatory detention pending removal of all aggravated felons and other aliens who are inadmissible or removable due to criminal convictions (§303).

Limited detention space and mismanagement of budgets result in criminal aliens being routinely released from detention prior to removal: more than 80,000 criminal aliens are free in American communities.

Mandatory detention of aliens from the time they are issued a final order of removal until the alien is actually removed or until 90 days have passed if the alien cannot be removed within that period (§305).

In 2004, almost half (34,800) of the more than 75,000 ''other than Mexicans'' apprehended by the Border Patrol were released on their own recognizance pending removal: an estimated 90 percent of nondetained aliens abscond after being issued an order of removal.

Upon notification by DHS or the AG that a foreign government refuses or unreasonably delays the return a national of that country who is ordered removed from the United States, the State Department shall suspend the issuance of immigrant and/or nonimmigrant visas to nationals of that country (§307).

A handful of governments routinely refuse to issue travel documents to their nationals who have been ordered removed from the United States, but this provision is not invoked.

Each Department of the Federal Government shall elect to participate in a pilot program to verify employment authorization of its employees and shall comply with the terms and conditions of such election (§402).

The 1996 law created three different pilot programs from which government agencies could choose; when two of them were allowed to lapse and only one, the Basic Pilot, was extended, agencies using one of the lapsed pilots simply stopped participating rather than sign up for the remaining one.

Public institutions of higher education may not offer in-state tuition to illegal aliens unless they also offer it to every citizen of the United States (§505).

Neither DHS nor the Justice Department has challenged any of the nine states that have passed laws that violate this law, despite the fact that Federal law clearly supersedes state law in the area of immigration.

Any alien seeking admission to the United States or a change of status who is likely to become a public charge or who is a public charge is excludable, if seeking admission, or removable, if already here and seeking adjustment of status (§531).

DHS has yet to come up with a definition of ''public charge'' to implement this provision.

Upon notification that a sponsored alien has received any means-tested public benefit, the entity (nongovernmental, Federal, state or local) that provided the benefit shall request full reimbursement by the sponsor (§551).

Only one lawsuit seeking reimbursement has been filed, and it was filed by private citizens trying to force the Los Angeles public hospital system to seek reimbursement from sponsors: the case was dismissed on technical, not substantive, grounds.

States and localities may not adopt policies, formally or informally, that prohibit employees from communicating with DHS regarding the immigration status of individuals (sanctuary policies) (§642).

Neither of the two sanctuary states, Maine and New Mexico, nor any of the multitude of sanctuary cities have been challenged by DHS or DOJ for violating this provision: soon after this law passed, the City of New York challenged the law in court and the court upheld the law and ordered the City to rescind its sanctuary policy: instead, the City modified its policy slightly, but the Federal Government has not challenged it.

DHS shall respond to an inquiry by a Federal, State, or local government agency seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law (§642).

This law also required the establishment by then-INS of the Law Enforcement Support Center (LESC), which is available 24/7 to state and local police seeking information on alienage and citizenship: however, state and local police who contact ICE about illegal aliens they have taken into custody are routinely rebuffed and told to simply release the aliens.

IMMIGRATION AND NATIONALITY ACT

The Secretary of DHS is authorized to expand expedited removal procedures to any or all aliens who have not been admitted or paroled into the United States and who have not affirmatively shown to the satisfaction of an immigration officer that they have been physically present in the United States continuously for two years immediately prior to this determination (§235).

The Secretary has only recently used this authority to expand expedited removal to nine Border Patrol sectors. The fact that our Federal court system is clogged with appeals of removal orders—the number of cases filed in Federal court rose from just over 2,000 in 1994 to more than 14,500 in 2004—and the fact that the illegal alien population in the United States continues to grow would suggest that expedited removal needs to be expanded along the entire land border of the United States.

Once an alien is apprehended and removal proceedings are initiated, DHS may detain the alien, release him on a minimum $1,500 bond, or release him on conditional parole (§236).

Since on estimated 90 percent of non-detained aliens abscond after being issued an order of removal, and since DHS has the authority to detain aliens pending removal, it makes no sense that almost half (34,800) of the more than 75,000 ''other than Mexicans'' apprehended by the Border Patrol were released on their own recognizance pending removal in 2004.

Marriage fraud, used in the past by at least nine terrorists to prolong their stay in the United States, is a deportable offense (§237).

ICE has announced that single-instance marriage fraud is a low priority and so will not be investigated or prosecuted.

Domestic violence, false claims to US citizenship and voting illegally are deportable offenses (§237).

Illegal aliens who are victims of domestic violence can obtain green cards through the Violence Against Women Act, but the abuser is rarely prosecuted and even more rarely deported; as happened in New York City with Mayor Giuliani's ''broken-window policing,'' stepped up enforcement of these ''low priority'' violations would begin to reassert the rule of law in our immigration system.

Failure of an alien intending to remain in the United States for thirty days or longer to apply for registration and fingerprinting during that thirty-day period is a deportable offense (§262).

Enforcement of this provision would be of obvious national security value, and it would send a clear message that security is our top priority.

All registered aliens are required to notify DHS within ten days of changing addresses; failure to do so is a deportable offense (§266).

This, too, has important national security value.

Any individual or entity that ''encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law'' is guilty of a felony punishable by imprisonment (§274).

A strong case could be made that localities like Herndon, Virginia, that are using taxpayer funds to build and promote day-labor sites for aliens they know to be illegal, and government entities like the Illinois Housing Development Authority, which has set aside taxpayer funds to provide mortgages to illegal aliens, are ''encourag[ing illegal aliens] to reside in the United States.'' The same case can be made against banks that accept consular ID cards to open accounts or allow illegal aliens to use individual taxpayer ID numbers to get home loans.

It is unlawful to knowingly hire, recruit, or refer for a fee an alien who is not authorized to work in the United States, and it is unlawful to hire any individual without verifying the employment authorization of that individual, either through the I–9 process alone or combined with the Basic Pilot program (§274A).

While it is exceedingly difficult to establish that an employer knew an employee was illegal, it is not difficult to establish that an employer failed to complete the I–9 process; it is also not difficult to encourage employers to use the Basic Pilot to verify work eligibility.

Aliens who commit fraud, use false or altered documents, or make misrepresentations on applications for immigration benefits are ineligible for the benefits (§§212, 237, 340, among others).

Not only does USCIS grant benefits to aliens despite indications of, and sometimes even evidence of, fraud or misrepresentation, ICE rarely investigates cases of alleged benefits fraud referred by USCIS. USCIS estimates that ICE declines to investigate over 70 percent of the benefits fraud referrals it receives. It is exceedingly rare for either agency to attempt to rescind a benefit once it is granted.

Millions of new immigrants come to America every year, and the numbers are rising. Do you know why these numbers continue to increase? Because when we don't enforce the laws, we send the message that we don't take our laws seriously.

We don't pass laws to be ignored. Join me in supporting this amendment.

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

The Acting CHAIRMAN. Does the gentlewoman from California claim the time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition, but I will not oppose the gentleman's amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman can claim the time in opposition.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I will note that the amendment does not really accomplish anything; although, I certainly really would not want to oppose enforcing the law.

The gentleman mentioned some things that are deficient in the administration of our immigration laws, and they are not new things.

Let me just give you an example on reporting a change of address. Do you know how that is done? You fill out a piece of paper, and you submit it. Do you think it is possible to actually find those pieces of paper, the millions of pieces of paper? Anybody who came in and who is a legal permit resident, you could file it, but no one will ever find it.

We mention often the terrorists that came into our country and did such damage to us on 9/11. You know what? Those people, most of them were not admissible to the United States, but the poor officer at the border, he did not know that. He could not know it because the piece of information that would have told him that was on a piece of microfiche sitting in a bucket in Florida waiting to be translated into an actual database.

There is a lack of technology in the department, and nothing in this bill changes that.

Further, nothing in this bill orders the President to order his department to go out and get the people who promised to appear and then disappeared. Let us go find those people. Let us bring them to justice. Either they will be deported or they will have their day and find their remedy.

Nothing in this bill tells the department to go out and find the people who have been convicted of crimes, who were supposed to be deported, who instead were released from county jail or from State prison because the department failed to go pick them up. There is nothing in this bill that says, go every day, check with the jails, find out who is a criminal alien and who is about to be released and deport them. There is nothing in there. There are no resources.

So this underlying bill is a failure. The amendment is well-meaning I am sure, but it accomplishes almost nothing. Nevertheless, it would be wrong to oppose it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentlewoman very much.

Let me just say, Mr. JOHNSON is a good friend from Texas, and I know that this sense of Congress reflects the attitude of the people of Texas and America that we should enforce the immigration laws. I am going to enthusiastically join and support him on this idea of enforcing the Nation's immigration laws.

But what I do want to indicate is that this is building on some enforcement laws that we have had, and that is that, over the years, we have enacted 20 enforcement laws in the last 20-years. We have increased the Border Patrol budget by a factor of 10, but it has not been enough. We have tripled the number of agents, but we need to do more, and we have created a Department of Homeland Security.

What we have not been able to do is write real, if you will, effective immigration law that brings in the comprehensive nature of immigration law which provides, if you will, an earned access to legalization and the building up and the securing of our borders by the enhancement of our Border Patrol agents, for example, scholarships, recruitment.

There is another amendment coming up about making sure that clothing comes from the right country. I think this is a good amendment, but I think that we can do better by looking at this from a comprehensive perspective and building and writing the kinds of laws that would be effective, if you will, to ensure that we are enforcing those laws.

Ms. ZOE LOFGREN of California. Mr. Chairman, I reserve the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I thank the gentlewoman from Houston for her comments. I appreciate it.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. GOODE).

Mr. GOODE. Mr. Chairman, I want to thank the gentleman from Texas for introducing this amendment to this fine legislation. He recognizes that the failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching a catastrophic or harmful attack on the United States.

His amendment is a message to the executive branch: Please enforce the laws that we have now to stop illegal immigration. They will listen to the gentleman from Texas with his stature and patriotism. It will be a fine message.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

I would simply note that this amendment will not really cure the problems in this bill. It will not get the resources. It will not make the administration do its job. It will not cure the incompetence and lack of performance that we have seen at the borders, both borders, southern and northern, as well as our ports of entry.

It a good idea to enforce the laws. Unfortunately, the administration is not doing so. Nothing in this bill is going to help them do so.

Mr. Chairman, I yield the remainder of my time to the gentleman from California (Mr. BACA).

Mr. BACA. Mr. Chairman, I rise in opposition of H.R. 4437. I have nothing against this particular amendment, but I am totally against this legislation.

We are all about protecting our borders. We are all about enforcement, and we are about developing a comprehensive immigration reform legislation that really will impact our people, but this bill today, it is flawed. It is inconsistent with the American values.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield the remaining time to the gentleman from New York (Mr. KING), the chairman of the committee.

□ 1915

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I just want to emphasize that I stand in strong support of his amendment. This is just one more example of the outstanding contributions to public service made by the gentleman from Texas. I support it and urge its adoption.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Texas (Mr. SAM JOHNSON).

The amendment was agreed to.

PART B AMENDMENT NO. 4 OFFERED BY MR. RENZI

Mr. RENZI. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 4 printed in House Report 109–347 offered by Mr. RENZI:

Add at the end of title I the following new section:

**SEC. 118. SECURING ACCESS TO BORDER PATROL UNIFORMS.**

Notwithstanding any other provision of law, all uniforms procured for the use of Border Patrol agents shall be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Arizona (Mr. RENZI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arizona.

Mr. RENZI. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me begin by thanking the chairman of our Homeland Security Committee for his allowing to move forward on this amendment, and more so for the protection he is now about to provide to many of our Border Patrol agents. I rise today to offer an amendment that would require all the uniforms worn by our Border Patrol agents to be made in America.

Imagine yourself a Border Patrol agent who serves in harm's way along this vast and violent border who dons the uniform of this Nation which is currently made in Mexico and which could easily fall into the wrong hands. As we speak, uniforms worn by our Border Patrol agents are manufactured in Mexico and could be easily lost or stolen or, worse yet, intentionally produced to undermine our border security efforts. These uniforms represent the law and order on our border, and allowing these uniforms to be made in America would minimize the possibilities that they could be procured by smugglers, terrorists, or others who pose great risk to our agents.

In 1941, Congress passed the Berry amendment, which restricts the Department of Defense from procuring some military uniforms for national security purposes outside of them being manufactured in America. For over 60 years Congress has chosen to keep this policy in place, and yet every day on our border our agents are besieged by armed human smugglers and drug traffickers and those who want to use lethal means to target our agents.

Just 2 years ago, the Border Patrol confiscated a smuggler's vehicle down on the southwest border that was painted like a Border Patrol vehicle.

While we may not be able to prevent individuals from painting trucks, we can surely stop them from getting these uniforms and from these uniforms falling into the wrong hands. Our Border Patrol agents need to be able to take pride in the uniforms they wear. They need to be secure in the knowledge that, when they are on the border peering into the darkness at night protecting us and when they are trying to determine whether the individual approaching them is friend or foe, that these uniforms are not being used as a tool against them. When our agents wake up each morning, they need to see the American flag and the ''Made in U.S.A.'' label on their uniforms. I urge my colleagues to support this amendment.

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

The Acting CHAIRMAN. Who claims time in opposition to the amendment?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I claim the time in opposition, but I will not oppose it.

The Acting CHAIRMAN. Without objection, the gentlewoman may claim the time in opposition.

There was no objection.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to the distinguished gentleman that offered the amendment, that is why we have suggested that we can work on these issues in a bipartisan manner. I think you have a very reasonable amendment, and might I just say that the National Border Patrol Council supports this amendment because it involves officer and public safety.

Since early last year, the Border Patrol uniforms, including the patches, the identifying patches, have been made outside of the country. It would be quite simple for someone to bribe a low-paid factory worker or truck driver in order to procure a quantity of uniforms for the purpose of masquerading as a Border Patrol agent. Obviously this makes sense, and that is why part of the problem with the underlying bill is, frankly, that it is weighted down by the criminalizing of the undocumented and not focusing on the criminalizing of the criminals. This, in fact, is a very instructive amendment because it helps to ensure the sanctity of the Border Patrol officers' uniform and their work. Inasmuch as the Border Patrol's work is done at night and low-light surroundings, it would be nearly impossible for the genuine Border Patrol agents to spot the imposters until they were close enough to harm the agents if they had a false uniform. Likewise, members of the public could easily be fooled into believing that the imposters had authority to stop and question them, and they could perpetrate crimes.

Mr. Chairman, I support this amendment, and I am delighted to yield such time as he may consume to my distinguished colleague from California (Mr. BACA).

Mr. BACA. Mr. Chairman, once again I stand in opposition to this legislation. This is not comprehensive legislation. We all believe that we could have stronger enforcement not only on our borders but also stronger enforcement in reference to what happened to immigrants, but basically this legislation is not a comprehensive educational law reform or immigration reform. It basically is deplorable legislation. It violates the 13th and 14th amendments of the Constitution. We are abolishing the Constitution that protects us. How can we alter the Constitution?

I must remind our colleagues that we are talking about individuals who have a human face, a senior, an adult, and a young child. So this legislation, instead, will say the 11 million undocumented workers are felons, are felons. Is that what America wants, to arrest and lock up 11 million immigrants? Are we going to have detention camps, concentration camps? What are we going to do with these 11 million individuals who would be designated as undocumented individuals? What happens to children of individuals that will be labeled? They will be labeled, and they will have to carry that label the rest of their lives as either a felon or an individual who has a misdemeanor. When you have that label, you carry that label with you the rest of your life, and you are asking us to be productive individuals. What happens to those individuals that every day of their life some individual will tell them, well, you are the little individual, you are the criminal. We see a little white person looking, a little brown person stereotyping them and says, you are a felon, you are here in this country illegally. They had nothing to do with them being out here.

Let me tell you, this legislation is horrible, it is terrible, it is deplorable. We must stop this kind of legislation. We must develop comprehensive legislation. We must not have concentration camps; we must not kick our students out of school. What happens to a lot of our kids who are in our schools because the legislation will label them as a criminal? ADA funding that goes to our schools, what happens? Who arrests them? Are we aiding and abetting? When we go to church and we see someone in our church or a pew right next to us, do we then turn in someone because we assume that you are an undocumented? We will begin to do more profiling. We will begin to identify more individuals like myself and others to say, Are you legal or not legal here in the United States? And people who look a different color will not be asked to prove their identity.

This legislation is horrible. We should not support this kind of legislation. We should protect our Constitution.

Mr. RENZI. Mr. Chairman, I want to thank the gentleman for California. I do have respect for him. I think his passion on the issue has to do with the overall bill, while we are here discussing my amendment which relates to Border Patrol uniforms.

Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. HAYES).

Mr. HAYES. Mr. Chairman, I thank Mr. RENZI for his very thoughtful amendment, and I thank him for yielding the time.

Mr. Chairman, this is about Border Patrol uniforms, the amendment. Mr. Chairman, I rise today in strong support of this amendment. I know we need to take the necessary steps to ensure the Federal Government is producing sensitive goods such as U.S. Border Patrol uniforms in the United States to help alleviate this national security risk. After reading an Associated Press article in late November, I was shocked to learn that U.S. Border Patrol uniforms are not made in America.

The article states that agents and lawmakers are concerned about the consequences if the uniforms for agents charged with combating illegal immigration fall into the hands of criminals or terrorists. The article detailed some of the concerns I have been expressing for some time now.

For years now I have been a stalwart for strengthening the Berry amendment, which requires the Department of Defense to give preference to domestically produced and manufactured products, notably clothing, food, fabrics, and specialty medals. Soon I will reintroduce a bill that applies the Berry amendment guidelines to Department of Homeland Security procurement.

It is imperative that we remedy this issue to help protect our borders and deter terrorists or criminal acts. Not only is this an issue of national security but it would help our Nation's economic security by maintaining a strong U.S. manufacturing base as well.

I commend Mr. RENZI for offering the amendment, and I look forward to working closely with him and my colleagues and the administration to ensure that we are all doing everything that we can to protect America's national security. I urge all my colleagues to support this important amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I want to acknowledge the fact that we could be doing more on this bill. Clearly, we want our Border Patrol agents to be well equipped and well uniformed. That is the missing part of this bill. The uniform ''Made in the USA'' is a good statement to make, but you cannot have Border Patrol agents without power boats, helicopters, night goggles, computers; and you cannot have them without recruitment, scholarship, and increased numbers to secure the border.

That is what we should be doing with the underlying bill, but I do support the amendment and just wish we could do more.

Mr. RENZI. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. KING), the new chairman of the Homeland Security Committee, who has stepped up to protect our Border Patrol agents and who championed this amendment.

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me this time, and there is no one who is not on the committee who has done more work than the gentleman from Arizona to really work on the issue of terrorism in the intelligence area, in the homeland security area, and I strongly support this amendment.

It is in keeping with the spirit of the law. It is in keeping in the spirit that we should be searching for as we try to stop illegal immigration, stand behind those on the borders who are protecting us against this massive increase of illegal immigrants.

So I am proud to stand by and endorse the amendment of the gentleman from Arizona.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. RENZI).

The amendment was agreed to.

PART B AMENDMENT NO. 5 OFFERED BY MR. CASTLE

Mr. CASTLE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 5 printed in House Report 109–347 offered by Mr. CASTLE of Delaware:

At the end of title I, insert the following new section:

**SEC. 118. US–VISIT.**

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a timeline for—

(1) equipping all land border ports of entry with the US–VISIT system;

(2) developing and deploying at all land border ports of entry the exit component of the US–VISIT system; and

(3) making interoperable all immigration screening systems operated by the Department of Homeland Security.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Delaware (Mr. CASTLE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Delaware.

Mr. CASTLE. Mr. Chairman, I rise to offer this simple amendment to the legislation before us today. In the post-9/11 world, our primary concern has to be stopping terrorists from penetrating our borders. Chairman SENSENBRENNER's dedication to fixing gaps in our security is commendable, and I am

proud to join him and Chairman KING in improving our border security capabilities while allowing American citizens and legal immigrants to continue contributing to our economy.

Both Congress and the 9/11 Commission have identified the US–VISIT biometric entry and exit system as essential to preventing terrorists from entering the country through land borders, airports, and seaports. Currently, US–VISIT kiosks are deployed at most airports and some land borders, where travelers submit biometric information, including digital fingerprints and a photograph, and the Department of Homeland Security screens the data against terrorist watch lists and criminal record databases.

Since its implementation, US–VISIT has caught more than 900 murderers, pedophiles, and other dangerous criminals attempting to enter the United States. Still, the system records only a fraction of foreign arrivals and does not yet record when foreign travelers leave the country. While US–VISIT is presently being used at some of the busiest border crossings, the Department has yet to deploy the tracking system at all land border ports of entry.

The development of the system's exit component has also been slow; and thus our government does not yet have a reliable way of tracking visa overstays. In addition, the 9/11 Commission and other recent reports have highlighted the need for the Department to improve the interoperability of US–VISIT and its other immigration screening systems to ensure that terrorists and criminals do not slip through the cracks.

The Department of Homeland Security is already working on a plan to expand US–VISIT and eventually track every foreign visitor entering and leaving the country. My amendment would simply require the Department to update Congress on the progress of this plan by submitting a detailed time line for equipping all land borders with the US–VISIT system, developing and deploying the exit component of the system at all land borders, and making all immigration screening systems operated by the Department compatible with one another.

Improving the quantity and quality of the information in US–VISIT will undoubtedly enhance our ability to better track and identify potential security threats to our Nation. The Department already has a plan to do this, and my amendment will ensure that Congress is updated on the status of this important process.

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

The Acting CHAIRMAN. Who claims time in opposition?

Ms. ZOE LOFGREN of California. Mr. Chairman, I will not oppose the amendment, but I claim the time in opposition.

The Acting CHAIRMAN. Without objection, the gentlewoman from California is recognized for 5 minutes.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I will support the amendment, but I am under no illusion that the amendment will actually achieve what the author hopes.

Over 5 years ago, before there was a Department of Homeland Security, I strongly suggested to the then immigration service that we engage in a biometric study so that we would have a secure biometric system that could be deployed and would be both with our immigration screening systems and also with other databases. We were told by the National Institute of Standards and Technology that they could accomplish that in 6 months for about $2 million. Unfortunately, we never did it.

So we now have biometrics that are incompatible in various databases, law enforcement, immigration, and certain other databases that we have. Consequently, even the system that we have on US–VISIT is not fully functional. I would like to note also that the databases that are utilized by US–VISIT are also not integrated.

It is true, we have caught some people who have committed crimes who should not be admitted to the United States through US–VISIT, and I count that as a good thing. But the 9/11 Commission was looking at the need to stop terrorists. The problem is that US–VISIT is completely disconnected with our databases relative to terrorists, and I do not think this amendment is going to fix that.

I would also like to note that the amendment suggests that we accelerate, I believe, the exit component of US–VISIT.

□ 1930

There is no exit component of the US–VISIT. Basically, it does not exist.

The situation with databases and technology in the department is simply dismal. We should be filing all immigration matters by biometrics so we do not have the confusion we currently have of names that sound similar, or, in some languages, first and last names get traded back and forth rather interchangeably. It is ridiculous that we have not done that; but it is not for lack of asking, urging and insisting.

And I will say something else about getting reports. I sit on the Homeland Security Committee. We are due so many reports by this department, I cannot even begin to count them. We were due a rail security report, I believe, it was last June. We are due reports on cybersecurity; that is several years ago. The department basically thumbs its nose at the United States Congress. It does not provide the reports required under current law. I suppose hope springs internal, and we should ask again, but this resolution will not cure the massive arrogance and incompetence of the department.

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

Mr. CASTLE. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. KING).

Mr. KING of New York. Mr. Chairman, the Castle amendment is extremely well written. I am proud to endorse it.

I also would emphasize that the points raised in the amendment do refer to points that we have been asking DHS to provide us information on. This amendment will give us more of the muscle that we need to ensure DHS is in compliance. I thank the gentleman for his amendment and urge its adoption.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself the balance of my time.

As I said earlier, I plan to support the amendment. I think it is worth making clear: There is no exit system now. So why does that matter? People come into the United States, they put their fingerprints on the US–VISIT system. It catches some people, and it does not catch others. And then they come into the United States.

We have been talking earlier about making aggravated felons of those who overstay their visas, whether they be visitor or whatever. At the current time, and I do not see this changing any time soon, we do not catch those people. If they leave, we do not know if they have left or if they are here. Because we do not have a connection with our database, we do not know if they are connected with terrorism or not.

So the lack of functionality that we have in technology and the lack of deployment of additional technology has left us more vulnerable than we need to be.

I mentioned earlier this evening that some of the 9/11 terrorists were not admissible to the United States. The officer who inspected them could not know that because the fact of their ineligibility was on a piece of microfiche sitting in a bucket. You cannot search a database if it is on a piece of microfiche sitting in a bucket. We are not that much better off today than we were at that time. I am sure the gentleman is distraught about that. I am as well. I have been trying to get this changed for more than half a decade.

The timeline for a billion-dollar program is a good idea, but I do not have any real confidence that the department will perform any better after this amendment is adopted than it has in the past several years with a lot of pushing and insisting from Members, frankly, on both sides of the aisle. The incompetence just does not quit.

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

Mr. CASTLE. Mr. Chairman, I yield myself the balance of my time.

I agree with almost everything that the gentlewoman from California has said about this particular system. I share her concerns. I appreciate her support for my amendment and Mr. KING's support as well.

I think the whole business of biometrics and US–VISIT has tremendous potential that is not being realized. The reason I present this amendment is

not to change anything they are doing; this is not complimenting anything that they are doing or saying that they are doing it particularly well; but to force some sort of reportorial system back to Congress, that is all this amendment does, so perhaps they will get it in their heads that they have to do better than they are doing now.

The gentlewoman is right, there is a lot of disorganization and incompatibility and inconsistency in terms of what is happening, and yet it has potential.

Ms. ZOE LOFGREN of California. Mr. Chairman, will the gentleman yield?

Mr. CASTLE. I yield to the gentlewoman from California.

Ms. ZOE LOFGREN of California. Mr. Chairman, we have numerous reports that are required. I sit on the committee, which is why I know this. They never do the reports. They are required by law to submit the reports. We have dozens, hundreds of reports that simply have never been delivered. I hope this is an exception, but I do not have a high level of confidence.

Mr. CASTLE. Mr. Chairman, we can tweak them a little bit if this amendment passes because I do believe, and it has worked, and even with the limitations the gentlewoman has shown, it has worked rather well in some areas where they have actually captured people who have done things that they should not have done. I think it could do a heck of a lot more in terms of terrorism, and it should. I intend to force it. We know this department has some start-up difficulties, and we have to deal with that. Having said that, I think this is a good step in the right direction. If we stand behind it and help it work, it will help us all.

I thank the gentlewoman for her support.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Delaware (Mr. CASTLE).

The amendment was agreed to.

The Acting CHAIRMAN. The Committee will rise informally.

The SPEAKER pro tempore (Mr. KING of Iowa) assumed the Chair.

## MESSAGE FROM THE SENATE

A message from the Senate Ms. CURTIS, one of its clerks, announced that the Senate disagrees to the amendment of the House to the bill (S. 1932) ''An Act to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).'' and requests a conference with the House on the disagreeing votes of the two Houses thereon, and

That on December 15, 2005, appoints Mr. GREGG, Mr. DOMENICI, Mr. GRASSLEY, Mr. ENZI, Mr. ALLARD, Mr. SESSIONS, Mr. STEVENS, Mr. SHELBY, Mr. SPECTER, Mr. CHAMBLISS, Mr. MCCONNELL, Mr. CONRAD, Mrs. MURRAY, Mr. HARKIN, Mr. SARBANES, Mr. INOUYE, Mr. BINGAMAN, Mr. BAUCUS, Mr. KENNEDY, and Mr. LEAHY, to be the conferees on the part of the Senate.

The SPEAKER pro tempore. The Committee will resume its sitting.

## BORDER PROTECTION, ANTITERRORISM, AND ILLEGAL IMMIGRATION CONTROL ACT OF 2005

The Committee resumed its sitting.

PART B AMENDMENT NO. 6 OFFERED BY MR. GINGREY

Mr. GINGREY. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 6 printed in House Report 109–347 offered by Mr. GINGREY of Georgia:

At the end of title I, insert the following new section:

**SEC. 118. SUSPENSION OF VISA WAIVER PROGRAM.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the visa waiver program established under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187)is hereby suspended until such time as the Secretary of Homeland Security determines and certifies to Congress that—

(1) the automated entry-exit control system authorized under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note) is fully implemented and functional;

(2) all United States ports of entry have functional biometric machine readers; and

(3) all nonimmigrants, including Border Crossing Card holders, are processed through the automated entry-exit control system.

(b) REPEAL.—Subparagraph (B) of section 217(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(3)) is hereby repealed.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Georgia (Mr. GINGREY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. GINGREY. Mr. Chairman, I believe that the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 needs to address a loophole in our immigration system. I have introduced this amendment which suspends, not cancels, but suspends temporarily the Visa Waiver Program until the machine-readable and tamper-resistant biometric identification system mandated by the PATRIOT Act to be the cornerstone of the entry-exit system is fully operational.

Until we have the technical and human resources to secure our points of entry, we cannot afford to allow visitors to come to the United States without prescreening them prior to arrival. Despite the fact that the United Kingdom is one of our Nation's closest friends and allies, the London subway bombings earlier this year were executed in large part by British citizens with known ties to terrorism.

We know that terrorists like Zacharias Moussaui and Richard Reid exploited the Visa Waiver Program to travel to the United States. Do we want individuals like these to fly to America unchecked and to attack our subway system in the name of terrorist groups like al Qaeda under the cloak of the Visa Waiver Program? Do we want French citizens with Islamofascist mindsets to get a free pass through Customs? If not, we need to suspend this program until we are equipped to check the criminal and terrorist backgrounds of every visitor who arrives at a point of entry and to confirm the identity of each visitor using biometric identifiers.

The success and failure of the Visa Waiver Program can trace its roots back to 1986 when it was passed as part of the Immigration Reform Control Act. As many of my colleagues know, what we left undone in 1986 is in large part why we need to consider a new immigration reform law in 2005 that is consistent with the recent reauthorization of the PATRIOT Act. The Visa Waiver Program was only designed to be a temporary program for a small and select group of nations. Today, 27 countries are eligible under visa waivers, opening the door widely, widely, Mr. Chairman, for an unscreened terrorist to attack the United States.

Yesterday, the United States USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 passed by a vote of 251–174, a strong endorsement for securing our Nation against terrorism. The PATRIOT Act acknowledges the problem of the Visa Waiver Program, and I have introduced this amendment to suspend the program until the solution made possible by the PATRIOT Act can realistically take effect. This is an issue that extends beyond apprehending illegal immigrants and actually works to secure our points of entry from those who desire to attack our Nation.

Mr. Chairman, I include for the RECORD a letter from the 9/11 Families for a Secure America in full support of this amendment.

9/11 FAMILIES FOR A SECURE AMERICA,
DECEMBER 15, 2005.
*Staten Island, NY,*

Hon. PHIL GINGREY,
*Cannon House Office Building,*
*Washington, DC.*

DEAR MR. GINGREY, 9/11 Families for a Secure America fully supports your amendment to H.R. 4437 to suspend the Visa Waiver Program until the automated entry-exit control system authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is fully implemented.

The recent civil disturbances in France make it quite clear that the time is past when citizens of particular countries should be granted blanket permission to enter the United States without first applying for a visa. Many of the nations of Europe, after decades of permitting mass immigration from nations that sponsor terrorism have created a situation where large numbers of Islamic extremists, though closely connected to the terrorism that originates in countries such as Saudi Arabia, are themselves citizens or native born in any of a dozen European nations. The result is that Islamic extremism is no longer limited to persons born

in or citizens of Middle Eastern nations. For this reason, citizens of European countries should be subject to the same visa application process which applies to the other nations of the world.

If Islamic extremists commit another 9/11 it will not make any difference to the victims of that attack that the people responsible carried French passports rather than ones issued by Iran, Saudi Arabia or Lebanon.

Sincerely,

THE BOARD OF DIRECTORS,
9/11 FAMILIES FOR A SECURE AMERICA

Bruce DeCell, Sergeant, NYPD (retired), Father-in-law of Mark Petrocelli, age 29.

Bill Doyle, father of Joseph, age 24, WTC North Tower.

Lynn Faulkner, husband of Wendy, WTC South Tower.

Peter and Jan Gadiel, parents of James, age 23, WTC, North Tower 103rd floor.

Grace Godshalk, mother of William R. Godshalk, age 35, WTC South Tower 89th floor.

Joan Molinaro, mother of firefighter Carl Molinaro.

Will Sekzer, Detective Sergeant (retired) NYPD, father of Jason Sekzer, age 31, WTC North Tower 105th floor.

Mr. KING of New York. Mr. Chairman, will the gentleman yield?

Mr. GINGREY. I yield to the gentleman from New York.

Mr. KING of New York. Mr. Chairman, these are issues that must be addressed, and I will assure the gentleman that, as chairman of the Homeland Security Committee, that I will work on these issues and address the very real concerns that you have. I would ask in that context you consider withdrawing the amendment with that pledge I make to you.

Mr. GINGREY. Mr. Chairman, I appreciate that spirit of cooperation. I know there are some concerns about the amendment. Indeed, a major airline in my district, in my State, has some concern over it, and people who are concerned about tourism and the economic effects of this amendment.

But I think this is a situation where, when we look back and think about 9/11, it would probably cost our economy $3 trillion if we have another attack of that magnitude. The cost of that, of reduced tourism, would pale in comparison to another $3 trillion cost to our economy if that should occur. I sincerely appreciate the chairman's willingness to cooperate with us, and I look forward to working with him on this issue.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The Acting CHAIRMAN. Without objection, the amendment is withdrawn.

There was no objection.

PART B AMENDMENT NO. 7 OFFERED BY MR. CAMPBELL OF CALIFORNIA

Mr. CAMPBELL of California. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 7 printed in House Report 109–347 offered by Mr. CAMPBELL of California:

At the end of title III, add the following:

**SEC. 308. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE DEPARTMENT OF HOMELAND SECURITY.**

(a) IN GENERAL.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

(1) by striking ''Immigration and Naturalization Service'' and inserting ''Department of Homeland Security'' each place it appears; and

(2) by adding at the end the following:

''(d) ENFORCEMENT.—

''(1) INELIGIBILITY FOR FEDERAL LAW ENFORCEMENT AID.—Upon a determination that any person, or any Federal, State, or local government agency or entity, is in violation of subsection (a) or (b), the Attorney General shall not provide to that person, agency, or entity any grant amount pursuant to any law enforcement grant program carried out by any element of the Department of Justice, including the program under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 241(i)), and shall ensure that no such grant amounts are provided, directly or indirectly, to such person, agency, or entity. In the case of grant amounts that otherwise would be provided to such person, agency, or entity pursuant to a formula, such amounts shall be reallocated among eligible recipients.

''(2) VIOLATIONS BY GOVERNMENT OFFICIALS.—In any case in which a Federal, State, or local government official is in violation of subsection (a) or (b), the government agency or entity that employs (or, at the time of the violation, employed) the official shall be subject to the sanction under paragraph (1).

''(3) DURATION.—The sanction under paragraph (1) shall remain in effect until the Attorney General determines that the person, agency, or entity has ceased violating subsections (a) and (b).''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to grant requests pending on or or after the date of the enactment of this Act.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from California (Mr. CAMPBELL) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, there are cities around this country that have laws or executive orders under which they prohibit law enforcement officials from reporting to the Department of Homeland Security when they encounter, through the normal course of law enforcement practice, individuals who are aliens, who are foreign nationals and who are in this country illegally. That, first of all, is a violation of Federal law. Both the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 both prohibit cities from adopting that sort of ordinance.

But secondly, it is just wrong. We have Federal law here, and we have people in the ordinary course of their law enforcement activities encountering people who are foreign nationals and in this country illegally, and cities are passing ordinances making it a crime basically for those law enforcement officials to let Department of Homeland Security know that.

The reason this happens is there is no enforcement mechanism on this Federal law right now. What this amendment would do is simply provide an enforcement mechanism by making those law enforcement agencies in those areas not eligible for Federal grants if they have such a prohibition which is in violation of Federal law.

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

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Ms. JACKSON-LEE of Texas. Mr. Chairman, let me say to the gentleman from California (Mr. CAMPBELL) that it is interesting that we come to the floor and try to make like there is a divide in the arresting and detaining of criminals. Every jurisdiction, outside of the Federal jurisdiction, has the right and responsibility to arrest criminals, whether they be documented or undocumented. There is no divide on that question. Local law enforcement, local sheriffs, local constables, local police, can, in fact, arrest criminals, detain them and even send them through our judicial system.

Your amendment, however, breaks the back of our local jurisdiction, and it creates an enormous unfunded mandate. It would force cash-strapped State and local governments to enforce civil immigration laws. We want the criminals off the street. But you would force our local governments to take on extra responsibilities without funding.

Let me remind you that the idea of enforcement of terrorism really begins outside of our borders. That is what we are here to talk about, to ensure that we have strong border security enforcement.

I would also offer to say that we hope that the DeFazio-Lungren bill passes in a few moments because that is what it does, it ensures that we protect against those who would come inside. That would protect the Federal jurisdiction and the State. But this amendment preempts any State and local laws that bar their law enforcement officers from assuming the Federal responsibility of enforcing civil immigration laws.

But more importantly, what it does is it forces local jurisdictions to send private information on crime victims, possibly a rape victim, who may be an undocumented immigrant. And this amendment opposes another unfunded mandate on State and local governments. It undermines effective community policing, increases racial profiling. As well, let me suggest that it requires local government to give information that it might not even have. Then you eliminate their opportunities to secure their own communities.

And so, frankly, this is a bill that most of the law enforcement are against, and it is enormously burdensome, and it breaks up the responsibility, or it stops the responsibility of

law enforcement because it is divisive and it is unworkable.

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

Mr. CAMPBELL of California. Mr. Chairman, I yield myself such time as I may consume.

I appreciate the comments from the gentlewoman from Texas, but let me make it clear what this bill does and does not do, what this amendment does and does not do. It does not require local governments to do anything. All it does is tell them they should not prohibit, they should not actively prohibit their law enforcement officials from giving this information to the Department of Homeland Security. It does not require them to give the information. It says you may not prohibit or you lose Federal funds.

Mr. Chairman, I yield 1 minute to the gentleman from Arizona (Mr. HAYWORTH).

Mr. HAYWORTH. Mr. Chairman, my colleagues, I welcome the newest Member of the House from California; and I, likewise, welcome this commonsense amendment because in this amendment the gentleman from California encapsulates the challenge facing this House. We claim we are going to enforce existing laws. Let us begin here. Thirty-two cities and counties have not been cooperating. They say let us carve out an exception. Two states in our Union are sanctuaries, Oregon and Maine.

Ladies and gentlemen, if border security is national security, if we have found that we have illegally in this Nation over 80,000 convicted felons from other cultures, why should it be difficult for local law enforcement agencies to themselves obey the law? ''Yes'' on this amendment. It puts some teeth in the bill.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. FARR).

Mr. FARR. Mr. Chairman, would the author please tell me what is broken that needs fixing? Where is the local agency not, I mean, as you say in your bill, you shall not provide any person, agency or entity, pursuant, any grant, even any formula grants. You are going to just bring law enforcement to a standstill here. You are going to create the biggest bureaucracy in the world.

I represent a lot of local governments. I do not know any of them that do not share this information. But I also know that there are times when local law enforcement has undercover agents who are undocumented. I found that out from previous experiences where they may not want to tell anybody that is an undercover agent. And is that the kind of thing? I mean, this is not the law that the local city councils adopt. This is the way law enforcement does their business. And with your amendment, I see that the Attorney General has now to determine whether that city or county receives any formula funds of any amount, and that they cannot receive those amounts in the future. What are you going to do about Katrina? What are you going to do about all those cities that you are trying to bail out with the floods? I think this amendment is fixing something that is not even broken. I oppose it.

Mr. CAMPBELL of California. Mr. Chairman, I yield 45 seconds to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I rise in strong support of the Campbell amendment. This legislation is quite straightforward. It informs our States and localities to enforce the law. That sounds ridiculous to us, I am sure. But the fact is that one of the main problems with our immigration laws is that we are not enforcing them. And under the immigration reform legislation we passed in 1996, we prohibited States and localities from barring their entities and barring officials from providing immigration information to the Department of Homeland Security.

Now, these counties and these States have decided to defy the law. There should be a cost for that. And the cost, according to this amendment, which says we mean what we say, the cost is that they would receive no grant amounts made available to any Federal, State, or local government agency or entity that violates the law. The rule of law is important. Support this amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

You know, I wish that we could find common ground on really securing America and not, if you will, unduly burdening our local and State jurisdictions that already comply with the law, that already arrest the criminals. Now you are asking them to engage in civil immigration issues, which should be under Federal jurisdiction.

And my good friend suggests that this is an allowance amendment; it simply allows them to do this. He knows that by the very announcement or pronouncement coming from the Federal Government, what he does is he intimidates local jurisdictions and they take on burdens that they truly cannot fund.

We should be focusing on securing the borders, providing an enhanced, pre-testing program for those who are coming into the United States, providing more resources for Border Patrol agents, allowing them to enforce the border, giving them the law enforcement authority, being more secure in the visa program that we have. Those are some of the underlying elements that are missing out of this legislation, and I am sad to say that the present amendment will not in any way, I believe, provide any more security than what we have.

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

Mr. CAMPBELL of California. Mr. Chairman, I yield 45 seconds to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I urge all Members to support Mr. CAMPBELL's amendment to help rid our communities of dangerous illegal alien criminals. I commend Mr. CAMPBELL for his commitment to immigration reform. His amendment would make sure that cities do not get Federal taxpayer dollars if they have policies in place that harbor and give sanctuary to illegal alien criminals. Sanctuary policies tie the hands of local law enforcement officers and keep illegal aliens who commit crimes in our country rather than deporting criminals according to U.S. law. Under these so-called sanctuary policies, in certain cities the police officers are prohibited from reporting the illegal aliens who commit crimes to Federal immigration authorities for deportation. As a result, taxpayers pay to incarcerate illegal alien prisoners who are later released back onto the streets.

Welcome to Congress. You have had an impact right away, Mr. CAMPBELL.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I continue to reserve the balance of my time.

Mr. CAMPBELL of California. Mr. Chairman, I yield the balance of my time to the gentleman from Georgia (Mr. NORWOOD).

Mr. NORWOOD. Mr. Chairman, I point out to all Members the reason you must pass this amendment is it is against the law to have a sanctuary city, a sanctuary State. This amendment goes to the heart of the frustrations of the police and deputies. They apprehend the criminal aliens, are forced to turn them back onto the streets. You want to know what is wrong? Somebody says tell me something is wrong.

Newlywed Dallas, Texas, police officer Brian Jackson, 28 years old, is the latest victim of this outrage. He was shot and killed November 13 in the line of duty. The suspect is an illegal alien that had been arrested and released by Dallas Police Department on September the 11 and again on September the 16 with the full knowledge that he was violating the law. That is why you need to vote for this amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

This bill will not work because local officials are not trained. They do not understand the difference between those who are undocumented or citizens. We are putting an unfunded mandate on it. We are keeping crime victims from reporting the crimes to local law enforcement. We are breaking community policing; and we are putting this heavy burden, and we are not securing America.

Provide resources to the Border Patrol and you will secure America. Provide technology and you will secure America. Vote ''no'' on the amendment.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from California (Mr. CAMPBELL).

The amendment was agreed to.

The Acting CHAIRMAN. It is now in order to consider amendment No. 8 printed in part B of House Report 109–347.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. The request of the gentlewoman is not timely.

PART B AMENDMENT NO. 8 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 8 printed in House Report 109–347 offered by Ms. JACKSON-LEE of Texas:

Amend section 402 to read as follows:

**SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.**

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

(1) all available detention facilities operated or contracted by the Department of Homeland Security; and

(2) all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention (in accordance with subsection (b)).

(b) SECURE ALTERNATIVES TO DETENTION PROGRAM.—

(1) NATURE OF THE PROGRAM.—For purposes of this section, the secure alternatives to detention referred to in subsection (a) is a program under which eligible aliens are released to the custody of suitable individual or organizational sponsors who will supervise them, use appropriate safeguards to prevent them from absconding, and ensure that they make required appearances.

(2) PROGRAM DEVELOPMENT.—The program shall be developed in accordance with the following guidelines:

(A) The Secretary shall design the program in consultation with nongovernmental organizations and academic experts in both the immigration and the criminal justice fields. Consideration should be given to methods that have proven successful in appearance assistance programs, such as the appearance assistance program developed by the Vera Institute and the Department of Homeland Security's Intensive Supervision Appearance Program.

(B) The program shall utilize a continuum of alternatives based on the alien's need for supervision, including placement of the alien with an individual or organizational sponsor, a supervised group home, or in a supervised, non-penal community setting that has guards stationed along its perimeter.

(C) The Secretary shall enter into contracts with nongovernmental organizations and individuals to implement the secure alternatives to detention program.

(c) ELIGIBILITY AND OPERATIONS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select aliens to participate in the program from designated groups specified in paragraph (4) if the Secretary determines that such aliens are not flight risks or dangers to the community.

(2) VOLUNTARY PARTICIPATION.—An alien's participation in the program is voluntary and shall not confer any rights or benefits to the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) LIMITATION ON PARTICIPATION.—

(A) IN GENERAL.—Only aliens who are in expedited removal proceedings under section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) may participate in the program.

(B) RULES OF CONSTRUCTION.—

(i) ALIENS APPLYING FOR ASYLUM.—Aliens who have established a credible fear of persecution and have been referred to the Executive Office for Immigration Review for an asylum hearing shall not be considered to be in expedited removal proceedings and the custody status of such aliens after service of a Notice to Appear shall be determined in accordance with the procedures governing aliens in removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(ii) UNACCOMPANIED ALIEN CHILDREN.—Unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act (6 U.S.C. 279(g)(2))) shall be considered to be in the care and exclusive custody of the Department of Health and Human Services and shall not be subject to expedited removal and shall not be permitted to participate in the program.

(4) DESIGNATED GROUPS.—The designated groups referred to in paragraph (1) are the following:

(A) Alien parents who are being detained with one or more of their children, and their detained children.

(B) Aliens who have serious medical or mental health needs.

(C) Aliens who are mentally retarded or autistic.

(D) Pregnant alien women.

(E) Elderly aliens who are over the age of 65.

(F) Aliens placed in expedited removal proceedings after being rescued from trafficking or criminal operations by Government authorities.

(G) Other groups designated in regulations promulgated by the Secretary.

(5) IMPLEMENTING REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement the secure alternatives to detention program and to standardize the care and treatment of aliens in immigration custody based on the Detention Operations Manual of the Department of Homeland Security.

(6) DECISIONS REGARDING PROGRAM NOT REVIEWABLE.—The decisions of the Secretary regarding when to utilize the program and to what extent and the selection of aliens to participate in the program shall not be subject to administrative or judicial review.

(d) REPORTING REQUIREMENTS.—Not later than 180 days after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary of the Senate a report that details all policies, regulations, and actions taken to comply with the provisions in this section, including maximizing detention capacity and increasing the cost-effectiveness of detention by implementing the secure alternatives to detention program, and a description of efforts taken to ensure that all aliens in expedited removal proceedings are residing under conditions that are safe, secure, and healthy.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

My amendment is very concise and very direct. The amendment deals with eligible aliens who are released to the custody of suitable individual or organizational sponsors who will supervise them, prevent them from absconding, and ensure required appearances.

Decisions on eligibility for participation are made on case-by-case determination by DHS with no judicial review. The various options for secure alternatives include placement with sponsor, group home or supervised environment with adequate security.

There is a need for secure alternative programs because my good friends over here are criminalizing the elderly, the sick, children, and others who are now undocumented in the country.

The annual population of aliens in DHS custody is more than 200,000. We will add another 11 million. The gap between the number of noncitizens in immigration proceedings on a given day and the number of detention beds available to the DHS continues to grow.

This is a simple, straightforward amendment that would allow alternative sites to be established with criteria given by the Secretary of Homeland Security so that you can, in essence, provide secure alternatives for the elderly, the sick, the infirm, and children. When you make criminals out of 11 million undocumented who are here in the United States, by their very presence are made criminals, then I would assure you that this particular secure alternative program is needed. I would ask my colleagues to support this amendment.

Ms. ZOE LOFGREN of California. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentlewoman from California.

Ms. ZOE LOFGREN of California. Mr. Chairman, I would just like to rise in support of this very intelligent amendment. You know, most people do not realize that we actually have fewer beds, detention space in America today than we did on September 11. We have 700 fewer beds today than we did on September 11, 2001.

I have a bill that has not been scheduled for action that relates to unaccompanied minor children, and I would like to just mention the plight of one young boy, Malik Jarno, who came to the United States in his Boy Scout uniform to go to a Boy Scout jamboree. He is slightly retarded and he ended up, a long story I will not bore you with, being arrested. He did not commit any crime and was put in a jail, a 16-year-old boy in his Boy Scout uniform, put in a jail with adults. It is absolutely wrong to treat children in that manner.

The gentlewoman's amendment would make sure that children are treated appropriately while their matters are being reviewed. It does not say what the outcome has got to be, but just that we do not put children in prison with adults. Civilized nations do not do that. And I commend the gentlewoman for her amendment. It would also increase the ability to hold those who are not currently able to be held since, for reasons we cannot understand, the Bush administration has 700 fewer beds today than we did on September 11, 2001.

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Ms. JACKSON-LEE of Texas. Mr. Chairman, I reserve the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). Who claims time in opposition to the amendment?

Mr. MCCAUL of Texas. Mr. Chairman, I claim the time in opposition.

The Acting CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. MCCAUL of Texas. Mr. Chairman, I yield myself such time as I may consume.

Let me say at first, I have great respect for the gentlewoman from Texas, and I know this is a well intentioned amendment. However, I believe there are numerous problems with this amendment.

It is unnecessary and seeks to create a class of aliens who will are not be detained with the rest of the alien population. However, the mandatory detention provision of H.R. 4377 preserves the already existing parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act that waives mandatory detention and releases aliens for urgent humanitarian reasons or for significant public benefit. In other words, the Secretary already is empowered and has discretion to release juveniles and aliens who have serious medical conditions in which continued detention would not be appropriate and women who have been medically certified as pregnant, the very classes that the gentlewoman seeks too release.

Also, this amendment creates a whole new bureaucracy that is not necessary. It takes away power from the department and those who are really experienced with these issues and concerns involving the detention of aliens and empowers independent groups, NGOs and academic experts from the immigration and the criminal justice field, with the authority to design this program separate and apart from the Department of Homeland Security. This amendment also requires the Secretary of Homeland Security to enter into contracts with groups including the NGOs and individuals to implement the program.

Simply put, this amendment applies only to illegal aliens who are in expedited removal, which is typically 30 to 90 days. Such individuals will be removed quickly from the United States. Allowing them to be released outside of what the statute already prescribes would only create more incentive for them to enter into and remain in this country.

In addition, this amendment seeks to protect aliens with valid claims of asylum who are already protected under this bill. H.R. 4377 does not change current law regarding those with valid claims of asylum. They currently have and, if this bill passes, will still have that right. Detention of such aliens is still discretionary once placed into asylum proceedings.

And, finally, this amendment seeks to shift the authority for unaccompanied alien children to the Department of Health and Human Services. We have a serious and significant youth alien gang problem in the United States, MS–13, for instance, whose members are primarily from El Salvador and enter illegally into the United States across our land borders. Some of these gangs are dangerous criminals and such members of alien gangs who could potentially be not only criminals but terrorists. This amendment provides for a sweeping shift of power from the Department of Homeland Security to HHS to deal with such aliens. I submit that DHS has the expertise to deal with aliens.

We are in a crisis. That is why we are debating this bill today, and mandating this change in law is not how the government should be responding to these types of serious problems. This provision, simply put, removes all discretion from the Secretary of Homeland Security, where it properly resides, to determine who should be detained and not detained. And, therefore, for those reasons, I respectfully oppose this well-intentioned amendment.

Ms. ZOE LOFGREN of California. Mr. Chairman, will the gentleman yield?

Mr. MCCAUL of Texas. I yield to the gentlewoman from California.

Ms. ZOE LOFGREN of California. Mr. Chairman, I know the gentleman is a decent person, and I respect that. But I do not know if he is aware of the government's dismal record of arresting the 16-year-old in his Boy Scout uniform having attended the International Boy Scout Jamboree and then putting him in jail with adult prisoners. The record is not a pretty one, and I just note that the Secretary retains full power to lock up anyone he wants to if they are a criminal, but we have a very serious problem.

Mr. MCCAUL of Texas. Mr. Chairman, reclaiming my time, I am sure we can point to extreme examples, but the fact of the matter is that the statute does already provide and gives the Secretary of the Department of Homeland Security discretion to release juveniles, aliens with medical conditions and aliens who are medically certified as pregnant. I think this is already addressed by the law. And, therefore, this well-intentioned amendment, I believe, is unnecessary.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

First of all, I, too, have respect for the gentleman from Texas, but I think he should read the bill and see that the bill already has a secure alternative program in place. This amendment does not require the Secretary of Homeland Security to be advised or the program to be structured by a number of groups that he might consult with. It only allows the Secretary to seek advice. Also, this provides only the ability to set criteria for the different secure alternative programs that might be put in place, that might help the elderly, the infirm, the sick and children. And I give an example. In 1996, the INS contracted with the Vera Institute of Justice to run a 3-year demonstration program in New York. It was effective, and it worked. These are the kinds of suggestions that could be handled by the secure alternative program amendment that I offer.

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

Mr. MCCAUL of Texas. Mr. Chairman, I yield myself such time as I may consume.

The gentlewoman's, again, well-intentioned amendment says that the Secretary shall, mandatory language, shall design a program in consultation with nongovernmental organizations and academic experts in immigration and criminal justice. Again, this is a very serious matter, and I believe that the Secretary of the Department of Homeland Security is in the best position to make these determinations, not outside groups. And, of course, the Secretary can get any advice he wishes, but this is a decision for him to make and not for outside nongovernmental organizations.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I think if my colleagues would studiously and deliberatively think about what this amendment stands for, they would understand that this is simply an advisory amendment that allows the Secretary to consult with very reasonable organizations who understand the importance of providing secure alternatives for detainees who happen to be infirm or children or the elderly. The Center for Gender and Refugee Studies, the Episcopal Migration Ministries, the Ethiopian Community Development Center, the Florence Immigrant and Refugee Rights Project, the Florida Immigrant Advocacy Center, the Illinois Coalition for Immigrant and Refugee Rights, the Immigrant Children's Advocacy Program, the Kurdish Human Rights Watch, Midwest Immigrant and Human Rights Center, Mississippi Immigrants Rights Alliance, National Immigration Forum, Political Asylum Project of Austin, U.S. Committee on Refugees and Immigrants, and a number of other

individuals recognize that this is a reasonable approach. It is a risk-based approach that would allow the Secretary to consult to protect these detainees.

I ask my colleagues to support this amendment.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas will be postponed.

PART B AMENDMENT NO. 9 OFFERED BY MR. CASTLE

Mr. CASTLE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 9 printed in House Report 109–347 offered by Mr. CASTLE of Delaware:

At the end of title IV, insert the following new section:

**SEC. 408. REPORT ON APPREHENSION AND DETENTION OF CERTAIN ALIENS.**

(a) REPORT REQUIRED.—Not later than two years after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report on—

(1) the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry since the date of enactment of this Act;

(2) the number of such aliens who have been deported since the date of enactment of this Act; and

(3) the number of such aliens from countries the governments of which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.), section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or other provision of law, are governments that have repeatedly provided support for acts of international terrorism.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Homeland Security should develop a strategy for entering into appropriate security screening watch lists the appropriate background information of illegal aliens from countries described in paragraph (3) of subsection (a).

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Delaware (Mr. CASTLE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Delaware.

Mr. CASTLE. Mr. Chairman, I yield myself such time as I may consume.

I rise to offer this straight-forward amendment to the legislation before us today.

Following the attacks of 2001, it is essential that we improve our ability to track and identify terrorists attempting to cross our borders. Chairman SENSENBRENNER and Chairman KING have drafted legislation to better detect terrorist infiltrators, and I applaud them for their hard work on this important issue.

While most of the illegal immigrants who enter the United States do so for the purposes of finding work and making a better life, there are also those that may take advantage of our porous borders to enter the country and take part in terrorist activities. In fact, recent reports have projected that as many as 4,000 immigrants from countries identified as high risk will be arrested trying to enter the country illegally this year. As we speak, terrorists are using alien smugglers and document forgers to help move people through Iran and Pakistan, and it is only a matter of time until terrorist organizations attempt to use these techniques to enter the United States.

In 2004, the Border Patrol estimated that over 55,000 illegal immigrants from countries other than Mexico crossed our borders during a 10-month period. Of the illegal aliens from countries identified by the Secretary of State as sponsors of terrorism who have been ordered deported, only about 6 percent have actually been removed, and these are only the ones we know about.

This legislation takes steps to enhance our border security procedures and improve our ability to identify and remove potential terrorists. As part of this effort, it is imperative that we closely monitor trends in the number of immigrants from noncontiguous nations, other than, obviously, Mexico and Canada, who enter our country illegally. After 2 years of this bill's enactment, my amendment would provide essential oversight on the effectiveness of this system by requiring the Department of Homeland Security to report to Congress on the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry and the numbers of such aliens from countries identified by the State Department as sponsors of terrorism.

My amendment would also encourage Homeland Security to develop a strategy for entering the appropriate background information of illegal aliens from countries sponsoring terrorism into appropriate security screening watch lists.

With millions of illegal immigrants flooding over our vastly unsecured borders, there remains a huge vulnerability to terrorist attack. There is no doubt that al Qaeda and other terrorist groups will take advantage of any area that we fail to secure. Illegal aliens from countries known to sponsor international terrorism, in particular, should raise red flags, and Congress and the Department of Homeland Security need to closely monitor these trends.

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

The Acting CHAIRMAN. Who claims time in opposition to the amendment?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition, although I do not oppose the amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman from California will control the time in opposition.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I agree that we should get this information, and, actually, I believe that, under current law, the department is required to give us this information. In fact, there is an Office of Immigration Statistics buried in the bureaucracy of this department that is supposed to provide information to us on a variety of subjects.

I would just note that this is an agency that not only cannot administer, it is an agency that cannot count. We have had, for example, and it is a different issue, certainly, than terrorism, but I think several years in the last half decade where they have failed to count the number of visas when there were limits on employment visas, and then they say a big oops; they have given too many. And sometimes they even try to sneak around and deduct the overassessment from the next year's. They cannot count because they do not have any technology.

I think it would be quite a dandy idea to find out not only who has been apprehended from countries other than those who are immediately adjacent to us but a whole variety of other information, statistical information, about these individuals.

Again, I appreciate that the author is in good faith trying to make this happen. I will make him a side bet, maybe lunch, that we will never get this information any more than we get the information on the H–1B program that usually is due every year and usually we get it somewhere between 1, 2 and even 3 years late and wrong. I would like to get the information, but none of this is really going to happen until the inept administration of this function is improved. And I, regrettably, do not see that with the new Brownie coming on.

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

Mr. CASTLE. Mr. Chairman, I yield myself such time as I may consume.

I agree, again, with the gentlewoman from California. I am worried about her pessimism in all this as to whether we can get these kinds of reports or not.

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But I think it is important to do this. I think it is very important that we ask this Department to come forward with this information. This basically is, again, a study after 2 years. They have got to give us the report. But, by God, we have got to hold them to it, too. I just think we have to know how these systems are working.

I do not think there is any question that the systems we have been talking

about tonight on a couple of occasions could work, but they do not work because the Department has not been able to implement very well what they are prescribed to do by law already. We are not asking them to do anything different here except to do some reporting. In that case, we can start to make decisions about what is working or not.

So I understand exactly what she is saying and understand her frustration, as a matter of fact; and in spite of that frustration, she is supportive and I appreciate that also.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. KING), the chairman of the committee.

Mr. KING of New York. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I once again am proud to urge adoption of his amendment. It is very a constructive addition to the bill. It certainly deserves the support of all Members, and I urge its adoption.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wonder if I could ask the chairman of the committee a question: I understand from the Democrats on the Rules Committee that we have not yet received the manager's amendment that has been discussed so frequently on the floor today to the underlying bill. We have not seen anything. Do you have any idea when Members will see this manager's amendment that has been discussed today?

Mr. KING of New York. Mr. Chairman, will the gentlewoman yield?

Ms. ZOE LOFGREN of California. I yield to the gentleman from New York.

Mr. KING of New York. No, I cannot enlighten the gentlewoman at all. As soon I find out, you will be the first to know.

Ms. ZOE LOFGREN of California. Mr. Chairman, reclaiming my time, I appreciate that.

Before recognizing my colleague, I just wanted to mention that on Mr. CASTLE's amendment there are several other issues that I think we need to consider, assuming they are going to pay any attention to this at all, which I have questions about. We do have expedited removal provisions, and the data-keeping is not very good there.

I would note also that part of our problem is that not only do we have inadequate enforcement at the border; we are just not enforcing the laws at the border, but we do not have the personnel to actually adjudicate matters once we have apprehended people.

Now, the expedited removal at the border, it is controversial among some, but I think not at points of entry. Judgments can be made. There are problems that the General Accounting Office has told us relative to asylum, the application asylum laws, that do need to be addressed. But it is not at all clear that these numbers are going to be folded into this, and I think we ought to be aware of that.

Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentlewoman. You have made some very valid points, and I would rise to support Mr. CASTLE's amendment; but I would appreciate if he would recognize some of the dilemma that we face.

One of my colleagues from Texas, Mr. ORTIZ, was one of the first Members, I think, to raise the question of OTMs, which your amendment in part would give us some answers to by providing information for those undocumented aliens who would be coming through the southern border who were not from contiguous countries.

One of the issues that all of us are concerned about is the route of terrorism that might occur and might be utilized by individuals coming from places other than Mexico. As you well know, over the years, unfortunately, we have had a gap in our enforcement, and those individuals have been released on their own recognizance.

My concern is as you have this thoughtful amendment, and I ask you to consider this, we, frankly, do not have the detainee space, detention beds, and the enforcement, internal enforcement officers, and also Border Patrol officers, even though this is a report, to deal with the large numbers of those who are coming in that we have been able to ascertain. In fact, 110,000 OTMs have been released last year due to lack of detention facilities. Legislation that I offered asked for 100,000 detention beds.

So I just raise that with the gentleman. I think the amendment is thoughtful, but we still are without the resources to do what we need to do on these particular detainees or undocumented aliens.

Mr. CASTLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me just respond for a moment, if I may, to the gentlewoman from Texas. I do not disagree with what you are saying. Part of the reason to get reports is to understand exactly where the problems are, do we have insufficient detainee and foot patrol officers and a whole variety of other things, for all that matter, judicial personnel or whatever it may be, to take care of some of the problems that exist.

It is fine to make the initial detention; but if you cannot do anything with it, you have not really achieved much in terms of perhaps preventing terrorism. So I do not disagree at all, and that is part of my goal.

I do not disagree with the gentlewoman from California. I think there are a lot of holes in all this; and I do not expect immediate, strong, good reports. As a matter of fact, I think we are going to have to prod to get some of these reports. But I think it is going to give us information that is helpful. That is the reason we have come forward with the amendment, probably to underline a lot of what you are concerned about and saying in terms of what we have to improve with respect to this whole situation.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. CASTLE. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I think as long as we collectively, the gentlewoman from California, myself, are raising concerns, and you accept or at least recognize that they exist, I do think getting a handle on the numbers and maybe seeing that they are larger than, and it would be wonderful if they are less than, but if we at least have a definition of the problem. I thank the gentleman for his amendment.

Mr. CASTLE. Mr. Chairman, reclaiming my time, I do recognize the problems you have raised, and I do think those are things that we have to consider.

I do appreciate everybody's support for the bill.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. GINGREY). The question is on the amendment offered by the gentleman from Delaware (Mr. CASTLE).

The amendment was agreed to.

PART B AMENDMENT NO. 10 OFFERED BY MS. GINNY BROWN-WAITE OF FLORIDA

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 10 printed in House Report 109–347 offered by Ms. GINNY BROWN-WAITE of Florida:

At the end of title VI, insert the following new section:

**SEC. 615. DECLARATION OF CONGRESS.**

Congress condemns rapes by smugglers along the international land border of the United States and urges in the strongest possible terms the Government of Mexico to work in coordination with United States Customs and Border Protection of the Department of Homeland Security take immediate action to prevent such rapes from occurring.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentlewoman from Florida (Ms. GINNY BROWN-WAITE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Florida.

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the reports of the lawlessness along our borders are unprecedented. Stories about the number of young girls and women who smugglers and society's dregs rape as they attempt to cross the border are widespread.

Numerous recent articles have told stories of Minuteman members who are haunted by cries of women who are being raped and abused, who when they

first heard the cries, they actually thought they were coyotes wailing in the desert. These are women and young girls being raped. All along the southern border, the sight of women's undergarments hang from border fences as trophies. This is appalling, and yet it is also very telling. There are stories of mattresses tucked in caves for more convenient access to rape young girls as young as 8- and 9-years-old crossing the border. Violent acts against females in this manner are despicable. Congress cannot and should not tolerate this behavior.

H.R. 4437, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005, takes decisive action to reduce and eliminate this criminal activity. My amendment to the bill is a declaration that Congress condemns these rapes along the United States border.

Additionally, my amendment urges the Government of Mexico and U.S. Customs and Border Protection to work together to take immediate action to prevent such rapes from continuing.

We all understand that the best mechanism for preventing these rapes is to encourage legal citizenship and to stop people from crossing our borders illegally and therefore putting themselves in harm's way. By including my amendment in the underlying legislation, this House is sending a loud and clear message of its dedication to improving all aspects of border security. Urging both the United States and Mexico to take action is a good first step toward a peaceful, safe, and secure border.

The bill also provides a tremendous overhaul of the United States immigration policies, and I am very pleased that the House is debating this issue before we adjourn for the year. As a member of the Committee on Homeland Security, I look forward to implementing these measures, and I also look forward to the time when reports of rape and cruelty to young girls and women are not an issue on our border.

Mr. Chairman, I urge my colleagues to support my amendment, and I thank the gentleman for his recognition of this amendment's merits.

Mr. Chairman, I yield such time as she may consume to the gentlewoman from Florida (Ms. HARRIS).

(Ms. HARRIS asked and was given permission to revise and extend her remarks.)

Ms. HARRIS. Mr. Chairman, I rise today in strong support of this amendment offered by my colleague from Florida. Shockingly, thousands of women who cross the U.S. border illegally from Mexico are promised safe passage in return for sex and money. These women are not given safe passage, but rather become the trophies of criminal rapists as they hang the undergarments of their victims on the border fences.

But human trafficking and sexual exploitation impacts every corner of the globe; and the United States must lead an intensive, multilateral effort to stop it. Last year, an estimated 27 million people were forced into slavery around the world. I have heard the heartwrenching stories of women and children, young girls, who are tricked, kidnapped, and sold into sexual slavery.

These crimes occur in many forms, from sex trafficking to involuntary servitude. Women, even young girls, are told they will be taken out of the country where restaurants and hair salons need workers. When these girls enter the country, their identification is taken away and there is no restaurant, no salon, only brothels. Furthermore, these girls are commonly told they must pay a debt for their transportation into the country, and they are forced to sell their bodies to pay off this debt. Our borders must not become the avenues for pimps, traffickers to make millions of dollars.

These victims are left with insufficient housing, no access to social services, no education, or job opportunities. Sex trafficking rings are frequently linked to corruption, and law enforcement in some regions are even bribed to ignore these sex slavery rings. This must stop.

Mr. Chairman, this amendment before us today takes the necessary first step not only condemning the exploitation of people along our borders but also strongly urges immediate action to prevent such abuse from occurring in the future. I strongly urge my colleagues to vote in favor of this amendment and condemn this lawlessness on our borders.

The Acting CHAIRMAN (Mr. SIMPSON). Who claims the time in opposition to the amendment?

Ms. ZOE LOFGREN of California. Mr. Chairman, I claim the time in opposition although I do not oppose the amendment.

The Acting CHAIRMAN. Without objection, the gentlewoman will control 5 minutes.

There was no objection.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support this amendment. The amendment calls on the Mexican Government to work closely with U.S. Customs and Border Protection to take immediate action to prevent the occurrence of rape along the U.S.-Mexican border.

Rape is a horrendous crime. Every 2½ minutes somewhere in the United States someone is sexually assaulted, and only 36 percent of the rapes are reported to law enforcement in the United States. It is safe to assume that the rate of reporting is considerably less along the border.

The women who are crossing our border are extremely vulnerable, and they are unlikely to tell law enforcement officials that they were raped while trying to cross the border without their papers. The smugglers know that these women are vulnerable, and they take advantage of them. I think in many ways this amendment makes clear what many have been talking about today, and that is the need to gain control of the situation at the border.

I have talked today a lot about how dysfunctional the administration of our laws has been. We do not have enough Border Patrol agents; they are not properly equipped; we do not have enough prosecutors; we do not have enough judicial personnel; we are citing and releasing individuals and letting them go. We have a chaotic situation at the border, and we need to create an orderly situation at our borders. We need to take control of it. It is not occurring right now.

Part of that, and again this has been discussed, is to regularize the ability of individuals who want to come and be part of the American Dream so that they do not have to be with smugglers, vulnerable victims of crime, victims of rape; that there is some orderly manner for individuals to move back and forth across the border, to do the jobs that we know are not going to get done without them.

Earlier today, not on the record, someone said, Well, you know, if this bill passes, that is the end of salads in America. I think we need to contemplate the role that immigrant labor plays in the area of agriculture, fast food, tourism, the hotel industry, the tourist industry and the like. I think it is a mistake that the underlying bill does not deal with that issue.

I do agree, however, that the gentlewoman's amendment really calling on our two governments to coordinate, to fight this horrendous crime of rape is well intentioned, it is something I can support; and I hope it does some good.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

The amendment was agreed to.

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PART B AMENDMENT NO. 11 OFFERED BY MR. HUNTER

Mr. HUNTER. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN (Mr. SIMPSON). The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B amendment No. 11 printed in House Report 109–347 offered by Mr. HUNTER of California:

At the end of the bill, add the following:

**TITLE IX—FENCING AND OTHER BORDER SECURITY IMPROVEMENTS**

**SEC. 901. FINDINGS.**

The Congress finds the following:

(1) Hundreds of people die crossing our international border with Mexico every year.

(2) Illegal narcotic smuggling along the Southwest border of the United States is both dangerous and prolific.

(3) Over 155,000 non-Mexican individuals were apprehended trying to enter the United States along the Southwest border in fiscal year 2005.

(4) The number of illegal entrants into the United States through the Southwest border is estimated to exceed one million people a year.

**SEC. 902. CONSTRUCTION OF FENCING AND SECURITY IMPROVEMENTS IN BORDER AREA FROM PACIFIC OCEAN TO GULF OF MEXICO.**

Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 8 U.S.C. 1103 note) is amended—

(1) in the subsection heading by striking ''NEAR SAN DIEGO, CALIFORNIA''; and

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

''(1) SECURITY FEATURES.—

''(A) REINFORCED FENCING.—In carrying out subsection (a), the Secretary of Homeland Security shall provide for least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors—

''(i) extending from 10 miles west of the Tecate, California, port of entry to 10 miles east of the Tecate, California, port of entry;

''(ii) extending from 10 miles west of the Calexico, California, port of entry to 5 miles east of the Douglas, Arizona, port of entry;

''(iii) extending from 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas;

''(iv) extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and

''(v) extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.

''(B) PRIORITY AREAS.—With respect to the border described—

''(i) in subparagraph (A)(ii), the Secretary shall ensure that an interlocking surveillance camera system is installed along such area by May 30, 2006 and that fence construction is completed by May 30, 2007; and

''(ii) in subparagraph (A)(v), the Secretary shall ensure that fence construction from 15 miles northwest of the Laredo, Texas port of entry to 15 southeast of the Laredo, Texas port of entry is completed by December 31, 2006.

''(C) EXCEPTION.—If the topography of a specific area has an elevation grade that exceeds 10%, the Secretary may use other means to secure such area, including the use of surveillance and barrier tools. ''.

**SEC. 903. NORTHERN BORDER STUDY.**

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a study on the construction of a state-of-the-art barrier system along the northern international land and maritime border of the United States and shall include in the study—

(1) the necessity of constructing such a system; and

(2) the feasibility of constructing the system.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Congress on the study described in subsection (a).

**SEC. 904. SENSE OF THE CONGRESS.**

It is the sense of the Congress that the Secretary of Homeland Security shall take all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the United States.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from California (Mr. HUNTER) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California.

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, a few years ago, in fact in 1994, we mandated the construction of a fence in San Diego California, a triple fence. And that fence, with a basic fence on the border, a Border Patrol road, then a secondary higher fence with an overhang, a second Border Patrol road and then a third fence were designed to stop the massive drug trade and the smuggling of narcotics and people across what was the most prolific smugglers' corridor in America, that between Tijuana and San Diego.

At that time we had some 10 border murders a year. We had gangs that roamed that area that they called a ''no man's land'' to the point where Joseph Wambaugh wrote the best seller ''Lines and Shadows'' about the no man's land that existed between Tijuana and San Diego. We had some 300 drug trucks a month crashing that border and running up with cocaine for our children.

We built that fence, Mr. Chairman, and in doing that we knocked down the murders from 10 a year to zero. We knocked down the border drive-throughs from 300 a month to zero. We knocked down the smuggling of both illegal aliens and narcotics to almost zero where that fence was.

I might say that the great Border Patrol chief, Mr. Sylvester Reyes, stood in testimony, even adversely to his administration, and testified to the sufficiency of that fence.

This proposal, Mr. Chairman, is 700 additional miles of fence, and it has a great humanitarian aspect. The first piece of this fence, 361 miles from Calexico to Douglas, Arizona, is the area through which most of the people come who have represented those 400 deaths a year by dehydration in the deserts of Arizona.

If we had 400 college kids or high school kids or neighborhood kids a year dying in a lake in a city, we would immediately fence it. By fencing that area we are going to prevent those deaths. We cannot fence it by the next hot season, which will start in the end of May this coming year, but we have in this legislation directed interlocking cameras so we can see people when they come across the border while we are building the fence and we can respond. We can both deport them, and we can also save their lives, Mr. Chairman.

The second piece that is mandatory here is the 15 miles on each side of Laredo. Across the river from Laredo is Nuevo Laredo where the drug lords reign, where they kill the local law enforcement officers within, some cases, a few hours of their taking office. If we can dry up that massive land smuggling with backpacks full of cocaine coming across that smugglers' jump-off point in Nuevo Laredo by fencing both sides with a double fence, 10 miles on each side of Nuevo Laredo, and we want to have it done and it is mandated by this bill by the end of the year this next year, we will have done great things for the people of America and the good citizens of Nuevo Laredo.

This has a great humanitarian aspect to it, and we costed it out. It is roughly $2.2 billion. That is a fraction of what we spend each year to incarcerate the criminal aliens whom we currently have in massive numbers in our Federal penitentiaries and in our local jails.

That is the essence of this.

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

The Acting CHAIRMAN. Who claims time in opposition to the amendment?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I claim time in opposition.

The Acting CHAIRMAN. The gentlewoman will control 10 minutes.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California (Mr. FARR).

Mr. FARR. Mr. Chairman, I rise in opposition to this amendment and what it says about the United States of America.

I wish this debate had been held in committee and that something more than just the last-minute long list of amendments could be debated right here tonight, because I think most of the Members of this House have not read this amendment nor understand the implications.

This amendment allows the Secretary of Homeland Security to not only build a wall between Mexico and the United States but to study building a wall across Canada, across our U.S. borders. In so doing, it gives the political appointee the authority to waive all laws, not only all environment laws but also notwithstanding any other provision of the law, child labor laws, laws to protect workers from ensuring safe and healthy workplaces, Davis-Bacon laws, civil rights provisions, ethics laws for clean contracting and procurement policy, laws and statutes that give small businesses a fighting chance for winning contracts for construction.

There is no recourse to the abuse of power and certainly no good will come as demonstrated in this manner in safeguarding our national borders.

I urge all my colleagues to be rational lawmakers and avoid overreacting in the hysteria of a few.

Mexico is California's number one trading partner. Our border with Mexico is the busiest in the world. More people and commerce legitimately cross that border than any other border in the world. Why would the Government of the United States at a time when we are advocating support for enforcement of law, why would the government now want to forbid the use of a law to finish the fence? Not even the importance of securing our border can justify placing a government official above the law.

How can we celebrate tearing down the Berlin Wall, fight undemocratic regions around the world, and build respect for law here at home with this kind of message?

Allowing a political appointee to waive the law and to prohibit legal appeals is not winning the war on terrorism; it is supporting it.

Ronald Reagan said, ''General Secretary Gorbachev, if you seek peace, if you seek prosperity for the Soviet Union and Eastern Europe, if you seek liberalization, come here to this gate. Mr. Gorbachev, open this gate. Mr. Gorbachev, tear down this wall.''

Unfortunately, someone will have to say that about this wall some day because an America with walls between Canada and Mexico is not an America that reaches out for the people of this world to come here legally.

Mr. HUNTER. Mr. Chairman, I just wanted to mention that Ronald Reagan closed down the border when our agent Kiki Camarena was murdered and the killer was not produced forthrightly by Mexican authorities.

Mr. Chairman, I yield 2 minutes to the gentleman who is a co-author of this legislation and a tireless worker for the border fence in San Diego.

Mr. DREIER. Mr. Chairman, I agree with my friend from California (Mr. FARR). We look forward to when we can tear this down. We want to be able to tear this down when we see an end to illegal drug trafficking, when we see an end to illegal crossings of our border, when we see economies of scale because of trade. But until that time, because of the success that we have seen with the 14-mile border fence from the Pacific Ocean to the Otay Mesa, it is absolutely essential that we build on that success.

We are in the midst of completing that 3½ mile gap, and Mr. HUNTER has just referred to the diminution that we have seen in cars running across the border and people running across the border at that fence.

This is a humanitarian issue as well. It is humanitarian because when we look at the 1,500 people, fellow human beings, who have died in the desert because of the fact that they have crossed illegally into our country, the existence of these fences at the most dangerous spots along our 2,000-mile border will go a long way toward saving the lives of our fellow human beings.

It is absolutely essential that we do all that we can to strengthen our relationship in trade, to strengthen our relationship in working with the Mexican Government; but when we have a problem that is killing people, literally killing people, and costing the United States of America billions of dollars, the existence of this fence is the right thing to do. And I do anxiously look forward when we see things improved to our saying that we can completely tear down this wall.

Ms. JACKSON-LEE of Texas. Mr. Chairman, my good friend knows that the fence is no substitute for good intelligence.

Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oregon (Mr. DEFAZIO), a member of the Homeland Security Committee and the Transportation Committee.

Mr. DEFAZIO. Mr. Chairman, they are proposing here to build an extensive triple-wall fence along the Mexican border, ostensibly building on the success of a very short section of fence, and they are also proposing that we should study building a fence along the entire 2,000-plus-mile Canadian border. They are not talking much about that.

Here is a picture of one of the world's existing fences that completely surrounds an area. It is in Melilla; and like Ceuta, which is attempting to keep Africans from getting into the Spanish parts of Morocco, they do not work.

The EU paid for these double fences. They use deadly force. They kill people there, and people still go over it, around it, and through it. It is 10 feet high with concertina wire on top. They will make it 20 feet high with concertina wire on top. It does not work.

When Hong Kong was walled off by the Communist Chinese, again, a fairly extensive piece of land, and they could use deadly force, businesses were set up on the Communist Chinese side of the border, the entrepreneurs there, to guarantee to get people through in less than a minute. And they did. And it did not work.

They say it is only $2.2 billion. We could do a lot more with $2.2 billion. We could do some interior enforcement to keep illegal people from working here. We could hire more Border Patrol agents. There are a lot of things we could do with $2.2 billion, but to build or extend this fence, yeah, it will make someone rich like Bechtel or Halliburton or whoever is going to build the fence, they will get a pile of money out of it; but it is not going to work. It does not work in Africa. It did not work in Communist China, again, where they are using deadly force. Are we going to use deadly force?

How about some enforcement on the Mexican side of the border? Well, they do not want to go there because they all voted for NAFTA. They do not want to say let us withdraw from NAFTA unless the Mexicans put enforcement on their side of the border. Right now people line up on the border at night and the Mexican police say, hi, how you doing? Okay. And then they run across.

How about a little bit of international cooperation? There are a lot of things we could do here, but the things we could do that are effective offend big business who are the patrons of the Republican Party. That is interior enforcement, employer enforcement. People do not come here to go on vacation. They come here to go to work. If they could not get work, they would not sneak across the border. If we force the Mexican Government to do something on their side by threatening to withdraw from NAFTA, which we can do with 6 months' notice, again, big business would not allow the Republicans to do that or George Bush certainly would not do it because he is for open borders. But they can pretend here they are doing something.

They are wasting $2.2 billion of taxpayer money to do something that has not worked anywhere else in the world even where they are willing to shoot the people that go through the fence, Communist China, Morocco. It is not going to work here either.

And what about Canada? Come on, guys, talk about the Canada part. Tell us about the 2,000-plus-mile fence along the Canadian border. That is going to be a real piece of work.

Mr. HUNTER. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. ROYCE) who has been a major proponent for this fence.

Mr. ROYCE. Mr. Chairman, I rise in support of this amendment. Of course, the circumstance is that in San Diego this fence has worked. In San Diego those crossing and apprehended where we have erected this fence have dropped from 202,000 a year in 1992 to less than 9,000 by 2004. So, yes, people still find a way around the fence, but not many. And if we are going to be serious, the establishment of a border fence project like this is probably going to have the same impact on these other communities that it has on San Diego, which is to say crime rates have fallen to a fraction of what they were.

San Diego is no longer one of the most prolific drug smuggling corridors. So where is the fence needed? On these corridors you see here. This is where we can have the maximum impact.

Why is it important? Partly because this has become post-9/11 a national security concern. If we do nothing to stop people attempting to enter illegally off our southern borders, when we know that al Qaeda has already indicated that its intention is to send agents over the southern border of the United States with the intent of carrying out an attack on the United States, we are not doing our jobs under the Constitution of the United Nations to protect the American public.

Now, will we catch everyone? Maybe not, but 3,000 people from state sponsors of terrorism have been stopped to date, and this is a chance to make certain that al Qaeda operatives do not have an easier chance of getting into the United States.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me tell you what the 9/11 Commission announced to America as one of the key elements of the disaster and tragedy of 9/11. Even the families of the 9/11 victims who insisted on such a commission acknowledged that it was faulty and failed intelligence.

□ 2045

In this time of 21st century technology, my good friends and colleagues, who I have great respect for on the other side of the aisle, want to put into place the old Berlin Wall, again the same wall that Ronald Reagan had torn down, the same wall that will be as inept and ineffective and destructive as the Berlin Wall.

I think it is important to note for those who are talking about the area of Laredo, part of the State of Texas, and many of my colleagues from Texas have been champions on this issue, but my friends should realize that the reason for the drug cartels in Nuevo Laredo is because we busted the Colombian drug cartels in Colombia, and they simply moved to Mexico.

So, rather than the old Berlin Wall, again, what we really need is an effective law enforcement at the border. We are going to put the Berlin Wall up, but we are not going to have 15,000 extra Border Patrol agents.

I would offer to say that the Berlin Wall, without law enforcement, is misleading the American people into false security.

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

Mr. HUNTER. Mr. Chairman, I yield 30 seconds to the gentleman from Virginia (Mr. GOODE), my great cosponsor on this.

Mr. GOODE. Mr. Chairman, I want to thank Chairman HUNTER, Chairman DREIER and all of the supporters of this amendment.

Will this wall, will this fence make America absolutely safe, absolutely secure, and will it stop every illegal alien? No, it will not, but it will make us more secure. It will make us safer, and it will surely cut down the horrific numbers that flood into this country.

Vote to help save America. Vote yes on Hunter.

Ms. JACKSON-LEE of Texas. Mr. Chairman, how much time remains?

The Acting CHAIRMAN (Mr. SIMPSON). The gentlewoman from Texas (Ms. JACKSON-LEE) has 3½ minutes remaining. The gentleman from California (Mr. HUNTER) has 2½ minutes remaining. The gentlewoman from Texas has the right to close.

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is my pleasure to yield 1 minute to the distinguished gentleman from California (Mr. FARR).

Mr. FARR. Mr. Chairman, I thank the gentlewoman for yielding me time.

I just want to make a comment to my colleagues from California. Yes, the fence they showed was a fence that has been built without waiving any laws, a fence that is in existence. It did not need to do this Draconian kind of legislation here where you are going to an appointed official and giving them the authority to waive every law.

What really bothers me, and nobody has seen this, is one section. In your section 903, ''The Secretary of Homeland Security shall conduct a study on the construction of a state-of-the-art barrier system along the northern international land and maritime border of the United States and shall include in the study,'' a whole bunch of studies.

That northern international border, as I know it, is called the Canadian border. This bill is not just about building a fence across the Mexican border. It is also about studying and building a fence across the Canadian border. It is a meat-axe approach, giving all these waivers, and it should be rejected.

Mr. HUNTER. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Chairman, I am happy to join my colleagues in cosponsoring this important amendment.

In many ways, the Border Protection, Antiterterrorism, and Illegal Immigration Control Act of 2005 is a return to basics for a complete overhaul of our system of immigration. An integral component of the basics is the long overdue need for securing the most populous areas of our southern border with physical barriers. Like locking the door to your house before turning on the alarm, it only makes sense to begin enforcement of our border with physical barriers.

My colleagues, Chairman HUNTER, Chairman DREIER and Mr. ROYCE, have attested to the success of the border fence in California. I believe we can apply this success to other parts of our borders using additional fencing and 21st century technology.

We need to stop the fluidness of our border before we consider any other immigration idea. In the words of a doctor, we need to stop the bleeding before we can stitch the wound, and constructing barriers on our borders is a critical first step toward curing this patient who has long suffered from inadequate therapy.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Let me just briefly bring to the attention of my colleagues again the point that we are trying to make.

We started out by saying that border security has no divide among Democrats and Republicans. It has no divide among Americans, but there is a right way to do and to enhance border security.

In this legislation, are going to offer the old Berlin Wall, again separating the north from the south, separating us from our Canadian neighbors.

It is interesting, however, that when we ask for 15,000 more border patrol agents, increased recruitment and training of those agents, adding more equipment to those agents, we get a resounding no.

We need to do sensible, comprehensive immigration reform, not one that simply feels good, because the American people need real security.

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

Mr. HUNTER. Mr. Chairman, I yield 1 minute to the gentleman from South Carolina (Mr. BARRETT).

Mr. BARRETT of South Carolina. Mr. Chairman, I thank the chairman for the time.

I rise in support tonight of the Hunter amendment. Nine years ago, Congress decided to build a 14-mile fence along the San Diego-Mexico border to curb drug trafficking and illegal immigration. As a result, the number of people caught crossing the border illegally along this area dropped by nearly 200,000 in 12 years.

Mr. Chairman, Americans are upset. They understand that too much of our border is still vulnerable. The world's a different place than it was 9 years ago, and illegal entry has grown well beyond that 14-mile stretch of land.

By mandating construction of a security fence along the five most dangerous areas of the southern border, this amendment seeks to take the next step in making our Nation safer.

Additionally, I would like to thank Chairman HUNTER for working with me to include language requiring the Secretary of Homeland Security to conduct a study on the use of physical barriers along the northern border.

I urge my colleagues to support the Hunter amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I reserve my time.

Mr. HUNTER. Mr. Chairman, I yield the remaining time to close to the gentleman from California (Mr. DANIEL E. LUNGREN), the former Attorney General of the State of California, who understands border control.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I have heard the references to the Berlin Wall. There is only one problem: The Berlin Wall was built to keep people in, not keep people out. I do not recall in searching my memory a single example of people trying to jump over the Berlin Wall to get into East Germany.

This is for a different purpose. It is a different thing, and your suggestion that this is a Berlin Wall is only off by about 180 degrees.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself the remaining time.

I thank the distinguished gentleman for his recharacterization of the Berlin Wall. It kept people out, and it kept people in, and that is what we are saying about the largest gated community in the western hemisphere. It will keep the good people of Canada, the good people of the southern border out, the trade and commerce, the friendship that we have developed, and it will cause no extra security to the American people.

Might I suggest to you that the 9/11 Commission reinforced the fact that it is intelligence, good intelligence, that keeps Americans secure. It is good equipment, good resources, good Border Patrol agents that are trained, professionally developed, not the falsehood of a security fence that cannot provide any security.

Might I remind my friends that the Berlin Wall allowed people to jump out

and to jump in. The Berlin Wall was not a secure wall for the East Germans. People escaped from East Germany. People will escape from Mexico and the southern border.

This will only injure the relationships and cause no greater security. I believe this amendment is doomed to fail, and it should fail because the falseness of a security fence will not allow any Americans to sleep good at night.

Let us reinforce the intelligence community of America. Let us reinforce our Border Patrol agents, and let us reinforce friendship. Together, we can fight against terrorists, and we can fight against those who would come into the United States, undocumented, with real immigration reform and a comprehensive immigration plan as offered by many of our colleagues, such as GUTIERREZ, KOLBE, MCCAIN and KENNEDY. Let us talk about comprehensive reform.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. HUNTER).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. HUNTER) will be postponed.

PART B AMENDMENT NO. 12 OFFERED BY MR. DEFAZIO

Mr. DEFAZIO. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Part B Amendment No. 12 printed in House Report 109–347 offered by Mr. DEFAZIO:

At the end of the bill, add the following (and conform the table of contents accordingly):

**TITLE ____—PRESCREENING OF AIR PASSENGERS**

**SEC. ____. IMMEDIATE INTERNATIONAL PASSENGER PRESCREENING PILOT PROGRAM.**

(a) PILOT PROGRAM.—Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall initiate a pilot program to evaluate the use of automated systems for the immediate prescreening of passengers on flights in foreign air transportation, as defined by section 40102 of title 49, United States Code, that are bound for the United States.

(b) REQUIREMENTS.—At a minimum, with respect to a passenger on a flight described in subsection (a) operated by an air carrier or foreign air carrier, the automated systems evaluated under the pilot program shall—

(1) compare the passenger's information against the integrated and consolidated terrorist watchlist maintained by the Federal Government and provide the results of the comparison to the air carrier or foreign air carrier before the passenger is permitted to board the flight;

(2) provide functions similar to the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431); and

(3) make use of machine-readable data elements on passports and other travel and entry documents in a manner consistent with international standards.

(c) OPERATION.—The pilot program shall be conducted—

(1) in not fewer than 2 foreign airports; and

(2) in collaboration with not fewer than one air carrier at each airport participating in the pilot program.

(d) EVALUATION OF AUTOMATED SYSTEMS.—In conducting the pilot program, the Secretary shall evaluate not more than 3 automated systems. One or more of such systems shall be commercially available and currently in use to prescreen passengers.

(e) PRIVACY PROTECTION.—The Secretary shall ensure that the passenger data is collected under the pilot program in a manner consistent with the standards established under section 552a of title 5, United States Code.

(f) DURATION.—The Secretary shall conduct the pilot program for not fewer than 90 days.

(g) PASSENGER DEFINED.—In this section, the term ''passenger'' includes members of the flight crew.

(h) REPORT.—Not later than 30 days after the date of completion of the pilot program, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the following:

(1) An assessment of the technical performance of each of the tested systems, including the system's accuracy, scalability, and effectiveness with respect to measurable factors, including, at a minimum, passenger throughput, the rate of flight diversions, and the rate of false negatives and positives.

(2) A description of the provisions of each tested system to protect the civil liberties and privacy rights of passengers, as well as a description of the adequacy of an immediate redress or appeals process for passengers denied authorization to travel.

(3) Cost projections for implementation of each tested system, including—

(A) projected costs to the Department of Homeland Security; and

(B) projected costs of compliance to air carriers operating flights described in subsection (a).

(4) A determination as to which tested system is the best-performing and most efficient system to ensure immediate prescreening of international passengers. Such determination shall be made after consultation with individuals in the private sector having expertise in airline industry, travel, tourism, privacy, national security, and computer security issues.

(5) A plan to fully deploy the best-performing and most efficient system tested by not later than January 1, 2007.

The Acting CHAIRMAN. Pursuant to House Resolution 610, the gentleman from Oregon (Mr. DEFAZIO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Oregon.

Mr. DEFAZIO. Mr. Chairman, I yield myself such time as I may consume.

Hopefully, this will be a relatively noncontroversial amendment, unlike the preceding.

We are doing something nonsensical today. We have, post-9/11, required that manifests be submitted to the United States of America to our law enforcement intelligence authorities for incoming flights for all passengers on board. That is good. That was only voluntarily before 9/11.

Unfortunately, we do not require that this be done until the flight has left, and we have all seen that a number of times flights have been turned back. They have had to land in Canada or Maine. People have had to be offloaded. It would be a lot more sensible to have a program where we could vet the manifest before the plane leaves.

So this amendment would set up a pilot program. The technology exists. It is being done in Australia and elsewhere very successfully, to have a pilot program so that we could show that this will work so that we can both make America more secure and facilitate international air travel.

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

The Acting CHAIRMAN. Does the gentleman from California claim the time in opposition?

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I do claim it; although I do not oppose it.

The Acting CHAIRMAN. Without objection, the gentleman from California is recognized for 5 minutes.

There was no objection.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, it gives me great pleasure to be involved in this bipartisan amendment with my friend from Oregon.

The amendment addresses a dangerous flaw in our current system.

Under current practices, Customs and Border Protection does not receive the names of passengers on board international flights bound for the U.S. until after the flight is in the air, as the gentleman explained.

When CBP finally gets the passenger manifest, it sends it over to the Transportation Security Administration, TSA, so they can compare it against the terrorist databases. At that point, if they find a name match, there is no way to reconcile the situation.

This has resulted in numerous high-profile instances where a plane was forced to divert from its intended destination, I believe in almost every case while over the Atlantic. This inconveniences passengers and costs the airlines hundreds of thousands of dollars per incident. There have been, as I understand, seven diversions this year alone.

What is worse, since CBP and TSA have been operating this program, there have been two occasions on which the individuals flagged turned out to be the dangerous individuals on the watch list.

Fortunately, there is a commercially available system in use for flights to Australia that provides the airlines with a cleared or not cleared decision for each passenger in real-time, not 4 hours before or not 2 hours after they have taken off, but in real-time, at the time of check-in.

The system has been offered free of charge to CBP on a pilot basis. They have declined the offer and have yet to conduct any tests. Instead, they have been trying to internally develop a new system for over a year now. I believe we are wasting valuable time.

This amendment, at a minimum, will force CBP to conduct a test of the commercially available systems within 90 days of the date of enactment. If CBP can complete the development of its own proprietary system, we will also get a real apples-to-apples comparison of the various products.

Ultimately, Mr. Chairman, this amendment will speed implementation of this vital program to ensure that the airlines will know who can board the plane safely and who cannot long before the plane leaves the ground.

I believe everyone agrees that is the best possible situation. We have, on a bipartisan basis I think, been frustrated by the responses we have received as to why they cannot develop their own program and why they then resist conducting a pilot program utilizing something that has already been done in another country.

The only question it seems to me is scaleability: Can they scale up to the volumes we have in the United States because obviously Australia is a smaller country with a smaller number of people? But in this computerized era in which we live today, I do not believe that scaleability is a problem. That is the reason for this pilot project.

I would like to thank the gentleman from Oregon for his efforts and his willingness to work with me on this language. I would urge all Members to support this amendment.

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

Mr. DEFAZIO. Mr. Chairman, the chairman has spoken so eloquently that I don't think I can improve upon that.

□ 2100

Mr. Chairman, I yield back the balance of my time.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SIMPSON). The question is on the amendment offered by the gentleman from Oregon (Mr. DEFAZIO).

The amendment was agreed to.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in part B of House Report 109–347 on which further proceedings were postponed, in the following order:

Amendment No. 8 by Ms. JACKSON-LEE of Texas.

Amendment No. 11 by Mr. HUNTER of California.

This will entail a 15-minute vote followed by a 5-minute vote.

PART B AMENDMENT NO. 8 OFFERED BY MS. JACKSON-LEE OF TEXAS

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) 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 Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 252, not voting 19, as follows:

[Roll No. 639]

AYES—162

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Cleaver
Clyburn
Conyers
Cooper
Crowley
Cuellar
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Hastings (FL)
Higgins
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Maloney
Markey
Matsui
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rahall
Rangel
Reyes
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Slaughter
Solis
Spratt
Stark
Strickland
Tauscher
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—252

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Bass
Bean
Beauprez
Berry
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Capito
Cardoza
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Costa
Costello
Cramer
Crenshaw
Cubin
Culberson
Davis (AL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Everett
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Souder
Stearns
Stupak
Sullivan
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Visclosky
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NOT VOTING—19

Barton (TX)
Cantor
Clay
Davis (FL)
DeLay
Diaz-Balart, M.
Emanuel
Feeney
Hyde
LaHood
Lynch
McCarthy
Meeks (NY)
Rogers (MI)
Saxton
Sweeney
Thomas
Waters
Young (AK)

□ 2122

Messrs. CARTER, LOBIONDO, HALL, LEWIS OF CALIFORNIA, MANZULLO, AND TANNER changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PART B AMENDMENT NO. 11 OFFERED BY MR. HUNTER

The Acting CHAIRMAN (Mr. SIMPSON). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. HUNTER) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 260, noes 159, not voting 14, as follows:

[Roll No. 640]

AYES—260

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Bass
Bean
Beauprez
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Cardoza
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Costa
Costello
Cramer
Crenshaw
Cubin
Culberson
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Doolittle
Drake
Dreier
Duncan
Edwards
Emerson
English (PA)
Etheridge
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Hoekstra
Holden
Hooley
Hostettler
Hulshof
Hunter
Inglis (SC)
Israel
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Maloney
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Melancon
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore (KS)
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Ramstad
Regula
Rehberg
Reichert
Renzi
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Sodrel
Souder
Spratt
Stearns
Stupak
Sullivan
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (SC)
Wolf
Young (FL)

NOES—159

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Berman
Blumenauer
Boehlert
Bonilla
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Cleaver
Clyburn
Conaway
Conyers
Cooper
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doyle
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Granger
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinojosa
Holt
Honda
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren, Zoe
Lowey
Markey
Matsui
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Millender-McDonald
Miller, George
Mollohan
Moore (WI)
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Price (NC)
Radanovich
Rahall
Rangel
Reyes
Reynolds
Ros-Lehtinen
Rothman
Roybal-Allard
Rush
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Slaughter
Snyder
Solis
Stark
Strickland
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOT VOTING—14

Barton (TX)
Cannon
Clay
Davis (FL)
Diaz-Balart, M.
Emanuel
Hyde
LaHood
Lynch
McCarthy
Meeks (NY)
Sweeney
Waters
Young (AK)

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (during the vote). Members are advised 2 minutes remain in this vote.

□ 2130

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. KING of New York. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. REHBERG) having assumed the chair, Mr. SIMPSON, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 4437) to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, and for other purposes, had come to no resolution thereon.

## URGING RUSSIAN FEDERATION TO WITHDRAW LEGISLATION RESTRICTING ESTABLISHMENT OF NONGOVERNMENTAL ORGANIZATIONS

The SPEAKER pro tempore (Mr. REHBERG). Pursuant to clause 8 or rule XX, the unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 312, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 312, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 405, nays 15, not voting 13, as follows:

[Roll No. 641]

YEAS—405

Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Edwards
Ehlers
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)

Jefferson
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
Kuhl (NY)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Tancredo
Tanner
Tauscher
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NAYS—15

Abercrombie
Coble
Duncan
Gutknecht
Hastings (FL)
Jenkins
Jones (NC)
Kucinich
Otter
Paul
Saxton
Sensenbrenner
Taylor (NC)
Wamp
Weldon (PA)

NOT VOTING—13

Barton (TX)
Brown, Corrine
Davis (FL)
Diaz-Balart, M.
Emanuel
Hyde
Kirk
LaHood
McCarthy
Murtha
Sweeney
Waters
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. REHBERG) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 2148

Mr. HASTINGS of Florida changed his vote from ''yea'' to ''nay.''

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the concurrent resolution was amended so as to read: ''Concurrent resolution urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions.''.

A motion to reconsider was laid on the table.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.J. RES. 73

Mr. UDALL of Colorado. Mr. Speaker, because it was added in error, I ask unanimous consent to have my name removed as a cosponsor of H.J. Res. 73.

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

There was no objection.

## APPOINTMENT OF CONFEREES ON H.R. 1815, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

Mr. HUNTER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1815) to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

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

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. SKELTON

Mr. SKELTON. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. Skelton moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 1815 be instructed to agree to the provisions contained in section 1047 of the Senate amendment, relating to a report on alleged clandestine detention facilities for individuals captured in the Global War on Terrorism.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Missouri (Mr. SKELTON) and the gentleman from California (Mr. HUNTER) each will control 30 minutes.

The Chair recognizes the gentleman from Missouri.

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

I rise to offer a motion instructing House conferees on the National Defense Authorization Act for Fiscal Year 2006 to support the Senate provision requiring a classified report on alleged clandestine detention facilities for individuals captured in the global war on terrorism.

Before I get to the motion itself, let me speak to the broader issue of detainee policy that has been under consideration in this conference. Our conferees have an opportunity to bring back a conference report that will strongly state that it is our law and policy that no one in custody of the United States will be subject to cruel, inhuman or degrading treatment or punishment. This House spoke resoundingly on that issue last night on Mr. MURTHA's motion. This is the right policy, and I commend Senator MCCAIN for offering his amendment for this Nation and our military forces as well as intelligence personnel.

Mr. Speaker, I am confident that the ultimate conference report we bring back will contain this language. The rest of the provisions in that detainee package are complex. They deal with intricate changes in the law, and their implications will be felt for a long time to come. We would have been better served by a more deliberative process with hearings and debate. I will have more to say about the outcome of that package when we return a conference report to this body.

A critical issue beyond the McCain language that should be included in the conference report is the issue of congressional oversight of potential secret prisons around the world. On November 2, the Washington Post published a story claiming that ''the CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe.'' Citing U.S. and foreign officials familiar with the arrangement, the article said that ''the secret facility is part of a covert prison system set up by the CIA nearly 4 years ago that at various times has included sites in eight countries.''

The story has been followed by a flurry of press reports, both here and abroad, and statements by the administration. It has created a firestorm of concern amongst our European allies and defense partners that threatens to undermine our efforts in the war against terror. Just yesterday, the 25-nation European Union legislature voted to establish a ''temporary ad-hoc committee on the alleged use by the CIA of European countries for the illegal transport and detention of prisoners.''

No nation or individual should question America's commitment to combating terrorism; yet what sets us

apart from the enemy is our fundamental commitment to human rights and the rule of law. While the administration has publicly stated that Americans do not torture and that the United States does not secretly move terrorism suspects to foreign countries that torture to get information, Congress has a fundamental responsibility to verify these claims on behalf of the American people. It is critical to ensure that the appropriate Members of Congress are fully informed about these activities. Congress must not hear of these matters from a newspaper.

During Senate consideration of the defense bill, an amendment was adopted with bipartisan support, by a vote of 82–9, that would clearly establish congressional oversight expectations over clandestine facilities currently or formerly operated by the U.S. Government, regardless of location, where detainees in the global war on terrorism are or were being held.

The provision, which had the support of both the chairman and ranking minority member of the Senate Intelligence Committee, does not pass judgment on the merit or values of these facilities. It simply asks for a classified accounting of activities related to the facilities by the director of National Intelligence to the Congressional Intelligence Committees.

The provision was offered as a compromise measure by Senator KERRY and Senator ROBERTS, chairman of the Senate Select Committee on Intelligence. Senator ROCKEFELLER, vice chairman of the Intelligence Committee, also supported the provision.

The Senate provision sets a higher standard for congressional oversight than what we have seen throughout the war on terror on numerous matters, including the abuses of detainees. We must set a higher standard in our own oversight and in what we expect the administration to tell us.

Success in any war requires the informed consent of the American people, and in a matter as sensitive as this, that can only be derived from Congress reviewing appropriate information from the administration so we can understand the issues involved and provide such consent.

The Senate provision is reasonable and limited in scope. It is the least we can ask for from the administration as it simply reenforces existing legal responsibility under title 50 of the U.S. Code to inform Congress about intelligence matters.

Voting for this motion to instruct will send a clear message to the American people that the Congress intends to thoroughly review this matter and fulfill our important oversight responsibilities. It will also send a message to our allies that we are taking this matter seriously. It is a reasonable and modest motion, and I urge my colleagues to vote yes.

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

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

Mr. Speaker, let me just start off by saying that I think this is a somewhat dangerous thing that we are doing right now. We are responding to newspaper articles. We are talking about an issue that is not within the jurisdiction of this committee, and we are implying in this response that, if we have a positive vote that somehow there has been an inadequacy, somehow people have not been briefed about ongoing operations around the world, somehow there is a breakdown in our process. And I think that is precisely the wrong message to be sending.

Mr. Speaker, I yield 7 minutes to the gentleman from Michigan (Mr. HOEKSTRA), who chairs the appropriate committee, the Intelligence Committee.

Mr. HOEKSTRA. Mr. Speaker, I would like to thank my colleague from the House Armed Services Committee for yielding me this time and for acknowledging that the item under discussion tonight is an item that falls under the jurisdiction of the Intelligence Committee. And as much as my colleague and I wrestled last year at almost exactly the same time, as we arm wrestled together to work out the responsibilities and the shape of the new director of National Intelligence, we worked through that process.

Mr. ABERCROMBIE. Mr. Speaker, will the gentleman yield?

Mr. HOEKSTRA. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Speaker, I have a serious question. Is there a question as to whether there is proper jurisdiction? If there is, would not the Parliamentarian have ruled that we are out of order now and not carry forward?

Mr. HOEKSTRA. Mr. Speaker, reclaiming my time, I am pointing out why it is, from my perspective, inappropriate under the Defense Authorization Bill to instruct the Intelligence Committee what we need to be doing.

As I was indicating, it was last year at roughly this time, when my colleagues and I on the Defense Committee and the Intelligence Committee were shaping the new director of National Intelligence, responding to the concerns of the 9/11 Commission. And as we acknowledged through that process, we had a tremendous amount to learn from our colleagues on the House Armed Services Committee about how they used intelligence. They had, I think, a shared view that they had much to learn from the Intelligence Committee about how others in the intelligence community and policymakers might use intelligence.

□ 2200

But one of the things that we really focused on was that we could learn from each other, that we would each stay in our lanes of the road. They are the experts on defense, we attempt to be the experts on intelligence, and we respect these roles.

One of the other things that came out of the 9/11 Commission report, besides giving us some guidance in terms of how to restructure the intelligence community, was the emphasis that the 9/11 Commission said there has been inadequate oversight by the Intelligence Committees of what is going on in the intelligence communities, and it is important for the Congress to respond to that. The Intelligence Committee has responded to that.

As we went forward this year, one of the first things we did with committee funding is, on a bipartisan basis, this Congress supported an increase of 25 percent of the staff for the Intelligence Committee. That staff is focused on primarily one new subcommittee in the Intelligence Committee. It is our Oversight and Investigations Subcommittee.

We have taken seriously the directive or the instructions or the suggestions, whatever you want to call them, from the 9/11 Commission saying, strengthen oversight, and we have been able to do that in a very, very positive and a very, very constructive and in a very bipartisan way.

So we are monitoring what is going on in the intelligence community. We are monitoring the implementation and the standup of the new DNI organization on a bipartisan basis. We are going to be putting in place metrics so that we can measure the performance of the DNI against benchmarks that we have established that will talk about the progress that we are making. Oversight is alive and well within the intelligence community. It is a key priority. It is a key focus, and it is a key bipartisan focus to make sure that we do our job well.

The last thing that we need to be doing as we are at war with radical Islam, in the middle of the war, is to begin instructing the Director of National Intelligence on what they should or should not be doing or what they should be preparing for Congress based on press reports in the Washington Post, the Washington Times, the New York Times or any other outlet. That is a very interesting way to direct a Federal bureaucracy.

The work that needs to be done is being done on a bipartisan basis. The DNI and other elements of the intelligence community understand their responsibility to be accountable to Congress for what they are doing, how they are doing it, and to make sure that they are acting within the confines of the laws and the framework that we have established.

Oversight is working. It is demonstrated in the work we do every day in the committee. It is demonstrated in the intelligence authorization bill that went through this Congress earlier this year, and when we come back with a conference report in February, you will continue to see the progress that we have made on a number of these issues.

It is being done in a professional way. It is not being done in an ad hoc way of

reading a newspaper and saying, wow, that is an interesting allegation or theory that is out there. Yeah, we ought to put it into a bill that does not have anything to do with the intelligence community and say, we ought to instruct the intelligence community to go do this.

Let us do this in a professional way, in a bipartisan way. Let us defeat this motion to instruct conferees and let us move forward and let the DNI focus on doing the job that they are doing, which is the tip of the spear in winning the war on terrorism.

Mr. SKELTON. Mr. Speaker, I yield 4 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, it is our constitutional responsibility to exercise oversight, and I want to say to the gentleman who just spoke, the chairman of the Intelligence Committee, this side of the aisle believes that you have been more bipartisan and are trying to include both sides in the deliberations, and we believe that is the correct way to do it, and we congratulate you for that.

This issue, of course, came up after your bill passed, so it could not have been offered in your bill because the issue was not known. It asked for a report to the Defense Committee as well. That is the bill that we are discussing. It is, I think, very relevant. I would hope that every Member would vote for this motion.

Quite simply, this motion would instruct conferees to agree to a Senate provision, passed 82–9, that requires the director of the National Intelligence Agency to provide members of the House and Senate Intelligence Committees with a detailed report of any clandestine prison or detention facility where detainees in the global war on terrorism are or were being held.

This Congress ought to know that information. The Intelligence Committee ought to know that information. Indeed, in my opinion, perhaps all America ought to know that.

I say to my colleagues, whether you are troubled by recent revelations that the United States operates a clandestine prison or prisons on foreign soil or not, and I am one who is troubled by it, you should not quarrel with the proposition that the Members of this Congress have a constitutional obligation to conduct oversight on the administration's conduct of this war. That is what makes America different.

Mr. MCHUGH. Mr. Speaker, will the gentleman yield?

Mr. HOYER. Mr. Speaker, I would be happy to yield to the gentleman from New York, had I more time.

Mr. HUNTER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. MCHUGH) for the purposes of conducting a colloquy with the gentleman from Maryland.

Mr. MCHUGH. Mr. Speaker, I thank the gentleman from Maryland and the chairman of the Armed Services Committee.

Mr. Speaker, as I think the only Member in the House tonight who is both a member of the Armed Services Committee and the Intelligence Committee, I listened to what the gentleman said. The gentleman said that he felt the information should be known to the Intelligence Committee, and I agree with the gentleman, and also to the House.

Would the gentleman help me understand, because based on the language of the instruction, I see no requirement that the information reported to the Intel Committee be reported to the full House, is that his understanding, that somehow that very clandestine, very important information, very secretive information, should be shared to the whole House? Because that is not contained in the instruction.

Mr. HOYER. Mr. Speaker, reclaiming my time, I think the gentleman is correct, that it would not be shared with the whole House as a public disclosure. My understanding, and I stand to be corrected, is that every Member of the House, however, has the opportunity to go to the Intelligence Committee and see that information for themselves. I think I am correct on that. The gentleman may know more about that than I do.

Mr. MCHUGH. Mr. Speaker, reclaiming my time, I would ask the gentleman, why are we here tonight? The fact of the matter is, as I believe the chairman of the Intel Committee suggested, the oversight activities associated with these kinds of facilities is being conducted by the Intel Committee and is in fact available to those Members of the House who wish to come here. Why is this instruction necessary?

Mr. HOYER. Mr. Speaker, reclaiming my time, the reason for that is for the same reason that overwhelmingly in the Senate they asked, because they wanted to assure that the information on the publicly disclosed conduct is in fact available to the Intelligence Committees of both Houses and to the Defense Committees.

Now, the gentleman who chairs that committee has said, we have that information. We do not have the information on our side of the aisle that in fact we have information from the National Intelligence Director as it relates to the publicly disclosed facilities and the use of those facilities and the countries which are receptors for those facilities.

Mr. MCHUGH. Mr. Speaker, reclaiming my time, just so I understand, is the gentleman from Maryland saying that the gentlewoman from California (Ms. HARMAN), the ranking member of the Intelligence Committee, does not have that information available to her, because that is what the gentleman very strongly suggested? I do not see the gentlewoman from California on the floor tonight. I do not think she would agree with that kind of assertion.

Mr. HOYER. Are you asking me whether Ms. HARMAN has it? I have not had a conversation with Ms. HARMAN, so I cannot respond.

Mr. MCHUGH. Mr. Speaker, I cannot either. I have not talked to the gentlewoman from California, but I feel very confident, and certainly if the chairman of the full committee would like to stand forward to the microphone and take this, I would be shocked, I would be stunned, if the gentlewoman from California, the ranking member of the Intelligence Committee, did not have that information. The point being, at the end of the day, and there is no one, no one I respect more and feel more affection toward, in all areas but particularly in the area of defense, than the ranking member of the Armed Services Committee, the gentleman from Missouri (Mr. SKELTON), but it just seems to me that these are activities that are already occurring. They are activities that, as a 13-year member of the Armed Services Committee, in spite of my loyalty to that committee, I feel are beyond the bounds of this committee and are not necessary, and I am confused as to why we are here as members of the Armed Services Committee trying to instruct the Intelligence Committee to do something that is already being done.

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

The SPEAKER pro tempore (Mr. REHBERG). The gentleman from Maryland (Mr. HOYER) has 1½ minutes remaining.

Mr. HOYER. Mr. Speaker, the chairman of the Senate Intelligence Committee was a cosponsor of this resolution. Obviously, it was his conclusion the Intelligence Committees did not have it.

Regrettably, very frankly, I tell my friend from New York, this Congress has shown little inclination for oversight. I am not going to go into the number of incidents that I think we should have had oversight on that we have not, particularly in the House as opposed to the Senate, which has had some more but not much. In my judgment, the revelations of clandestine CIA interrogation centers are serious and disconcerting, and this Congress, on behalf of the American people, needs to get at the bottom of it. The contention is that we have. Perhaps so. But apparently, again, the chairman of the Senate Intelligence Committee does not think that is the case.

These revelations, if true, and the administration has not denied them, threaten to undermine our standing as the world's leading advocate for basic human rights and the rule of law. That concerns me. I presume it concerns every Member of this body. They threaten to underline our alliance.

Following in the footsteps of the mistreatment of prisoners at Abu Ghraib, which I think seriously undermined our position, Guantanamo Bay and Bagram Air Base, this story is yet another example of the administration's

attitude toward adherence to domestic and international law. That concerns me. It ought to concern the Congress. That is what separation of powers is about.

When we abandon the moral standards upon which our country was founded in the conduct of the war on terror, which I have supported, we not only diminish our standing in the world, we foment resentment against the United States and embolden those with whom we are engaged in a daily struggle.

I have supported that struggle. I intend to continue to support that struggle. But I think our moral standing needs to be as strong, frankly, as our military standing. Both will stand this country and Nation in good stead, as they have through history.

I thank the gentleman for yielding me time, and urge support of the gentleman's motion.

□ 2215

Mr. HUNTER. Mr. Speaker, I yield 9 minutes to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. Mr. Speaker, I thank the gentleman from California, the chairman of the House Armed Services Committee, for yielding me time.

I want to just look at the facts that are presented as modified in the amendment. Now, Senator ROBERTS has been part of this, and I have deep respect for Senator ROBERTS from Kansas. He is a great American. He has served in the marines, and I think he makes clear sense. But what we have in this amendment says we want reported on ''any clandestine prison or detention facility currently or formerly operated by the United Stated Government, regardless of location, where detainees in the global war on terrorism are or were being held.''

Now, terrorism is something that we have tried to define, to be interpreted in current terms. But are we talking about terrorism in the Revolutionary War, the War of 1812, the Civil War, World War I, World War II, the Vietnam conflict or Operation Iraqi Freedom? It is not really clear in this piece of legislation.

I think if you visit Iraq and the facilities that we have to hold prisoners of war or enemy combatants or if you have visited Gitmo, Guantanamo Bay, and the facilities we have there, I have been to both locations, and from my observation and my perspective as a Member of Congress from Kansas and the oversight that I have tried to conduct, we have conducted our incarceration of these people at a level that exceeds the Geneva Convention requirements. We have treated these people over and above those requirements so I am not really sure what I am trying to get to.

Even in Gitmo, or Guantanamo Bay, if these enemy combatants have tried to take their own life through starvation, we have gone over and above any requirements that are included in the Geneva Convention to keep these people alive. We even put them in the type of container so that we can give them food and nourishment to keep them alive. We have gone over and above.

So what we are trying to do, I think, in this language and with great respect to the gentleman from Missouri is something I think that goes beyond what we need to expose to public debate in order to keep this country safe.

We have tried to explain to the American public that we are going to do everything that is necessary to keep the American public from exposure to terrorist attacks. Part of that requirement says that we must take detainees, enemy combatants who have chosen to inflict harm on the American public, to a situation where we can get information from them to keep from further attacks occurring in America.

Now, in order to do that we have to put them in facilities, treat them with respect, give them access to any religious capabilities, but doing that in a fashion that we still keep them in a position where they can yield to us information that will keep Americans safe from attack from terrorists.

Now, this has gotten a great deal of public attention from headlines in the national media. Part of the problems that we face as Members of Congress is that we do not react to headlines, but react to proper policy. Headlines can be without substantiation. Headlines can be based on partial facts. Headlines can be based on things that are not complete in their basis of intention. So what we have to do is, as Members of Congress, is take out all of the problems that are taken through these headlines that are not related to the facts, move that aside, and base our decisions on the facts.

What we are trying to do is protect the American public, number one. Number two, make sure that we treat these people with respect who are enemy combatants. And, number three, remember the point that it is against the law in America, no matter where you are on the face of the globe, if you are an American citizen you cannot torture an enemy combatant or a prisoner of war. It is against the law. If you do it, it is against the law. If it is a secret prison, whether they exist or not, it is against the law. If it is Gitmo, if it is Iraq it is again the law to torture anybody.

So to inform that we are doing that in some secret prisons and somewhere in Europe or in Asia or somewhere on the face of the globe is absolutely wrong because if you do commit torture as an American citizen, it is against the law.

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. TIAHRT. I yield to the gentleman from California.

Mr. HUNTER. I thank the gentleman for yielding. One of the tragedies of this debate over torture over the last several months has been a clear message going out from the media that somehow the United States has gone out, the theme has gone out, carried on in American media, that somehow Americans are debating whether or not to stop torturing people.

In fact, torture is banned. It is under title XVIII, United States Code, I believe section 2348, which says under the word ''torture'' that if you torture someone, whether you are an agent of an intelligence agency or a uniformed soldier or just an average American, if you torture somebody, you can get up to 20 years in prison; and if you kill them while you are torturing them, you can be executed by the United States of America.

So the idea that somehow torture is not banned by American law and it does not carry heavy criminal penalties has been lost on the American media. One well-known reporter asked me does it really use the term ''torture'' in this United States Code. And I showed that person the code and said, yes, it does, right there; and it has been banned for a long time.

It has also been banned in our signatory, the effect of our signature on the anti-torture treaty. So I thank the gentleman for that clarification.

Mr. TIAHRT. Mr. Speaker, the two points I want to make in conclusion are very clear. Number one, it is against the law to torture anybody. If you are held in detention as an enemy combatant or prisoner of war or even in our civil prison system, it is against the law to torture anyone. Number two, after my personal review of Guantanamo in Cuba and the prisons in Iraq, we have exceeded the requirement of the Geneva Convention. We have taken care of our prisoners better than the requirements in the Geneva Convention.

If you go to Guantanamo Bay today and you walk through the prison cells, you will see that we have indicated the direction of Mecca. We have given them the ability to have a Koran which is not touched by the hands of infidels. We give them all respect to their religion, to them as human beings. They are properly fed. We will not even allow them to starve themselves to death because we believe that it is more important to keep these people alive than it is to take their life because they are enemy combatants. We have gone over and above the requirements. And I think as Americans we should be proud of what our troops have done in containing these enemy combatants, in containing prisoners of war.

Wherever it is on the globe, we do not commit torture because it is against the law. We exceed the requirements of the Geneva Convention. So I think that this piece of legislation as modified from the Senate is not required. It is, I think, inefficient and it should not be voted into law. I think that what we have done is proper and within the law and with respect to all human beings on the face of the Earth.

Mr. SKELTON. Mr. Speaker, how much time does each side have remaining?

The SPEAKER pro tempore (Mr. REHBERG). The gentleman from Missouri (Mr. SKELTON) has 20½ minutes remaining. The gentleman from California (Mr. HUNTER) has 9 minutes remaining.

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

Mr. Speaker, it was William Shakespeare who once said, Me thinkest thou protest too much.

Why are those speaking against this motion doing so? Are not they anxious to learn the truth? That is what this is, an informational inquiry.

We have been hearing discussions from our friends on the other side, particularly my friend from Kansas, about something else. He did not address this particular motion.

Mr. Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I had not intended to speak tonight, but I felt I must in light of what has been said about the operations of the Intelligence Committee on which I sit.

It has been suggested that this motion is unnecessary because we are already conducting full oversight. Oversight means collecting the information and then acting on it. That is what oversight is. That is what is expected of Congress under the Constitution. We have not conducted that oversight.

On the committee, as a committee, the House Permanent Select Committee on Intelligence has not collected information about purported possible or former detention facilities currently or formerly operated by the United States Government, regardless of location, where the detainees in the global war on terrorism are or were being held.

Perhaps the chairman has had some briefings, because there are very many things that the chairman of the committee gets to hear that the rest of the committee does not, but we have not. The ranking minority member has told me that she has not. This motion would be worthwhile to be undertaken.

Mr. MCHUGH. Mr. Speaker, I reserve the balance of our time.

Mr. SKELTON. Mr. Speaker, I yield 3 minutes to the to the gentleman from Hawaii (Mr. ABERCROMBIE).

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

Mr. ABERCROMBIE. Mr. Speaker, I think it is really a little bit beneath what our committee represents on armed services to think that Mr. SKELTON would be responding to headlines.

Mr. SKELTON brings this motion because of what was in the Senate bill that was supposed to be under consideration for us during conference, a conference which we have not had.

Geneva Convention in our known facilities? Perhaps that is true. I expect it is true and it should be true, but that is what we are talking about.

Mr. Rumsfeld routinely responds to these questions on behalf of the Department of Defense. This question is before us because it is in the bill that we have to take up by way of conference. And the question that needs to be answered I raised publicly with the chairman while Senator WARNER was there and while Ms. HARMAN was there.

I asked does this language or anything having to do with the accusations that have been made whether in the newspapers or elsewhere, does any of that find its way into this bill, into our conference discussions in a way that deals with the outsourcing of torture, with renditions, a word which is now coming into our nomenclature, where we send people out for others to do it. That is at stake here and is clearly and explicitly involved in the motion to instruct. That is what we are trying to deal with.

□ 2230

Mr. MCHUGH. Mr. Speaker, will the gentleman yield?

Mr. ABERCROMBIE. I yield to the gentleman from New York.

Mr. MCHUGH. Mr. Speaker, the gentleman has spoken very eloquently about the Defense authorization bill and instruction. Will the gentleman tell me how this motion to instruct has anything to do with the defense authorization bill? If the gentleman will answer the question I just posed, because I am confused, which happens often.

Mr. ABERCROMBIE. Mr. Speaker, if the gentleman is confused, it is the first time in my entire relationship when such was the condition.

Mr. MCHUGH. The gentleman's very kind but very inaccurate, but in any event, the motion to instruct, as I understand it, has nothing to do with this Defense bill. It has everything to do with the Intelligence Committee.

Mr. ABERCROMBIE. Mr. Speaker, we have gone through this. Whether the gentleman likes that it is before us in this context is really beside the point. I would have preferred it in another context as well, but we have to deal with the reality that it came to us as a result of the Senate action and is on the floor. If it was inappropriate, if there was some parliamentary reason for it not to be here, I expect we would not be having the discussion.

So my answer to the gentleman is that I am trying to deal with it in the context within which it has been presented, and I would like to deal with the substance of the issue rather than the process.

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

I would say I appreciate the gentleman's comments. My question was predicated upon the gentleman's assertion that this motion to instruct was related to this Defense bill when, in fact, it is not. The gentleman may wish to interject arguments about whether or not it is important or is not.

My single point was this has nothing, with a capital N, to do with the Defense authorization bill. It is a motion to instruct another committee to do something that this committee does not have jurisdiction over.

Mr. ABERCROMBIE. Mr. Speaker, will the gentleman yield?

Mr. MCHUGH. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Speaker, I quite understand the gentleman's position, and what I was trying to do in good faith in response was say, I cannot argue the process with you. In fact, I am willing to concede even on process, but it is the substance which is before us right now in the Defense bill that came to our attention in the House, and that is what I think we need and that is what I was trying to respond to was the substance. I will not argue with the gentleman about whether the process is correct or not.

Mr. MCHUGH. Mr. Speaker, reclaiming my time, my point was not to debate the process, not to disagree with the substance, but rather to talk about the accuracy of the gentleman's words which were inaccurate.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. MCHUGH. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank my friend for yielding.

I understand the gentleman from Hawaii, and I checked to make sure I understood him correctly and the facts correctly, is that the Senate has offered an amendment which is included in the Defense bill which is being conferenced, the very bill to which this motion is being directed, that we take the Senate language that is in the Defense bill. So, obviously, it is absolutely relevant on the bill that is going to conference. In fact, it would not be relevant in any other piece of legislation.

I suggest to my friend that the gentleman is correct, it ought to be offered in a relevant time, and now is the relevant time.

Mr. MCHUGH. Mr. Speaker, if I may reclaim my time, I do not disagree with the gentleman that the Senate, as the Senate does, has done something that should not be done. It is something inappropriate and something totally based upon the rule of no rule. I agree with the gentleman.

However, the gentleman from Hawaii's context was to the House bill, which has no application, no provision, to this. That was the relevancy in my comments. That is all I was questioning was his comment relevant to the House bill. There is no provision, as there should have not have been, because this is not relevant to the House bill.

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

Mr. SKELTON. Mr. Speaker, I yield 30 additional seconds to the gentleman from Hawaii (Mr. ABERCROMBIE).

Mr. ABERCROMBIE. Mr. Speaker, I thank the gentleman from Missouri (Mr. SKELTON) for the time.

My reference, in fact, was to what was in the Senate bill. This is the only way we get to discuss it, and here we have spent the last few minutes arguing process.

The substance here is very, very simple and direct. Are we outsourcing torture to third parties and pretending, by citing what Americans are required to do under American law, that such a thing is not taking place? That is what we need to bring forward in terms of what this does, and that is what we need to debate here tonight.

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

My good friend from New York failed to read the part of the Senate bill that makes this all correctly before us. In section 1047, subsection A, the President shall ensure that the U.S. government continues to comply with the authorization reporting notification requirements of Title V of the National Security Act of 1947. The National Security Act of 1947 deals with this subject matter before us.

Mr. Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, the process for consideration of the Defense bill this year has been a disappointment. Conferees appointed tonight, and the bill will probably come out tomorrow. We have had a very limited opportunity to meet, debate and discuss the bill.

It is my understanding, primarily from press reports, that a provision is being considered affecting Channel Islands National Park off the coast of California, specifically Santa Rosa Island, effectively taking control away from the National Park Service.

The history of this is that in 1986 our tax dollars spent $30 million to make this island part of the National Park Service. A plan has continued in which a group of business people who were grandfathered in at the time have been managing hunts of trophy elk and deer, literally for thousands of dollars a hunt. This will phase out in the year 2011, five years from now, and this island will be returned to its natural state as part of the National Park Service.

Here is the problem. This provision is going to be put in the Defense bill. I called up today to the management company that manages this island. They referred me to a spokesperson. I called that person and the call said I will be out of the office from December 13 until December 19 and I am not available for questions; I do not think I am going to be checking messages. I called back to the management company on the island. They say that is it.

So here is the situation. This provision involving Channel Islands National Park was not in the House bill, was not in the Senate bill. The gentleman from New York (Mr. MCHUGH) was talking about jurisdiction. There is no jurisdiction for this bill. No hearings, no notice, no jurisdiction, no request from the Department of Defense, the National Park Service, the Department of Interior or the Department of Veterans Affairs.

Both California senators are opposed. The gentlewoman from California (Mrs. CAPPS), the House Member of the district, is opposed, and yet mysteriously this provision is rumored to be appearing in the conference report.

It is not the way to be doing business on the Defense bill in a time of war, and I hope that this provision will not be in the conference report when we consider it tomorrow.

Mr. MCHUGH. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. HUNTER), the chairman of the full committee.

Mr. HUNTER. Mr. Speaker, I thank the gentleman for yielding me the time.

The gentleman from Arkansas has just discussed the park for Santa Rosa Island and the idea that I wanted to use that great resource for Marines and soldiers and paralyzed veterans and allow them a chance to have recreational opportunities, and I guess I have to plead guilty.

This came about when I was passing that island with a car full of Marines who had just returned from Iraq. They mentioned to me that that is one of the great resources on our coast. It is owned by a family which does charge a lot of money to people to hunt and fish. One of them said, you know, it would be great if they did not exterminate all the deer and elk on that island because the Park Service has a plan, and it is a written plan, and I have seen it, to exterminate with helicopters every single deer and elk on this beautiful island.

The Marines continued, it would be great because that is such a neat place, and it is the kind of place where people in wheelchairs can access that great sport of hunting and fishing, if we could have some kind of a permission to continue to hunt and fish there but not pay the $10,000 that is presently charged but have that when the U.S. government takes it over for paralyzed veterans and disabled veterans and not exterminate every single deer and elk on that island.

That was the intent of this gentleman in placing that provision in the bill, and I find it somewhat ironic that the people who profess to love the wildlife and love the flora and fauna and the environment seem to have no trouble with the National Park Service gunning down every single animal on that island in an extermination operation and not leaving any of that great resource for the people who defend this country.

I thank the gentleman for the time.

Mr. MCHUGH. Mr. Speaker, I reserve the balance of our time.

Mr. SKELTON. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Speaker, I am proud to rise in strong support of my friend and ranking member IKE SKELTON's motion to instruct conferees on the defense authorization bill of which I am a conferee.

Mr. SKELTON's motion would ensure that the conference report keep a vital Senate provision that is in the bill on the Senate side which would require that the Director of National Intelligence report to Congress on what may be a covert CIA prison system.

While it is vital that the military be given the proper intelligence to fully prosecute the war on terror, I am deeply concerned, as are many Americans, that the administration and the CIA may be resorting to illegal and immoral tactics that are destroying our national credibility and threatening the safety of our own troops should they be captured by the enemy.

The war on terror is in large part a battle of ideas and accounts of prisoners being whisked away off European streets and elsewhere by the CIA to be interrogated at secret facilities, beyond being unconscionable, undermine our reputation and the spread of our democratic values.

If we had had a conference that actually met, and if we had actually been able to talk about this issue, I think we would have had the same kind of response that the Senate did, which was an overwhelming vote in favor of having these provisions included in the bill, but we did not have a conference. We still have not had a conference where we have all met.

What I find to be fascinating as a Member of Congress from California, there has been great discussion this evening about the prerogatives of the House and jurisdiction, and we have now a national park in California that has never had a hearing, that the Member of Congress from that district is deeply opposed to having it transferred to the military. Look, we are all for saving the deer and the elk, and we are certainly all for our veterans, but how about regular order? How about doing this the right way?

We would not have a provision, a shameful provision, in this bill that transfers Santa Rosa Island to the military for the purpose of private recreation that is inserted in the 11th hour.

Including this provision is an egregious abuse of power to please certain special interests and would certainly embarrass its proponents at a time when we should be using this bill only to support the young men and women who are fighting and dying in Afghanistan and Iraq.

The provision supported by Mr. SKELTON's motion would restore Congressional oversight by providing vital information on the extent of these facilities, their location, the number of detainees currently being held there and the type of interrogations being conducted at these locations.

Separate but related to this bill I am deeply troubled by a shameful provision regarding the transfer of the Santa Rosa Island to the military for the purpose of private recreation that was inserted at the eleventh hour.

Including this provision is an egregious abuse of power to please certain special interests and should embarrass its proponents at a time when we should be using this bill only to support our young men and women in uniform fighting and dying in Iraq and Afghanistan.

This section was never reviewed by the committee and has no place in this bill and I urge its removal.

I urge my colleagues to support this motion to instruct.

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

To my friend from Arkansas, who is the ranking member on the Military Personnel Subcommittee of the Armed Services Committee, the subcommittee on which I chair, I would simply say that I find it somewhat incredible that he would be calling into question provisions in the Armed Services authorization bill that provides in the Santa Rosa Channel Islands chain the opportunity for disabled veterans to have recreational opportunities.

I would say as the chairman of that subcommittee, the question is not why we have done it. The question is, why has it taken us so long to do it, and I cannot believe that if a vote were up today to whether or not we should authorize that kind of activity in that area, the distinguished gentleman from Arkansas would vote no, and yet he questioned it.

□ 2245

Let me say that at the end of the day, Mr. Speaker, this motion to instruct is misplaced, it is misguided, and, quite frankly, it is political. Let me just read to you the opening lines of the reference to the Senate bill that is contained in this instruction. It says: ''The President shall ensure that the United States Government continues,'' continues, as if the President would not, ''continues to comply with the authorization, reporting, and notification requirements in title V of the National Security Act of 1947.''

I have stood here, Mr. Speaker, and listened to the entire debate. Not once did any speaker on the other side suggest, imply, accuse the President, anyone in the administration of not abiding by that provision. And yet they are here tonight trying to suggest in a bill that has no jurisdiction over the Intelligence Committee that somehow we should instruct that Intelligence Committee to comply and require that the President do something that he is already doing. This is, sadly, Mr. Speaker, politics at its worst.

There is nothing really substantially wrong in what this instruction requires, except that this House, this floor, at a time of war, on the very day the Iraqi people went, over 10 million strong, to vote for democracy, we should be casting a vote that somehow calls into question the integrity of this administration, an administration that has freed 50 million people between Afghanistan and Iraq, an administration that today, with the support of this Congress on a bipartisan, bipartisan level, agreed and supported that.

This instruction should be rejected not on its substance but on its politics.

Mr. Speaker, I yield back the balance of my time.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. SNYDER).

Mr. SNYDER. First of all, Mr. Speaker, the allegation that somehow this is a political thing is troubling, given that this provision that is being discussed by the gentleman from Missouri is part of the Senate defense bill. It is why it is on the floor. Our side, regardless of what we think about the specific provision, has every right to have a motion to instruct on a provision that is in one of the two bills.

With regard to the provision that is not in either bill, which is the one with regard to the Channel Islands National Park, the allegation that somehow I am against veterans or against veterans with disabilities, by that rationale every national park in the country, we should say, is open for hunting by all veterans with disabilities. The point is, this is a national park. Under the Reagan administration, $30 million was paid to make this part of the national park with a management plan that is being followed.

Now, perhaps Mr. HUNTER has the right idea with this plan, I do not know. We have had no hearings about it. I know that it does not fall under the jurisdiction of the House Armed Services Committee; but to make an allegation that somehow I am opposed to veterans, I do not hear anyone suggesting we take the entire National Park System and because we are at a time of war we should open all the national parks for hunting.

Mr. MCHUGH. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from New York.

Mr. MCHUGH. I thank the gentleman for yielding. I would just say to him that I never accused him of being against veterans. What I said was, I find it incredible that the gentleman would be against this provision that opened this park, and I named the specific park, to disabled veterans.

Does the gentleman disagree? Are you against that?

Mr. SNYDER. Reclaiming my time, I am opposed to this park being taken from the National Park System. It is part of the National Park System.

Mr. MCHUGH. Then you are against it. I respect your opinion.

Mr. SNYDER. There is a place for hunting. This place is open to the public.

Now, the issue is the process by how we got here to preserve our national parks. The current management company there has introduced elk and deer that are not native to the island. They are threatening the species of plant life that are native to the island. That is why the National Park Service has a plan to phase out the hunting in the year 2011.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Speaker, I thank my friend for yielding me this time.

This country is blessed with a powerful and brave military. We have incredible natural resources and the strongest economy in the world. But the greatest strength of this country is our reputation for the adherence to human dignity as a core value of our country. The issue in this motion to instruct is whether we are strong enough and confident enough in that value that we are not afraid to make sure that it is true.

We have heard some comments from the other side about accusations being made or not being made about what is happening. There are no accusations here. There is a desire to understand what the facts are.

A country that is strong enough to be self-critical is truly strong, an administration that is strong enough to be evaluated is truly strong, and a Congress that is strong enough to do its job of oversight is truly strong enough to carry out its constitutional responsibilities. This country is able to rally people around the world to our cause because people around the world believe that we hold human dignity as a core value.

It is my belief that there is probably no record of torture anywhere that can be found. And that is precisely the point we want the rest of the world to know, so that those who defame us are not telling the truth about us. But if we are confident in that core belief and we are confident in our behavior, then we will be confident enough within reason of national security to let this Congress know, to let the country know, and let the world know that we practice what we preach.

We should vote ''yes'' for this amendment because we are strong, because what we say are our core values are in fact our core values in practice. Vote for Mr. Skeleton's amendment because its reflects those core values.

Mr. SKELTON. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. KUCINICH).

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

Mr. KUCINICH. Mr. Speaker, I would ask my friend if he would yield to a question, because I am looking here at the motion that he has, and it basically refers to the majority's bill and instructs them, according to their bill, and it is within our jurisdiction to do that. And it gives them the jurisdiction to follow up, does it not?

Mr. SKELTON. If the gentleman will yield, yes, this part of the Senate bill became part thereof as a result of the majority chairman of their Senate committee.

Mr. KUCINICH. Taking back my time, Mr. Speaker, you see, we have a right as a Nation to defend ourselves, but we do not have any right to shred the Constitution or to nullify the role

that Congress has as a coequal branch of government or to nullify the right we have to give motions to instruct. We have an absolute right to do that.

Now, this all goes back to 9/11, where all the fear has been created; and we have people now more concerned about leaks and more concerned about open discussion exposing secret prisons than they are in exposing those prisons. People want to deny congressional oversight and deny the power of coequality.

I mean, the facts are that there is a real body of evidence suggesting that secret prisons do exist; that there has been rendition; that people have been basically taken off the streets, moved to countries that use torture, and violations of human rights. I mean, what is happening to our country?

Let us look at our Constitution. We have habeas corpus, people have a right to be told what crime they have committed, they have a right to an attorney and to a fair and speedy trial. Now, why do we have those things? Because in America we stand for something.

So we are, in effect, permitting the shredding of our Constitution. The violation of international law. What has become of our Nation when we do not challenge that or at least have the opportunity to support Mr. Skeleton's motion to instruct, which is our right to do, to go along with what has already been approved in the Senate, and to say, look, we think that there ought to be a role for the Director of National Intelligence to give a report to the Intelligence Committee setting forth the nature and cost and otherwise providing a full accounting on any clandestine prison or detention facility currently or formerly operated by the United States Government regardless of location.

Look, let us remember what we stand for as a Nation. We are losing sight of that here. We are becoming something that could be called in another era un-American. Let us stand for our American values here and support the Skeleton motion.

Mr. Speaker, I wish to insert for the RECORD the following articles relating to my comments:

[From the Free Republic, June 6, 2005]

U.S. RUNNING 'ARCHIPELAGO' OF SECRET PRISONS: AMNESTY INTERNATIONAL

WASHINGTON.—The U.S. government is operating an ''archipelago'' of prisons around the world, many of them secret camps into which people are being ''literally disappeared,'' a top Amnesty International official said Sunday.

Amnesty International executive director William Schulz criticized the administration of U.S. President George W. Bush for holding alleged battlefield combatants in ''indefinite incommunicado detention'' without access to lawyers in an interview with Fox News Sunday.

Schulz was pressed to substantiate Amnesty's claim in a May 25 report that the U.S. prison camp at the Guantanamo Bay, Cuba naval base—where hundreds of foreign terror suspects are being held indefinitely—represents the ''gulag of our times.''

The gulag claim, referring to the notorious prison camp system of the Soviet Union, has drawn withering criticism from the U.S. president, who called it ''absurd.'' Vice President Richard Cheney and Defense Secretary Donald Rumsfeld have also slammed the rights group's claim.

Russian 1970 Nobel Prize winner Aleksandr Solzhenitsyn described the Soviet prison camp system in his best-selling book ''The Gulag Archipelago.''

Schulz said the gulag reference was not ''an exact or a literal analogy.''

''But there are some similarities. The United States is maintaining an archipelago of prisons around the world, many of them secret prisons into which people are being literally disappeared—held in indefinite incommunicado detention without access to lawyers,'' Schulz told Fox.

Asked how AI could compare the detentions of millions of Soviet citizens in the gulag system to purported anti-U.S. combatants captured on the battlefield, Schulz said some of those held in Guantanamo ''happened to be in the wrong place at the wrong time.

''We do know that at least some of the 200 some prisoners who have been released from Guantanamo Bay have made pretty persuasive cases that they were imprisoned there, not because they were involved in military conflict but simply because they were enemies of the Northern Alliance,'' he said.

Schulz called for an official probe into the alleged rights abuses at U.S. detention centers around the globe.

Amnesty refers in the May 25 report to Rumsfeld and U.S. Attorney General Alberto Gonzales as alleged ''torture architects.''

The United States ''should be the one that should investigate those who are alleged at least to be architects of torture, not just the foot soldiers who may have inflicted the torture directly, but those who authorized it or encouraged it or provided rationales for it,'' Schulz said.

According to Amnesty, Rumsfeld provided ''the exact rules, 27 of them in fact, for interrogations, some of which do constitute torture or cruel, inhumane treatment,'' Schulz said.

The Guantanamo Bay camp and U.S. detention practices have been the subject of renewed debate in recent weeks, sparked by a Newsweek magazine report—since retracted—that Guantanamo interrogators flushed a Koran in a toilet to rattle Muslim prisoners.

Amnesty is not the only rights group to have called on Washington to investigate alleged abuses at the camp—Schulz pointed to released FBI documents that also raised concerns about Guantanamo interrogations.

U.S. officials insist such concerns are unfounded, and that the ''war on terror'' detainees are treated as humanely as possible.

U.S. soldiers have been tried and punished for abusing detainees—notably at Iraq's Abu Ghraib prison, where at least one captive died—but U.S. officials say those are isolated incidents.

The furor sparked by Amnesty's claims shows no signs of abating.

The New York Times said Sunday that the Guantanamo Bay prison should be closed down, saying it had become ''a national shame'' and a ''propaganda gift to America's enemies.''

''What makes Amnesty's gulag metaphor apt is that Guantanamo is merely one of a chain of shadowy detention camps that also includes Abu Ghraib in Iraq, the military prison at Bagram Air Base in Afghanistan and other, secret locations run by the intelligence agencies,'' the Times said.

The Washington Post, whose editorial page has been more critical of Amnesty's gulag claim, reported Sunday—citing Schulz—that Amnesty's donations have quintupled and new memberships have doubled in the past week since it released its report. (Wire reports)

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[FROM THE WASHINGTON POST, WED. NOV. 2, 2005]

CIA HOLDS TERROR SUSPECTS IN SECRET PRISONS

(By Dana Priest)

The CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to U.S. and foreign officials familiar with the arrangement.

The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.

The hidden global internment network is a central element in the CIA's unconventional war on terrorism. It depends on the cooperation of foreign intelligence services, and on keeping even basic information about the system secret from the public, foreign officials and nearly all members of Congress charged with overseeing the CIA's covert actions.

The existence and locations of the facilities—referred to as ''black sites'' in classified White House, CIA, Justice Department and congressional documents—are known to only a handful of officials in the United States and, usually, only to the president and a few top intelligence officers in each host country.

The CIA and the White House, citing national security concerns and the value of the program, have dissuaded Congress from demanding that the agency answer questions in open testimony about the conditions under which captives are held. Virtually nothing is known about who is kept in the facilities, what interrogation methods are employed with them, or how decisions are made about whether they should be detained or for how long.

While the Defense Department has produced volumes of public reports and testimony about its detention practices and rules after the abuse scandals at Iraq's Abu Ghraib prison and at Guantanamo Bay, the CIA has not even acknowledged the existence of its black sites. To do so, say officials familiar with the program, could open the U.S. government to legal challenges, particularly in foreign courts, and increase the risk of political condemnation at home and abroad.

But the revelations of widespread prisoner abuse in Afghanistan and Iraq by the U.S. military—which operates under published rules and transparent oversight of Congress—have increased concern among lawmakers, foreign governments and human rights groups about the opaque CIA system. Those concerns escalated last month, when Vice President Cheney and CIA Director Porter J. Goss asked Congress to exempt CIA employees from legislation already endorsed by 90 senators that would bar cruel and degrading treatment of any prisoner in U.S. custody.

Although the CIA will not acknowledge details of its system, intelligence officials defend the agency's approach, arguing that the successful defense of the country requires that the agency be empowered to hold and interrogate suspected terrorists for as long as necessary and without restrictions imposed by the U.S. legal system or even by the military tribunals established for prisoners held at Guantanamo Bay.

The Washington Post is not publishing the names of the Eastern European countries involved in the covert program, at the request

of senior U.S. officials. They argued that the disclosure might disrupt counterterrorism efforts in those countries and elsewhere and could make them targets of possible terrorist retaliation.

The secret detention system was conceived in the chaotic and anxious first months after the Sept. 11, 2001, attacks, when the working assumption was that a second strike was imminent.

Since then, the arrangement has been increasingly debated within the CIA, where considerable concern lingers about the legality, morality and practicality of holding even unrepentant terrorists in such isolation and secrecy, perhaps for the duration of their lives. Mid-level and senior CIA officers began arguing two years ago that the system was unsustainable and diverted the agency from its unique espionage mission.

''We never sat down, as far as I know, and came up with a grand strategy,'' said one former senior intelligence officer who is familiar with the program but not the location of the prisons. ''Everything was very reactive. That's how you get to a situation where you pick people up, send them into a netherworld and don't say, 'What are we going to do with them afterwards?' ''

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. MCDERMOTT).

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

Mr. MCDERMOTT. Mr. Speaker, this Congress ought to support Mr. Skeleton's motion because the reason we are here is that the United States Congress has refused to use its power of oversight to look at what we have been doing overseas. Have we had hearings about Abu Ghraib? Have we had hearings about secret prisons in Romania, in Poland, or wherever?

The Republican leadership of the House says we are not going to look. We simply will hold our hands over our eyes and we will not look out there to see what is going on. Unfortunately, there is the rest of the world. There is the Guardian newspaper, there are newspapers in France and Germany and all over the place looking at this information, and it is now worldwide known what we are doing. Yet the Congress walks around here, see no evil, hear no evil, speak no evil.

This Congress has abrogated, you have given up your responsibility of oversight. Mr. SKELTON brings out a simple amendment that says, let's follow the Senate, which has gotten up on their hind legs and said, let's have some oversight in what we're doing, and suddenly you guys object.

It is clear what you don't want people to know. You don't want the people to know what went on in the Vice President's office or in the White House or what was going on when the Attorney General——

Mr. MCHUGH. Mr. Speaker, will the gentleman yield?

Mr. MCDERMOTT. No, I am not going to yield. You don't know how to play the game. You have got to learn the rules.

When you let the Attorney General of the United States say that torture in certain circumstances is probably all right, man, you have opened the door to disrepute.

PARLIAMENTARY INQUIRY

Mr. MCHUGH. Parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore (Mr. REHBERG). The gentleman may state his inquiry.

Mr. MCHUGH. The gentleman from Washington suggested I did not know the rules. Is it not within the rules for a Member to ask another Member to yield?

The SPEAKER pro tempore. It is within the rules for a gentleman to ask another gentleman to yield.

Mr. MCHUGH. So in the context of the gentleman's response, I did know the rules; is that correct?

The SPEAKER pro tempore. That is correct.

Mr. MCHUGH. I thank the Speaker.

□ 2300

Mr. SKELTON. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the Senate of the United States passed a section to which I would like to have as a centerpiece in my motion to instruct conferees to adopt. By a vote of 82–9 the Senate adopted this amendment which was offered by the chairman of the Senate Intelligence Committee.

I do not understand why some people do not want to learn the truth. That is what this is. It is an attempt to have a provision that allows us in the Congress of the United States, both the House and the Senate, under the provisions of this language to learn the truth. We do not want to learn things from the front page of a newspaper. We want to learn things as they should be properly reported to us from the White House which this motion to instruct would require. It is that simple.

The other side seems to wish to confuse the issue which causes me to scratch my head as to why they oppose this motion to instruct. It is clear-cut. A huge majority of the Senators, both parties, voted in favor thereof in the Senate.

Mr. Speaker, I urge adoption of my motion to instruct, and I yield back the balance of my time.

Mr. SPRATT. Mr. Speaker, I rise today in support of the Skelton motion to instruct. Two years ago, the image of the United States was tarnished by photographs of prisoner abuse at Abu Ghraib. The photographs drew condemnation from members of Congress, the American people, and the world. At a time when we were professing American values, these photographs told a story of secrecy and disgusting abuse.

That's why the Washington Post's revelations about the CIA's clandestine detention facilities last month are so troubling. We all understand the difficult job our interrogators have in trying to pry useful intelligence from tough, hostile prisoners. We all believe that the vast majority of our interrogators perform their jobs admirably and within the rules, and the information they have obtained has served as the intelligence foundation of our War on Terror. But at a time when the wounds of Abu Ghraib have still not fully healed, fresh allegations of secrecy and questions about interrogation have the potential to reopen old issues of abuse that we have struggled for months to put to rest.

The President has said that ''we do not torture'' prisoners, and I take him at his word, but we have the right to ask for answers about clandestine facilities supplied, of course, in classified form.

The Skelton motion to instruct simply calls on the President to disclose to the Congress the nature, cost, location and operations of the detention facilities referenced by the Post, and the ultimate disposition of the detainees that are held there. This would in no way hinder the effectiveness of interrogations, but it would go a long way toward showing the world we are serious about preventing prisoner abuse. As Senator McCain so eloquently said, ''We are Americans. We hold ourselves to humane standards of treatment of people, no matter how evil or terrible they may be . . . The enemy we fight has no respect for human life or human rights. They don't deserve our sympathy. But this isn't about who they are; this is about who we are. These are the values that distinguish us from our enemies.'' I urge my colleagues to support the Skelton motion to instruct. All it seeks is information to which we are already entitled under Title 50 of the U.S. Code, and information we need to fulfill our duties under Article I, Clause 8 of the Constitution.

The SPEAKER pro tempore (Mr. REHBERG). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Missouri (Mr. SKELTON).

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

Mr. SKELTON. 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.

## FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate agreed to the following resolution:

S. RES. 334

In the Senate of the United States, December 15, 2005.

Whereas William Proxmire served in the Military Intelligence Service of the United States Army from 1941 to 1946;

Whereas William Proxmire served the people of Wisconsin with distinction from 1957 to 1989 in the United States Senate;

Whereas William Proxmire served the Senate as Chairman of the Committee on Banking, Housing, and Urban Affairs in the ninety-fourth to ninety-sixth and one hundredth Congresses;

Whereas William Proxmire held the longest unbroken record for roll call votes in the Senate;

Whereas William Proxmire tirelessly fought government waste, issuing monthly

''Golden Fleece'' awards beginning in 1975 for the ''biggest or most ridiculous or most ironic example of government waste;''

Whereas William Proxmire worked endlessly to eradicate the world of genocide, culminating in the ratification by the Senate of an international treaty outlawing genocide;

*Resolved,* That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable William Proxmire, former member of the United States Senate.

*Resolved,* That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

*Resolved,* That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the Honorable William Proxmire.

The message also announced that the Senate has passed without amendment bills of the House of the following titles:

H.R. 4324. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, and for other purposes.

H.R. 4436. An act to provide certain authorities for the Department of State, and for other purposes.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a concurrent resolution of the House of the following title:

H. Con. Res. 218. Concurrent resolution recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century.

The message also announced that the Senate has passed bills of the following titles:

S. 1390. An act to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes.

S. 2116. An act to transfer jurisdiction of certain real property to the Supreme Court.

## CERTIFYING EXPORT OF CERTAIN MATERIAL AND EQUIPMENT TO PEOPLE'S REPUBLIC OF CHINA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–74)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, without objection, referred to the Committee on International Relations and ordered to be printed:

*To the Congress of the United States:*

In accordance with the provisions of section 1512 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261), I hereby certify that the export of 36 accelerometers to the People's Republic of China's Ministry of Railways, for use in a railroad track geometry measuring system, is not detrimental to the U.S. space launch industry, and that the material and equipment, including any indirect technical benefit that could be derived from such export, will not measurably improve the missile or space launch capabilities of the People's Republic of China.

GEORGE W. BUSH.

The White House, *December 14, 2005.*

## SPECIAL ORDERS

The SPEAKER pro tempore (Mrs. SCHMIDT). Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

## ST. MARY'S COUNTY HURRICANE RELIEF FUND

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOYER) is recognized for 5 minutes.

Mr. HOYER. Madam Speaker, I rise today to recognize the extraordinary efforts of Joe St. Clair, Tom Jarboe, and Donald Cropp, founders of the St. Mary's Hurricane Relief Fund. That is the county in which I live.

Following the devastation of Hurricane Katrina, these three men organized the St. Mary's Hurricane Relief Fund to help the victims of the storm in the small town of D'Iberville, Mississippi, located in the district of my friend, Congressman Gene Taylor.

This October, Joe, Tom and Don drove two tractor trailers stocked with needed school supplies, book bags and other goods the entire way to D'Iberville. These items were collected with the assistance of countless St. Mary's County businesses and volunteers. Literally, tens of thousands of dollars of contributions.

The Hurricane Relief Fund's work to help D'Iberville did not stop when they returned to St. Mary's County. Since their initial trip, the St. Mary's Hurricane Relief Fund has organized an Adopt A Kid Campaign to ensure that the children of D'Iberville had the resources that they needed, facilitated stationing a medical team in D'Iberville, sent educational supplies to Sacred Heart Catholic School, sent 80 first-aid kits to D'Iberville Health Care Clinic and worked to fulfill the needs of the community as requested by D'Iberville officials.

This December, Joe, Tom and Don organized another massive donation drive, Operation Mississippi Christmas, this time to ensure that no child in D'Iberville went without a present.

Last Friday, I visited with the organizers and a group of volunteers at a warehouse as they loaded two additional tractor trailers bound for D'Iberville. That is four tractor trailers for these young people. I am proud I was able to participate in this noble effort by donating hundreds of duffle bags filled with gifts.

When the trucks left for the gulf coast on Saturday morning, they were loaded with more than just presents, and included among their cargo were 200 book bags loaded with school supplies, 50 additional first-aid kits, cases of needed medical supplies for the D'Iberville clinic, quilts donated by the local Amish community, bicycles, hundreds of duffle bags, 35 complete computer systems with printers, cables, et cetera, all donated by SmartCo, defibrillator batteries and a charger donated by St. Mary's Hospital, a critical item for the medical clinic, and 1,160 Wal-Mart gift cards for the upper middle and high school students.

On Sunday afternoon, the trucks rolled into D'Iberville, completing the approximately 16 hours and 1,000 mile journey.

On Monday, D'Iberville Elementary School held a pizza party as the presents were handed out and the goods distributed to the grateful community. At the end of the day, I received a call from the group indicating they had accomplished their mission of handing something to every school child, every school child in D'Iberville.

St. Mary's Hurricane Relief Fund has organized an amazingly successful relief effort, and I applaud its hard work. I would like to personally and publicly thank you, Joe St. Clair, Joe Cropp, Tom Jarboe, Guy Curley, Reggie Townsend, Ann Raley, Vince Whittles, the St. Mary's Chamber of Commerce, Father John Ball and the St. Mary's Trinity Episcopal Parish, Technology Security Associates, Larry Wise and the folks at BAE Systems, Bo Bailey and his son Tony for driving the trucks, and the hundreds of additional contributors, volunteers and businesses that contributed St. Mary's Hurricane Relief Fund's drive to help D'Iberville, Mississippi.

I am proud that my constituents, realizing that they are part of a community bigger than St. Mary's County, have sought to help our neighbors in Mississippi during their time of need. Their efforts surely for us all symbolize the true meaning of compassion, and I think it sets a great example of giving in this holiday season.

Joe St. Clair and Don tell the story of the children and their eyes gleaming as they received these gifts. Joe St. Clair, a crusty businessman about 55 years of age, telling me the story had tears flowing down his cheeks.

Mr. Speaker, there is a lot of acrimony on this floor too often, and too often we forget to remember our neighbors and our friends. This is an example of the best that is America.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## TODAY'S IRAQI ELECTION

Mr. OSBORNE. Madam Speaker, I ask unanimous consent to claim the time of the gentleman from Indiana (Mr. BURTON).

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

There was no objection.

Mr. OSBORNE. Madam Speaker, the Iraqis voted today, and it is estimated that approximately 10 million of 15 eligible voters did vote. Women voted in record numbers. The Sunnis participated in large numbers for the first time. The vote completes the political process in Iraq.

Last January, they elected an assembly to draft a constitution. In August, the constitution was completed. In October, the constitution was approved by a large margin, about 70 percent of the voters. Now a new government is elected, and this was all done today with relatively little violence as the Iraqis went to the polls.

There is some other news that I think is positive as well: School attendance in Iraq is up by as much as 80 percent; 774 schools have been built or renovated; 36,000 teachers have been trained; and 142 health care facilities have been built or are under construction. Nearly all young Iraqis have been vaccinated for the first time. Satellite dishes, newspapers, TV stations and small businesses are developing and springing up, and 211,000 Iraqi troops have been trained and equipped.

Still, there are many who say that there is no progress in Iraq, and I would like to reflect on some comments from a young soldier from Nebraska that I met in a recent trip to the Middle East who said this. He said it is important that we finish the job there and not pull out prematurely because, if we do leave early, three things will happen.

Number one, thousands of Iraqis will die, and we have promised them we would not abandon them, and so we will break a promise.

Secondly, we will encourage more terrorism worldwide and in the U.S. as well. It would inform the terrorists that terrorism does work.

And lastly, 2,000-plus soldiers would have died in vain. I think this is an important point to consider. As I have talked to parents of soldiers who have died, this is something that they do not want to have happen. There was a letter distributed today by Congressman JEFF MILLER from Bud Clay, and it was written to President Bush upon the death of his son, Staff Sergeant Daniel Clay in Iraq. This is what Mr. Clay wrote to President Bush, and I quote, he said, ''We and many others are praying for you to see this through. As Lincoln said, 'that these might not have died in vain.' ''

Included in the letter from Mr. Clay was a letter from his son, and this letter was written if he should happen to be killed in combat, and it was written to his family.

□ 2315

And this is what Daniel Clay said. He said, what we have done in Iraq is worth any sacrifice. Why? Because it was our duty. That sounds simple, but all of us have a duty. Duty is defined as a God-given task. Without duty, life is worthless. It holds no type of fulfillment. The simple fact that our bodies are built for work has to lead us to the conclusion that God who made us put us together to do His work. And then he goes on, finally he says, I know what honor is. It is not a word to be thrown around. It has been an honor to protect and serve all of you, meaning his family. I faced death with the secure knowledge that you would not have to. This is as close to Christ-likeness as I can be. That emulation is where all honor lives. I thank you for making it worthwhile.

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The SPEAKER pro tempore (Mrs. SCHMIDT). Under a previous order of the House, the gentleman from Mississippi (Mr. TAYLOR) is recognized for 5 minutes.

(Mr. TAYLOR of Mississippi addressed the House. His remarks will appear hereafter in the Extension of Remarks.)

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## SAVING FOR A RAINY DAY

Mr. SCHIFF. Madam Speaker, I ask unanimous consent to speak out of turn.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. SCHIFF) is recognized for 5 minutes.

Mr. SCHIFF. Madam Speaker, the poet Longfellow once wrote: ''Thy fate is the common fate of all; into each life some rain must fall.'' How true this is.

We know that calamities will come to our Nation. We know that terrorists are trying to attack us again and that Osama bin Laden wants to strike us with weapons of mass destruction. We know that in years to come hurricanes, earthquakes, tornadoes, and other natural disasters will devastate our shores, our towns, our homes, and most terrible, our very lives.

We must prepare, not only with a strong military and good infrastructure but also with a reserve of funds to cushion the impact to our economy and to meet the needs of the victims. Part of being prepared is doing what many families know as saving for a rainy day.

America has seen both prosperity and depressions, periods of unbridled growth and periods of stubborn stagnation. We have seen strong budget surpluses and huge budget deficits.

While any economy has periodic cycles of expansion and contraction, we know that fiscally irresponsible policies of an administration or a Congress can abbreviate an upturn or prolong a downturn.

Today, a lack of revenue, uncontrolled spending and faulty planning have put our national debt so high that putting our fiscal house in order seems out of reach. I am here to tell you that it is not out of reach. It will take time, but it is possible and it must be done.

The Blue Dog Coalition has put together a comprehensive 12-point plan to make needed reforms to our budget process, and one of these critical reforms is the creation of a rainy-day fund to set aside money for good times to pay for disasters, which we know will eventually come.

Madam Speaker, as you know, unlike the Federal Government, States must balance their budgets each year. In tough times States must raise revenue or cut spending. And generally, they cannot put these decisions off for another year or another generation. But many States have been resourceful. Forty-five of them, including my own home State of California, have created their own rainy-day funds. These funds are still small, too small and the States are in poor fiscal health. But they have begun the process of planning for their own rainy days.

According to the Center on Budget and Policy Priorities, since 2001, States have used around $30 billion from their rainy-day funds and general fund balances to help offset more than $250 billion in deficits.

Even during these weak economic times, States must continue to maintain and grow the viability of their rainy-day funds. In California we understand only too well that an earthquake, wildfire, or other calamity can strike our State without notice; and these funds will be crucial to helping Californians deal with the crisis.

The Federal Government must also be prepared for the Nation's next crisis; but, sadly, we are not. Even today, this Congress struggles with the unprecedented task of rebuilding the gulf coast after the worst natural disaster in our Nation's history.

Because the Federal Government failed to make the proper investment into the levees protecting New Orleans, one of our prized cities now lies in ruins. If we had had the foresight to establish a national rainy-day fund prior to Katrina, immediate fiscal decisions of this Congress could have been so much less painful, the cuts so much less devastating, and we would not have to go so far deeper into debt to come to the aid of our fellow citizens.

Imagine also that if Congress properly invested each year into the rainy-day fund, the interest from this fund could be used to make needed infrastructure improvements, the same type of improvements that could have saved the city of New Orleans from such devastating flooding.

Congress has so far provided more than $62 billion in emergency funds to respond to Hurricane Katrina, but we know that so much more will be needed. So much more was spent after September 11 and still our Nation's needs are not met.

Let us do what we encourage all of our children to do and save for the future. I encourage this Congress to take a strong look at the Blue Dogs' 12-point plan and establish a rainy-day fund.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. BURGESS) is recognized for 5 minutes.

(Mr. BURGESS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## A REMARKABLE DAY IN IRAQ

Mr. HAYES. Madam Speaker, I ask unanimous consent to take the time of the gentleman from Texas (Mr. BURGESS).

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. HAYES) is recognized for 5 minutes.

Mr. HAYES. Madam Speaker, this has been a remarkable day in Iraq, and I would like to redirect our attention for a moment to the things that Mr. OSBORNE outlined. Remarkable, the accomplishments of Iraqi people today. More than 70 percent of their population went to the polls and exercised the right that they have never had before, the right to vote for a democratic government. That vote was courageous. It showed commitment. It showed the resolve of the Iraqi people to take control of their destiny and their future. It was a tremendous step forward for peace, stability in the future of freedom in the Middle East. So I would like to take a part of my time to salute and to call attention to the incredible things that the Iraqis have done today and have committed themselves to do in the future by voting for a free Iraq.

But more especially, Madam Speaker, I would like to call attention to the men and women in uniform from America and around the globe in the coalition forces, but especially tonight the American men and women who have made this election possible, who have spoken out, who have given, in many cases, their lives so that Iraqi men and women could vote today and determine their own future.

My most sincere thanks and the thanks of a grateful Nation is extended from every quarter today to these men and women who have performed so courageously and so remarkably and have made this day and this election possible. I do not know how we can thank them enough, but it is a privilege for me to stand before the people's House and call attention to these wonderful men and women who represent America and all we stand for: freedom, democracy, equal opportunity.

They did it today. What a tribute to them, but especially a tribute to their families, the moms and dads, wives and husbands of those soldiers, sailors, airmen and marines whose lives have been lost in the quest for freedom for people around the world.

So as I close, Madam Speaker, thank you for allowing me to speak tonight on behalf of myself, the Eighth Congressional District of North Carolina, the home of Fort Bragg, the 18th Airborne Corps, the 82nd Airborne Division, and all the men and women in uniform. God has blessed America so richly by giving us these men and women who have stood and fought and won for democracy.

God bless them all.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DeFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## IRAQI ELECTIONS

Ms. WOOLSEY. Madam Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Madam Speaker, with the holidays upon us, some Members of this body have been working really hard to divert attention from much of the pressing issues that we should be working on in this Congress. They have been doing this by complaining about some kind of war on Christmas.

You can always tell when their poll numbers are down. That is when they reach into their bag of culture war tricks and gin up a divisive controversy that has nothing to do with Americans' real challenges and Americans' real aspirations. It is really interesting, my colleagues on the other side of the aisle are very interested in preserving the symbols of Christmas. But the war they are supporting and the budgets they are passing, more Scrooge than Santa, demonstrate that they have forgotten the true meaning of Christmas, particularly the part about peace on Earth and goodwill towards all.

Besides, how many casualties have there been in this so-called war on Christmas? Here is a hint. Several thousand less than the war on Iraq. Today, without a doubt, we should congratulate the Iraqi people for what appears to be a successful, high turnout election. For the third time this year, courageous Iraqi citizens have enthusiastically exercised their democratic rights.

But successful elections do not, and cannot, obscure the devastating national tragedy that is the Iraq war. It does not change the fact that over 2,100 Americans have died for weapons of mass destruction that never existed. It does not change the fact that this war has turned Iraq into a hotbed of terrorist activity. It does not change the fact that our troops are sitting ducks for the insurgents who have been emboldened, not deterred, by our military presence in Iraq.

Now that the elections are over, the question is, What now? What next in terms of U.S. policy towards Iraq? Aside from trying to spin it and take credit for it, what is the President's reaction to this Iraqi election? All indications are that even with a modest reduction in troops, he will insist that we must stay the course. That means continuing with this bloody occupation that has killed or maimed thousands of our people, has cost us hundreds of billions of dollars and turned the entire world against us. Furthermore, he will not see the irony in celebrating Iraqi democracy while we use United States taxpayer money to manufacture propaganda and spread it in the Iraqi press. He will ignore the contradiction in praising Iraqi freedom while violating civil liberties at home by pushing for a more heavy-handed and invasive sequel to the PATRIOT Act.

Here is the bottom line: a successful Iraqi election should, at the very least, reinforce the imperative of bringing our troops home. If Iraq is truly able to self-govern, then we have no business occupying their country and meddling in their affairs.

I have argued all year long that it is time to restore Iraqi sovereignty and give Iraq back to the Iraqi people. If the election is a watershed moment, as the White House claims, then what is the continued justification for having our troops over there in harm's way?

Now is the time to enlist the support of the international community to establish an interim security force for Iraq. But that is just the first step. As I have written to the President in a letter signed by 61 other Members of the House, the United States must also launch a diplomatic offensive recasting our role in Iraq as a reconstruction partner, rather than a military occupier.

We must also lead the way in establishing an international peace commission to oversee the post-war reconciliation and coordinate peace talks between Iraq's various factions.

Madam Speaker, sometimes it seems like the only people who still support this war work in the big white building down Pennsylvania Avenue. There is barely any constituency left for our Iraq policy. The majority of the American people are not behind it; our global allies are not behind it. The Iraqi people are not behind it. Even Iraqi leaders, Sunnis, Shiite and Kurdish alike, who agree on practically nothing, have united around the call for the United States military to leave. With the Iraqi people having voted once

again, let us offer the ultimate vote of confidence in their democracy. Let us reward the self-sufficiency they have demonstrated by giving them their country back and bringing our American soldiers home.

2330

The SPEAKER pro tempore (Mrs. SCHMIDT). Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

(Mr. POE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. WYNN) is recognized for 5 minutes.

(Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## U.S. AUTO INDUSTRY SUPPORTS UNIVERSAL HEALTH CARE—IN CANADA

Mr. MCDERMOTT. Madam Speaker, I ask unanimous consent to take my Special Order at this time.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

Mr. MCDERMOTT. Madam Speaker, as we spend our time here talking about Christmas and the war on Christmas, I think we have missed the whole point. At least the Republicans have.

My passion since I arrived in Congress has been that every American should have access to affordable health care coverage. It should be a right, not a privilege as it is today. Over 45 million Americans have no coverage at all, and millions more cannot afford to get sick because of inadequate or expensive coverage.

Democrats have made health care a top priority, but the Republicans have not. Christmas trees seem to be more in their order. I have repeatedly introduced H.R. 1200, universal health care legislation. My friend and colleague JOHN DINGELL has done the same. My colleague JOHN CONYERS has done the same. We have many proposals all approaching a universal solution to a problem for this country.

Dozens of Democrats have been willing to sign on to this bill. But the majority, the Republicans, have talked but done absolutely nothing. Instead, they have used every opportunity to disparage government and claim that solutions to everything always end in the words ''incorporated,'' ''privatized.'' Whether it is Social Security or Medicare or drugs or whatever, it always has got to be private.

Republicans claim government, the one they control, is incapable of addressing America's needs. They proved it down in Louisiana. They proved it themselves. Their tortured logic says that we can wage war, but we cannot solve the health care crisis.

Pick up the newspaper, and the conclusion is inescapable. There are no more tomorrows. The health care crisis is real and a present danger to the American people and the U.S. economy, much more than this war on terror.

Especially hard hit is the manufacturing sector. Employees throughout the country are bracing for plant closings or wage and benefit cuts. We came out here and did pensions again today. We continue to do it to the workers.

Companies like General Motors and Ford cite the cost of providing health care coverage as a major factor in their current financial crises. So quietly behind the scenes here on Capitol Hill, the domestic auto industry has been talking to lawmakers about a bailout. They are looking for tens of billions of dollars next year and say it is required to save the auto industry and thousands of family wage jobs.

I am a strong supporter of America's labor movement and a strong supporter of family wage jobs. And if a company treats its employees right, I strongly support them as well. That might make me a candidate for supporting an auto bailout. But it really makes me wonder why Republicans will not join Democrats and fight for its family from within, a health care system that is destroying people, business, and our way of life.

Republicans say, let the market fix it. Well, we have done that. And the special interests have said stay out of it because people like me want this Nation to guarantee health coverage for everybody. Lobbyists make a living in this town out of spinning the tale of us against them and how we have to do it individually, and we cannot do it as a country.

Well, I will enter into the RECORD a letter that sets the record straight and give us a chance to finally confront America's health care crisis. This letter was sent separately to the Canadian government by the Ford Motor Company, General Motors, Daimler Chrysler and the union representing auto workers in late 2002.

The so-called big three U.S. car companies put their full support behind publicly, publicly, funded health care in Canada. Let me read some excerpts. ''Canada's publicly funded health care system provides essential and affordable health care services for all Canadians, regardless of their income. For both employers and workers in the auto industry, it is vitally important that the publicly funded health care system be preserved and renewed.''

The letter sent by GM, Ford, and Daimler Chrysler, concludes: ''In addition to reinforcing the quality and accessibility of health care for all Canadians, these measures would also help to ensure the long-run success of the Canadian auto industry.'' There is a business reason to do it. That is the U.S. auto industry acting outside the United States. It is time for them to act inside the United States and for us to act.

H.R. 1200 provides universal health care with guidelines for Federal Government decisions by local government and health care by the private sector.

My Democratic friends have other ideas. There is more than one idea how to do this. We ought to get them on the table. It is time for the Republican majority to make health care a priority. It is time for the auto industry to support a solution that is morally responsible and economically urgent: health care. Every American has a right.

Madam Speaker, we have been talking about it, and we have not done anything. It is it time to stop talking about Christmas trees and start talking about health care for all Americans.

SEPTEMBER 10, 2002.

Canada's publicly funded health care system provides essential and affordable health care services for all Canadians, regardless of their income. Publicly funded health care also enhances Canada's economic performance in several important ways.

The auto industry is Canada's most important export industry; it directly employs over 150,000 Canadians in high-wage jobs, supports hundreds of thousands of other spin-off jobs, produces $90 billion worth of shipments per year, and generates billions of dollars in tax revenues for all levels of government in Canada. The success of this industry has been crucial to Canada's economic progress over the past decade. Canada's health care system has been an important ingredient in the auto industry's performance.

Workers in the auto industry, and in the many manufacturing and service industries which supply automakers, benefit directly from access to public health care services. Thanks to this system, they are healthier and more productive. Employers in the auto industry, meanwhile, enjoy significant total labour cost savings because most health care services are supplied through public programs (rather than through private insurance plans).

The public health care system significantly reduces total labour costs for automobile manufacturing firms, compared to the cost of equivalent private insurance services purchased by U.S.-based automakers; these health insurance savings can amount to several dollars per hour of labour worked. Publicly funded health care thus accounts for a significant portion of Canada's overall labour cost advantage in auto assembly, versus the U.S., which in turn has been a significant factor in maintaining and attracting new auto investment to Canada.

Canada's publicly funded health care system is now facing demographic, technological, and fiscal pressures. The erosion of publicly funded health care through measures such as the delisting of currently-covered services, the imposition of user fees, the failure of the public system to keep up with the changing nature of health care, and new costs such as prescription drugs and homecare, will impose significant costs on automotive employers and undermine the attractiveness of Canada as a site for new automotive investment.

For both employers and workers in the auto industry, it is vitally important that the publicly funded health care system be preserved and renewed, on the existing principles of universality, accessibility, portability, comprehensiveness, and public administration. The system needs a secure multi-year funding base from government, and must be expanded to cover an updated range of services (including prescription drugs and home care services) that reflects both the evolving nature of medical science and the emerging needs of our population.

To this end, Ford Motor Company and CAW-Canada jointly urge the federal and provincial governments to take appropriate actions to preserve the public health care system, secure its funding base, and modernize the range of services which it covers. In addition to reinforcing the quality and accessibility of health care for Canadians, these measures would also help to ensure the long-run success of Canada's auto industry.

ALAIN BATTY,
*President and Chief Executive Officer, Ford Motor Company of Canada, Limited.*
BASIL ''BUZZ'' HARGROVE,
*National President, CAW-Canada.*

## A FREE IRAQ

Mr. KING of Iowa. Madam Speaker, I ask unanimous consent to take my Special Order at this time.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. KING) is recognized for 5 minutes.

Mr. KING of Iowa. Madam Speaker, I appreciate the opportunity to be recognized on the floor of this United States Congress and the opportunity to address the Members.

As I sit here and listen to this discussion that has gone on tonight, I would kind of like to unravel some of this from the top down and little bit. And, again, the lamentations come down about all the things that are going wrong in the world and particularly a list of things that are allegedly going wrong in Iraq.

My colleagues might notice that my finger is purple today. And it is purple in celebration and in solidarity with the freedom of the Iraqi people. The people have gone to the polls three times in this calendar year, and each time they said it could not be done, and each time they did an even better job. The January 30 election that elected the interim government that has now put together the constitution; the October 15 election that ratified the constitution; and then today's election that concluded today, December 15 by their calendar, that has now elected a new general assembly that will select from them a prime minister. And he will be seated in March, and they will be the most sovereign, the most representative Arab country in the world. Imagine that, Madam Speaker, sitting at the United Nations with Iraq having the most integrity because they represent the real people in their government.

The argument came from the gentlewoman that there were no weapons of mass destruction and that was allegedly the only reason that we went there. When did this country give up on liberation, Madam Speaker? Did we give up on this when we went to the Philippines after the USS *Maine* was sunk in Havana Harbor? We had the Spanish-American War that took place, and the USS *Maine* is still at the bottom of the harbor in Havana. But the Filipino people were liberated by the United States Marine Corps, and today, the Filipinos are grateful that the Americans came and liberated them, and we carried over there our way of life, our free enterprise system, our property rights concept, an educational system, an English language. And today, they are a prosperous people because they were liberated by Americans in 1898.

And look at the liberation that took place in the Civil War, Madam Speaker. There the war was about States' rights. It was about saving the Union. Abraham Lincoln's efforts were focused on saving the Union. And then, later on in the war, he signed the Emancipation Proclamation. No one thought too much of it at the time. Now we remember that as the war to free the slaves.

So sometimes we have to have a list of reasons why we have to go to war, Madam Speaker. And this is a war that has freed 25 million Iraqi people, 25 million Afghanis, has established the lodestars for the Arab world to follow this democracy that is going to be now a prosperous Iraq, and that can bring freedom to the entire Arab world, which brings peace to most of the world as we know it and eliminates the habitat for terrorists throughout the world.

This is a very, very noble thing that this country has done. It is a very, very noble sacrifice on the part of the 2,100 and more Americans who have sacrificed their lives for the freedom of the Iraqi people, for the safety of the American people.

It is not a terrorist center there unless you want to say a grave center for terrorists. They are taking 3,000 terrorists off the street every month between killed and captured. That is far more than the casualties that we are taking. Saddam Hussein was killing his own people at the rate of 182 per day, Madam Speaker. That adds up to over 100,000 Iraqis that are alive today that would not be if Saddam Hussein were still running his torture chambers, still running his plastic shredder machine, and with weapons of mass destruction, real gas weapons of mass destruction, killing his own people. This adds up to a humanitarian effort that is not unsurpassed in the world but unsurpassed by other countries aside from the United States of America.

The argument that we are using dollars to purchase propaganda in the Iraqi newspapers. Good night. How far do you to go to make an argument against the American people? Maybe we ought to spend these tax dollars to try to get the real news printed in the New York Times or the Washington Post, Madam Speaker. If that is what it takes, that is what we ought to do because part of this war is to defend our troops and our military. And I am tired of listening on this floor, and I did not hear it happen tonight, of people that say, ''I support our troops but I oppose the war.'' That means they oppose their mission, and they are asking soldiers to put their lives on the line for a mission that they do not believe in.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

(Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## FOREIGN-HELD DEBT

Ms. KAPTUR. Madam Speaker, I ask unanimous consent to take my Special Order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Madam Speaker, there are some things that Congress and the President can really do something about. And one of those is the management of our Federal accounts.

The news today reports in USA Today, Oil imports help push the trade gap to record highs. Every time I see the fact that we are importing more oil than finding ways to become more energy independent here at home, I say to myself, there is something that America really can do but is not doing.

The New York Times reported, and I include this in the RECORD, today that the U.S. trade deficit indeed has hit record highs, threatening U.S. growth. We are going deeper and deeper into debt every day with imports climbing much faster than exports. The American people know this. One can hardly find anything made in this country anymore. In fact, the trade deficit is so huge, it is now three-quarters of $1 trillion and rising and, with it, our foreign indebtedness. This widening gap is likely to reduce our overall growth as a country.

Now, our thirst for imported petroleum as a part of this increase rose 13 percent. And the Secretary of Treasury is living in another world when he says the reason that we are going into hock is because other nations are not growing fast enough, when, in fact, other nations are the very countries that are lending us money to make up this gap.

The New York Times says a growing number of economists worry that the United States has become locked into

becoming the world's consumer of last resort, a role that is leading to ever higher levels of foreign indebtedness financed in large part by central banks of China, Japan and other Asian countries.

And not just Asian. As this chart illustrates, the amount of debt being held by foreigners is going up. Japan, over $100 billion over last year to a level of $681 billion. They are literally owning us, owning our debt.

Europe, $471.8 billion. And a lot of that, I think, comes through the London markets, particularly the oil markets. So this masks some of the buying that actually is occurring through the Middle East.

China, Hong Kong, at a level now of over $295 billion. And those kinds of ownership of our assets and debt means we owe them interest. And that level of interest is what I want to discuss tonight.

The proportion of our foreign-held debt is now nearly half of what we owe as a country. Nearly half. It has grown exponentially, and the interest we pay on that debt is one of the largest components of the Federal budget. In fact, in this coming fiscal year, the interest alone that Americans will pay to foreigners for their borrowings to us will be nearly $100 billion. Take the amount that we have to pay Hong Kong and China for what they have lent to us. We will pay them over $13 billion. How much is $13 billion? $13 billion is nearly equal to all of the money we spend as a Federal Government financing student loans in the Pell grant program to make post-secondary study a reality for thousands of students.

□ 2345

How about the $30 billion in interest that we will owe Japan, when you think that that amount is $6 billion more than we devote to funding the No Child Left Behind Act. And it is twice as much as we spend on funding employment training and unemployment services combined.

In Ohio, for example, this past week only one school in the northeastern part of Ohio got funds in order to do additional job training, though President Bush campaigned very hard on that issue in Ohio. Ohio did not get 15 grants or 20 grants, we got one.

Our money is going to pay interest to foreigners who are lending us money. We are cutting money for Head Start by more than $11 billion, and yet we are paying over $100 billion to foreign interests who are lending us money. We cannot afford to pay TRICARE for the needs of those in the Guard and Reserve, many of whom are returning home and finding their benefits are cut, and we have a shortfall in the veterans affairs budget. All of those accounts put together are a pittance compared to the interest that we are paying on our foreign-owned debt.

I have introduced, along with several of my colleagues on both sides of the aisle, H.R. 4405, The Trade Balancing Act of 2005, which will require that in cases in which the annual trade deficit, that is the trade gap, the difference between imports and exports, between the United States and another country is $10 billion a year for three consecutive years, the President must take the necessary steps to create a more balanced trading relationship with that country.

I am asking my colleagues to help communicate this message to the President, to our colleagues, before a foreclosure sign is posted on our Treasury building. There could be nothing more important that this Congress could do than to turn a sound economy over to the future.

Madam Speaker, I will place these additional articles in the RECORD. Let us put America back on an even keel.

TRADE DEFICIT HITS RECORD, THREATENING U.S. GROWTH

(By Edmund L. Andrews)

WASHINGTON, Dec. 14.—The United States' trade deficit ballooned to a record in October, the government said Wednesday, with imports climbing much faster than exports even though prices for imported oil declined.

The trade deficit widened by $3 billion, to $68.9 billion, confounding forecasts on Wall Street that the gap would narrow and signaling that the nation's huge trade imbalance has not begun to stabilize.

The nation's deficit is on track to top $700 billion this year, up from last year's record of $618 billion, and its foreign indebtedness is rising at least as rapidly.

Because imports are about 50 percent higher than exports, the United States would need to increase exports twice as fast as imports simply to keep its imbalances from growing even more.

The widening gap is likely to reduce the nation's overall growth in the final quarter of this year. Morgan Stanley reduced its forecast for growth this quarter to 3 percent, from 3.4 percent on Wednesday, and Merrill Lynch shaved its already pessimistic forecast to just 2.3 percent.

News of the deficit also ignited a fresh round of political accusations in Washington over trade and globalization, with Democrats accusing President Bush of being soft on countries like China.

The United States stepped up its purchases from every part of the world and in most categories of goods, even as global demand softened, the Commerce Department reported.

The trade deficit with China through October hit $166.8 billion, exceeding the $162 billion deficit with China for all of last year.

Over all, the Commerce Department estimated that American exports grew by 1.7 percent in October, while imports climbed 2.7 percent.

But exports were weaker than the headline numbers implied, because virtually all of the increase stemmed from a big increase in aircraft sales after the end of a strike at Boeing.

Excluding aircraft, exports of capital goods and industrial goods were essentially flat. Exports of consumer goods declined 5.6 percent, to $9.37 billion.

Many analysts had expected the trade deficit to narrow slightly, partly because of the increase in airplane exports and partly because oil prices declined slightly during the month.

But American thirst for imported petroleum shot up 13 percent, largely to make up for the loss of production in the Gulf of Mexico cause by Hurricane Katrina.

The United States' trade deficit with the Organization of the Petroleum Exporting Countries totaled $77 billion for the first 10 months of this year, up from $59.1 billion for the same period last year. The higher deficit is the result of both higher oil prices over the last year and higher volumes of imports. But that was only part of the reason that the trade balance deteriorated. The trade balance for nonpetroleum products for the first 10 months of this year has widened to $447 billion, up from $400 billion last year.

Representative Benjamin L. Cardin of Maryland, a top Democrat point man on trade issues, accused the Bush administration of failing to create an effective strategy for dealing with unfair trade practices.

Representative Marcy Kaptur, an Ohio Democrat, stepped up her call for legislation to force the administration to take action against countries that consistently run trade surpluses with the United States of more than $10 billion a year.

Even some Republicans expressed dismay at the size of the deficit.

''Small business owners in Maine and across the nation are fighting to remain competitive with countries such as China that flagrantly disregard fair trade practices,'' said Senator Olympia J. Snowe, Republican of Maine.

The Treasury secretary, John W. Snow, said the administration was pushing countries like China, but added the trade deficit was largely a result of slow growth in other countries.

''If our major industrialized trading partners were growing faster, the U.S. wouldn't have such a large trade gap,'' Mr. Snow said at a briefing on the economy with Commerce Secretary Carlos M. Gutierrez and Labor Secretary Elaine L. Chao.

The American economy grew at an annual rate of 3.8 percent in the first three quarters of this year, far faster than either the European Union or Japan.

A growing number of economists worry that the United States has become locked into being the world's consumer of last resort, a role that is leading to ever higher levels of foreign indebtedness financed in a large part by central banks of China, Japan and other Asian countries.

Robert Sinche, a currency strategist at Bank of America, predicted on Wednesday that foreigners would own about $4 trillion in American assets, about 30 percent of its gross domestic product, by the end of 2006.

## IRAQ AND THE 56TH BRIGADE

Mr. GOHMERT. Madam Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore (Mrs. SCHMIDT). Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GOHMERT) is recognized for 5 minutes.

Mr. GOHMERT. Madam Speaker, it was truly great to have the 56th Brigade home this past weekend from Iraq. Commanded by Colonel James ''Red'' Brown of Lindale, Texas, they did a great thing this past year. It was the largest deployment of troops from the Texas reserve unit since World War II. This was not just a difficult year in their own and their families' lives, it was a historical year for the ages.

Many believe that the area Iraq occupies was where mankind had its beginning. There, in the cradle of mankind,

Iraq, had an historic election of representatives to write a constitution. It drafted and approved its constitution, and now today, because of the efforts of so many military members, including the 56th, that area elected its first true representatives to lead a democratic form of government.

There are those who have said it is a quagmire in Iraq and it is a mistake for us to be there. Some made these statements because of personal heartache. Some, on the other hand, were made from partisan political motivation, and some from disdain for our president and a desire to see his efforts fail, even though it risked world stability and national security.

But our soldiers were there. They know they have done a great thing. They have seen the admiring faces of Iraqi children that were never present in Vietnam. They have heard gratitude from many there in Iraq, our soldiers have. We have not heard as much here.

They not only fought, protected and defended, the 56th, for example, built a school and other important infrastructure improvements. They also saw the frantic efforts of terrorists who were terrified that democracy and the people will begin to rule over them and their oppressive dictatorial ways. They kept many terrorists occupied there, rather than here in America.

Some say that the freedom, democracy and liberty they were fighting for and the evil they have fought against simply was not worth it. My friends, it is worth it, and they are our heroes. They and their families have sacrificed for us, and we are grateful.

My friend from Lindale, who is also a Texas Aggie and a citizen soldier, Colonel Brown, is an American patriot. He and his distinguished command Sergeant Major Chambless led a band of great American patriots, and they led them well.

The quote from the 1800s by philosopher John Stewart Mill certainly applies to our present situation. He said, ''War is an ugly thing, but not the ugliest of things. The decayed and degraded state of moral and patriotic feeling which thinks that nothing is worth war is much worse. The person who has nothing for which he is willing to fight, nothing which is more important than his own personal safety, is a miserable creature and has no chance of being free unless made and kept so by the exertions of better men than himself.''

Those who have been serving in Iraq and Afghanistan and in harm's way on our behalf are some of the better people of whom Mills spoke.

Today was just an incredible day in Iraq. That for which we have been hoping and fighting happened. The Iraqis elected their first elected officials who will preside for the next years to come. There have been threats this year against any Iraqi who voted on. Those Iraqis who stuck their fingers into the ink knew they were readily identifiable for two to three weeks to any terrorist that wanted to kill them. What courage. We have voters here who will not even go out if it sprinkles or rains, and yet they were willing to risk the threat of death. They are not out of the woods. They can see the home lights though glowing from where they have gotten.

It was particularly distasteful though that so many had stepped up their screaming and their histrionics to ''pull out now.'' Have you wondered why the surrender call became so shrill just weeks and days before this historic election? Many of those knew if things went too well, the President's numbers might go up, the Republicans' numbers might go up. So, some had good motives, some did not. They risked the national security.

Now, because of the work of our heroes in Iraq, a great thing happened today, and we are grateful. May God comfort those who have paid with the sacrifice of a loved one in our Nation's defense. May God bless our defenders, our champions, our servicemembers. God bless their efforts and keep them safe. And through their valiant efforts may God continue to bless our America.

To those in Iraq, I say I look forward to seeing you in just a couple of days.

## TRIBUTE TO SENATOR WILLIAM PROXMIRE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. KIND) is recognized for 5 minutes.

Mr. KIND. Madam Speaker, early today the people of Wisconsin and this great Nation lost a great public servant, and I lost a good friend and a political hero, Senator William Proxmire. Senator Proxmire passed away at the age of 90 after a long and courageous battle against Alzheimer's.

I had the great fortune and honor to intern for Senator Proxmire after my junior year in college. He was to me all that is good and decent about public service. I valued his counsel and advice when I became a Member of the United States Congress. During his 32 years in the United States Senate, Senator Proxmire epitomized what a good public servant should be about; hard work, dedicated, principled and accountable to the people he represented.

He was famous back home in Wisconsin for two things: Shaking a lot of hands and giving out a monthly Golden Fleece Award for the most ridiculous expenditure of taxpayer dollars. I am still amazed even today when people come up to me to share their favorite Proxmire story. I swear everyone living in the State of Wisconsin during Senator Proxmire's years in office had the opportunity to shake his hand at some sporting or other public event or on the main street of their hometown.

He was tireless when it came to representing the people of Wisconsin, and tireless traveling around the State to give people a chance to meet their United States Senator. He did it so well that in his last couple of election campaigns, he actually spent more money returning campaign contributions than he spent in his entire reelection campaign. He is probably the last person from a past political era who could do that in light of the mud-slinging and the attack ads that, unfortunately, exemplify modern campaigns.

Also as an intern, I had fun investigating some of Senator Proxmire's famous Golden Fleece Awards for wasteful government spending. Senator Proxmire was talking about fiscal responsibility before it became fashionable. Because of it, he was not the most popular guy in D.C. during those years, given the attention he would draw to wasteful programs or projects.

I am sure he would be disappointed today to see the breakdown in fiscal management of taxpayer dollars and the return of large budget deficits that jeopardize our long-term economic and military strength, and I am also sure he would be disappointed today seeing the number of ethical and criminal investigations surrounding public officials in our country.

He was a person above reproach. He believed that those involved in public service owed the people of this country a higher standard of ethical conduct, and he exemplified that conduct each and every day.

His greatest regret in office he once said was his initial support for our involvement in Vietnam. His greatest accomplishment was the ratification of the Anti-Genocide Treaty. For 19 years, Senator Proxmire delivered a daily speech on the floor of the United States Senate about the need to ratify a treaty against genocide. He found it amazing that the leader of the free world would be one of the last countries to ratify the Anti-Genocide Treaty, rather than being one of the first. But he persevered in reminding his colleagues of the moral imperative to do, and he finally ratification of the treaty shortly before his retirement in 1989.

Senator Proxmire also would deliver a speech on the Senate floor about the need to stop the proliferation of nuclear weapons throughout the world which he viewed as potentially the ultimate genocide of human race.

People back home in Wisconsin viewed him has a maverick because he called it the way he saw it. He believed in standing up for the little guy and treating everyone decently and fairly. He believed, as many of us do today, that there is too much big money in government and too much influence of large special interests affecting the public's agenda. He was a strong advocate for getting the big money out of politics and he supported campaign finance reform.

His marriage to Ellen Proxmire was a true partnership in every sense of the word. Ellen and the family endured the demands and sacrifice of public life and were by Bill's side during the difficult years battling Alzheimer's. Through

their courageous battle, they helped open the eyes of many people about the urgent need to find a cure for this horrific disease before the national tidal wave hits our country in future years due to our aging population.

Much of what I learned about being an elected official I learned from Bill Proxmire. That is why I am proud to call myself a Proxmire Democrat. His legacy will endure, whether it is the call for greater fiscal responsibility with the people's money, or leveling the playing field in politics for people who work hard and play by the rules.

My thoughts and prayers are with Ellen and the entire Proxmire family. I hope they find some peace and comfort in the knowledge that Senator Proxmire touched many lives. He was loved by many, and he will be missed.

May God bless Senator Proxmire and take him into His care.

## THE DAWN OF A NEW DAY IN IRAQ

Mr. GINGREY. Madam Speaker, I ask unanimous consent to speak out of order.

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

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGREY) is recognized for 5 minutes.

Mr. GINGREY. Madam Speaker, I feel honored this evening as we approach the midnight hour here in Washington to realize that it is the dawn of a new day in Iraq. The sun is coming up almost as we speak, and I raise my hand and my index finger in symbolic fashion to salute the 10.5 million people who went to the polls in that historic election on December 15.

Madam Speaker, listen to what some of the Iraqi people have had to say about how they feel about the vote that was cast yesterday. ''This day is revenge for Saddam.'' Kurdish voter Chiman Saleh, whose two brothers were killed by Saddam's forces. The ink-stained finger after he voted.

''The time has come to build Iraq with our own hands and to use the great wealth that God has granted to Iraq, to rebuild Iraq so that we can turn our poverty into wealth and our misery into happiness.'' Prime minister al-Jaafari.

Finally, from the Associated Press, some good news: ''So many Sunni Arabs voted that ballots ran out in some places. The strong participation by Sunnis,'' the backbone of the insurgency, Madam Speaker, ''bolstered United States hopes that the election could produce a broad-based government capable of ending the daily suicide attacks and other violence.'' From the Associated Press. Good news indeed.

Madam Speaker, listen to what General George Casey, the Multinational Force Commanding General in Iraq, said today: ''The Iraqi people have had a great day. It is their third national poll this year: January 30th elections for the Transitional National Assembly, 8.5 million people voted; October 15th national referendum on the constitution, 10 million people voted on. December 15th elections for a permanent assembly, 10.5 to 11 million people voted, and many, many Sunnis. Voter turnout was high. We expect it to be at or above the October level. Turnout in the Anbar Province in western Iraq, the most violent part, the Sunni stronghold, is suspected to have increased fairly substantially over October. There was low violence across Iraq. We expect it to be at or below the October level. The Iraqi Security Forces performed wonderfully to maintain security at the polling sites. The high sentiment was set this morning when Iraqis swiftly repaired damage from an improvised explosive device at a polling place and that polling site was still open at 7 o'clock in the morning.''

Listen to this, Madam Speaker, from General Casey. ''Three years ago, Saddam Hussein was still tyrannizing the Iraqi people. The accomplishments of the Iraqis and the Coalition since then have been unprecedented, even in the face of a ruthless and a resilient insurgency. They include the transition to sovereignty, elections for a transitional government, a peaceful transition from the interim to the transitional government, the drafting and approving of the constitution, the building of Iraqi Security Forces to more than 200,000, and today, the elections for a permanent assembly.''

Madam Speaker, as we close out, I just want to say that this is also a great day for those 2,175 soldiers, men and women, who have given their lives, 15,000 others who have been severely injured, and 30,000 or more innocent Iraqi people, many of them women and children, who have given their lives for this cause. This is a great day.

This gives some peace and comfort, I am sure, to the Brown family of Atlanta, who gave their son Tyler, a First Lieutenant, in this battle, as he was killed in action; and the Johnson family of Armuchee, Georgia, in my district, when Joe and Janet gave their precious son Justin.

At least some comfort will come to these families at this time of Christmas when everybody else is celebrating and they have a certain sadness in their heart that will never go away. They will know that their sons did not die in vain, that this is the success that they were fitting and dying for. God bless them, God bless the Commander-in-Chief, and God bless America.

## RECALL DESIGNEE

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

OFFICE OF THE SPEAKER,
HOUSE OF REPRESENTATIVES,
*Washington, DC, December 15, 2005.*

Hon. Karen Haas,
*Clerk of the House,*
*Washington, DC.*

DEAR MADAM CLERK: Pursuant to House Concurrent Resolution 1, and also for purposes of such concurrent resolutions of the current Congress as may contemplate my designation of Members to act in similar circumstances, I hereby designate Representative BLUNT to act jointly with the Majority Leader of the Senate or his designee, in the event of my death or inability, to notify the Members of the House and Senate, respectively, of any reassembly under any such concurrent resolution. In the event of the death or inability of that designee, the alternative Members of the House listed in a letter placed with the Clerk are designated, in turn, for the same purposes.

Sincerely,

J. DENNIS HASTERT,
*Speaker of the House of Representatives.*

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces that on December 15, 2005, the Speaker delivered to the Clerk a letter listing Members in the order in which each shall act as Speaker pro tempore under clause 8(b)(3) of rule I.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 12 o'clock and 4 minutes a.m.), the House stood in recess subject to the call of the Chair.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

5688. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Information Technology Equipment — Screening of Government Inventory [DFARS Case 2003-D054] received December 5, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5689. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Contract Modifications [DFARS Case 2003-D024] received December 5, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5690. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Contract Administration [DFARS Case 2003-D023] received December 5, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5691. A letter from the Acting Director, Defense Procurement and Acquisition Policy,

Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Extraordinary Contractual Actions [DFARS Case 2003-D048] received November 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5692. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Acquisition of Telecommunications Services [DFARS Case 2003-D055] received November 16, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

***N O T I C E***

***Incomplete record of House proceedings.***

***Today's House proceedings will be continued in the next issue of the Record.***

United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, THURSDAY, DECEMBER 15, 2005 No. 161

# Senate

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

## PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, whose spirit searches all things and whose love bears all things, arise and lift up Your hand as we wait patiently for You. Give Your light, O God, and take away our darkness. Put a new song on our lips for we put our trust in You. Place Your precepts in our minds that we will delight to do Your will. Withhold not Your tender mercies from us, for Your loving-kindness keeps us alive.

Bless the Members of this body. Give them patience and cheerful endurance. Place peace in their hearts and serenity in their minds. Inspire them with an increased understanding of the scope of their task as Your servants.

Stretch forth Your right hand to help and defend us all. Encourage us to seek new depths of dedication.

We pray in Your wonderful Name. Amen.

## PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

## RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

## SCHEDULE

Mr. FRIST. Mr. President, we will begin consideration of the Labor-HHS conference report directly, with Senator HARKIN controlling the first 90 minutes. At the conclusion of that time we will return to the PATRIOT

**NOTICE**

If the 109th Congress, 1st Session, adjourns sine die on or before December 20, 2005, a final issue of the Congressional Record for the 109th Congress, 1st Session, will be published on Friday, December 30, 2005, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Thursday, December 29. The final issue will be dated Friday, December 30, 2005, and will be delivered on Tuesday, January 3, 2006. Both offices will be closed Monday, December 26, 2005.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

TRENT LOTT, *Chairman.*

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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Act conference and have a period of debate for the next 2 hours. We will recess at approximately 12:30 until 2:15, for a weekly policy luncheon.

At 2:15 we will have another block of time equally divided until 3:30. At 3:30 we have a stack of rollcall votes ordered on the remaining four motions to instruct conferees relative to the spending reduction bill. Those will be the first votes of the day. After that fourth vote, conferees will be named to that reconciliation measure. We will likely schedule additional votes in that 3:30 sequence and we will announce those votes as they are ordered.

I will have more to say on schedule as we proceed over the course of the day, both for the remainder of the day, this evening, this week, and possibly this weekend.

In the meantime, I will continue to remind Senators and ask that they do remain available over the course of the day and keep their schedules flexible for these votes.

I yield.

## DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 3010, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3010) ''making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 2006, and for other purposes,'' having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both houses.

(The conference report is printed in the House proceedings of the RECORD of December 14, 2005.)

The PRESIDENT pro tempore. Under the previous order, there will be 90 minutes under the control of the Senator from Iowa, Mr. HARKIN.

Who yields time?

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. COBURN). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, under the rule, I have 90 minutes—some of it has already been used up in the quorum call—to speak on the Labor, Health and Human Services, Education, and Related Agencies appropriations bill that is now before the Senate.

I again ask any Senator who wants to come over and speak on this time to try to be here before 10:30. I would be glad to yield time to Senators who want to come over and talk about this bill and why this bill should not be passed.

At this time of the year when we are seeing all the festive holiday decorations, Christmas trees, all the lights around, there is a certain mood about Christmas. It is a mood of being generous and understanding that it is the season for giving. It is the season for thinking about those who may be less fortunate than ourselves. It is also the time of the year when most families of means get together and think about their giving, how they are going to support charities or charitable giving toward the end of the year. It is true in churches all over the country and many nonprofit organizations. This is the time of year when people decide to give money to the churches, to everything, the Salvation Army, to all kinds of nonprofits. It is the time of the year when we remember ''A Christmas Carol'' by Charles Dickens, the wonderful stories about ''A Christmas Carol'' played in high school plays and theaters all over the country every year at this time.

Charles Dickens ''A Christmas Carol,'' the story of Ebenezer Scrooge. ''Bah humbug,'' remember that? That is his familiar saying about Christmas, ''bah humbug''—this tight man, ungenerous, miserly, stingy, with no feelings of compassion whatsoever to those less fortunate.

We all know what happened in ''A Christmas Carol.'' He is visited by the ghosts of Christmas past and the Christmas future. He then begins to see clearly that who he has been and what he has stood for is wrong.

The wonderful thing about Charles Dickens and ''A Christmas Carol'' is, at the end, Scrooge becomes compassionate and generous and changes his ways.

It is a wonderful story for this time of the year. If only life in Congress imitated that, if only Congress could follow the example of Ebenezer Scrooge in the final act of the play. I am sorry to say, in terms of the appropriations bill before us, the bill that funds those things that lift people up, that help the poorest in our society these days, to reach down, to give everyone hope, and try to make our society a little bit more fair and more just—that is what is in this bill. That is what this bill is about. But, sad to say, in this bill, as it is before us, Ebenezer Scrooge—the first Ebenezer Scrooge, the one before he changed in the final act—is in this bill. Scrooge reigns in this bill.

My friend and distinguished senior member of the Appropriations Committee, the Senator from Hawaii, DAN INOUYE, once said of the Defense appropriations bill that it defends America. The Labor, Health and Human Services, and Education bill, he said, is the bill that defines America. I have thought about that over the years. He said that a long time ago. I have thought about that over the years, as I have been chairman of the subcommittee and ranking member, and chairman and ranking member. Both Senator SPECTER and I have changed places on this subcommittee now I think going back over 15 years. I have thought about that, that this is really the bill that defines America.

So how do we want to define America? As the haves with the beautiful Christmas tree, with all the lights, nice cars, warm clothes, good food, who send their kids to the best schools, live in the best neighborhoods? That is America? That is it, that is America? And then down below we have people barely scraping to get by, who don't know how they are going to pay the heating bills in the winter, the elderly, disabled, the poor, those who want to get job training, they have lost their job, but they want to work and are looking for job training assistance; families with meager means who want their kids to get a head start in life so they want to send their kids to a Head Start Program so that their kids, too, will have a decent shot at the American dream; or families who are low income and have poor schools to go to and so they want to at least have good teachers and good facilities and good programs and textbooks and things for their kids so that their kids, too, can get up on that ladder of success; or families who live in low-income areas who have no health care insurance, have no health care, and the only thing they have to go to is the community health center for their health needs, and that is there for them.

I don't know. What kind of America do we want? Do we want an America where at least at this time of the year we think generously? In this beautiful country that we have, all of the riches that we have, can we not find it in our hearts to pass an appropriations bill that at least, at least, does not back down from where we were before? You would think that would sort of be the minimum. You would think at least at this time of the year we would say, well, we are not going to do any more for low-income people, but we are not going to cut them back any more either. You would sort of think that would be the bottom line.

Sad to say, of all of the appropriations bills that this Congress has passed this year, this is the only appropriations bill that is cut below last year's level. This bill, the one that funds education and health, the one that reaches down to help low-income people, this is the one that is cut, the only one, the only one that is cut.

Please, someone explain this to me. Interior appropriations, Transportation appropriations, Agriculture appropriations, Military Construction and Veterans, Foreign Operations, Commerce-State-Justice appropriations, Homeland Security, Energy and

Water appropriations, Legislative Branch appropriations—all above last year's level. Labor, Health and Human Services, and Education? Cut below last year's level.

Ten days before Christmas, Congress is poised to deliver a cruel blow to the most disadvantaged members of our society. Sadly, unlike in the Dickens tale, there is no sign of remorse, no nagging conscience, no change of heart at the end of the day.

This bill that we passed—and here I want to just, again, pay my respects and my esteem for our distinguished chairman, Senator SPECTER. He had a tough job. We worked it out. We passed a good bill, a decent bill in the Senate. I think it was unanimous, if I am not mistaken—I am sorry, it was 97 to 3. Well, that is almost unanimous, 97 votes. Both sides voted for the bill that Senator SPECTER crafted and that we worked together on. But then it went to conference, and the House came in and insisted on their position. Again, I just remind Senators and others that what happened is that it came out of conference—I didn't sign the conference report. Many of us would not sign the conference report because of these massive cuts. The bill went to the House last month, and the House rejected it. Then they reappointed conferees, as we did, and we met in conference on Monday evening, this last Monday evening, 3 days ago, for 44 minutes—44 minutes, with very little debate. The gavel was pounded, and we adjourned subject to the call of the Chair. Of course, the Chair never called us back, the Chair being the House Member. The House ran the conference this year. So they never called us back.

Now they jiggled a few things around, I guess, dealing with rural health—I will have more to say about that in a second—to get the votes in the House. Well, the House passed this bill yesterday by two votes. I think it was 215 to 213, if I am not mistaken. Two votes. A very contentious bill, two votes. Now we have it before the Senate. That is sort of the history.

Now it is up to us whether we are going to step back and say: No, we will not accept this bill. We will not accept cuts to these vital programs that I am about to go through here. But we will at least go on a continuing resolution until January. In January, when we come back, maybe there will be a little bit of change of heart and we can do a little better on this bill.

This appropriations bill, as I said, funds things such as the Head Start Program, community health centers, special education, job training, programs that help the neediest in our communities. As I said, most people who are watching today would probably expect these programs to get an increase this year because we know the poverty rate has gone up in this country, or at least you would expect that we would not cut it below last year's level. As I said, this is the only appropriations bill cut below last year's level, and that is about $1.4 billion less than last year. This bill cuts education for the first time in a decade, the first time since 1996 has education been cut. No Child Left Behind, all of us here, I am sure, hear a lot about that when we go back to our States, the comments about No Child Left Behind. The biggest complaint about No Child Left Behind is that they are not getting the money by which to meet the mandate. In other words, it is like an unfunded mandate on our schools.

Now, I voted for No Child Left Behind. I was at the table when we met with President Bush in 2001 to get this bill through. At that time, it was agreed upon—at least I thought it was agreed upon—that we would have a funding stream to meet the mandate.

The President agreed to that. His people agreed to it. The President himself agreed to that. Yet we are now $13 billion less than what we said we were going to be at 3, 4 years ago. So it is no surprise that people in our communities are upset about No Child Left Behind. They are being told to do certain things, but they are not being funded to do them.

Well, here we are. We are cutting it again in this bill with a 3-percent cut, so there will be $780 million this year less than last year. That now puts us at $13.1 billion below the authorized level. It leaves 120,000 children behind.

Now, what do I say about that? That is title I. In my opening comments, I mentioned the fact that people who live in low-income areas and go to schools that do not have a lot of money need help. They need what we call title I services, the low-income children. It is $9.9 billion below the authorized level. That means that title I services to 120,000 children, who are currently eligible to receive them, will not receive them next year. Think about that: 120,000 children who are now eligible for title I services in our public schools will no longer receive those services next year.

What is the American dream for those kids? What about it? What about the American dream for them? And because of the programs we had in the past—Head Start, title I, all the other programs—we have been able to get kids of low income through secondary school. Now they want to go to college. Well, back in the 1960s we passed a program called the Pell grants, after our distinguished Senator, Claiborne Pell. It was grants to low-income students so they, too, could go to college.

Under this bill, the maximum Pell grant award is frozen for the fourth year in a row. For the fourth year in a row, we have frozen Pell grants. That means the purchasing power of a Pell grant today is about one-fifth of what it was 20 years ago. So if you are low income, and you want to go to college, it would be better if you had gotten it 20 years ago because your Pell grant would have gotten you a lot further then. Today it is worth about one-fifth of what it was then.

And special education: 28 years ago, this Congress passed the Individuals with Disabilities Education Act to meet a constitutional requirement that we had to provide equal and appropriate education for children with disabilities—a constitutional mandate. At the time we passed that, we said our goal was to have the Federal Government provide at least 40 percent of the additional cost of educating kids with disabilities. That was our goal: We would provide 40 percent of that additional cost to our local school districts. That was 27 years ago.

Last year, we had reached 18 percent. In other words, by last year, the Federal Government was providing 18 percent of the additional cost of special education. Under this bill, you would think we would be going forward to 40 percent. This bill goes backward. We are now at 17 percent. We are going in the wrong direction.

How many times have we voted on this floor to fully fund special education? We keep voting to have special education fully funded. We have all these meaningless votes. When it comes down to paying for it, we are going in the wrong direction. We are going in the wrong direction, down to 17 percent this year.

Well, that is the story in education. The story in education is very simple. If you come from a well-to-do family, and you live in a good neighborhood, and you have great schools and high property taxes, don't worry, the American dream is there for you. But if you live in a low-income area, with low property values, low property taxes, you have poor schools, tough luck, you were not born to the right parents. Tough luck. That is what this bill is saying to you. That is education.

Look at health. Look at the health programs. What do we do about health? Again, if you are a Member of the Senate or the Congress, work for the Federal Government, you have a nice Federal Employees Health Benefits plan—like all of us do—and you do not worry about it. We have great coverage. I often think many times those of us who serve in the Senate and the House probably think: Well, probably everybody lives like we do. Everybody makes $150,000 a year. You have a couple of houses, drive nice cars, wear nice clothes. We send our kids to great schools.

Well, I don't know, if I am not mistaken, as to the population of the Senate, out of 100 Senators, I think—what is it—80 now are multimillionaires? There is nothing wrong with that. There is nothing wrong with having money and achieving the American dream and having nicer clothes, a nicer car, a nicer house. There is nothing wrong with that. That is a big part of the American dream. But it seems to me that those of us who have been blessed with good health and good fortune, and who have sort of made it to the top of that ladder, it is incumbent of us that we leave the ladder down for

others to climb, too, not pull it up behind us. And there are Senators and Congressmen in this body and in the House who are well to do, who have been blessed with good fortune, who understand the necessity of leaving the ladder down, and who fight constantly to make sure we meet our obligations as a Congress to reach down and help those less fortunate than ourselves.

Nowhere is this more true than in health. Nowhere is this more true than in health. We have tried over the years, since we cannot get a national health insurance program passed, to at least sort of block and tackle, if you will, to fill in the gaps, to help make sure people of low income can get at least some access to decent health care.

One of the most important of those is the community health centers. President Bush himself said at one time that his goal was to have a community health center—it was a State of the Union Message. I was there. President Bush said his goal was to have a community health center in every poor community by 2008, and we all rose and applauded. I believe in community health centers. Obviously, the President does, too. But where is the President? Where is he? Because in this bill not one new community health center will be authorized for next year—not one. Not one will be built in the United States.

Health professions. We want to recruit qualified health professionals to serve in parts of the country. It is slashed by $185 million.

National Institutes of Health: 355 new research grants will be cut. It is the smallest percentage increase in NIH. Actually, it is level funded. It is less than 1 percent, so you might as well say NIH has been level funded. This is the first time since 1970—35 years—that NIH has not received an increase.

Rural health programs: cut by $137 million. Now, you know there was some talk when this bill came back out of conference that they ''fixed'' the rural health problem. Not true. Not true. Not true. Rural health programs are cut by $137 million and nine vital health programs—trauma care, rural emergency medical services, health education training centers, healthy community access programs, geriatric education centers—are closed.

This one I think deserves a little bit more discussion, the geriatric education centers. We know our society is aging. We know geriatric care is a kind of a specialty. We want health professionals trained in geriatric care so the elderly among us will be healthier, will have better diets and nutrition, will have better exercise, and will have more sociability.

We know when you do those modest things, you keep the elderly out of nursing homes, you keep them out of the doctors' offices, you cut down on Medicare and Medicaid.

Well, here is a map that shows States that will lose geriatric centers. All the stars are geriatric care centers that are going to be closed. Two weeks before the 78 million baby boomers in this country begin to turn 60—that is next month, January—we are going to close all these centers. In Iowa, we have a center at the University of Iowa School of Medicine that trains doctors, osteopaths, nurses, dentists, chiropractors. There is a big need. Iowa has the highest percentage of citizens over the age of 85—the highest of any State in the Nation. This bill eliminates the geriatric center at the University of Iowa. So that is education.

Let's look at labor. We know that people are unemployed and they want to be retrained. The Department of Labor is cut in this bill by $430 million, the biggest cut ever made to the Department of Labor—the biggest ever, at a time when we keep hearing stories about how China is training all these engineers and scientists and doing all this stuff. We need to get people retrained, and this bill cuts adult job training and youth job training. Adult job training is cut and youth job training is cut. I guess we are telling people that you may have had a job and that job has ended, but you may want to get into the new economy. Do it on your own. You are not going to get any help.

People cannot do that. They are broke and out of work, and they have kids and families. Rather than advancing, they will go out and find some job that will at least put bread on the table, when they could be getting job training that would allow a better job and higher income in the future. This slashes employment services by $89 million—an 11-percent cut in employment services.

What are employment services? They are to help people get employed, to get a job. Yet we are cutting it, even though we know the rate of unemployment has gone up. I don't know how anybody can justify this, especially at this time of the year.

Let's take one more look at LIHEAP, the Low Income Heating Energy Assistance Program. This bill provides no additional funding for LIHEAP. We know that fuel costs are skyrocketing. In Iowa, natural gas prices are up 40 percent from last year. Hawkeye Area Community Assistance in southeast Iowa reports that LIHEAP funds are likely to run out in mid January, one of the coldest months of the year in my State. This bill fails to keep up with this overwhelming need.

I was in Iowa a couple weeks ago and I met with some people who applied for and are eligible for LIHEAP. I remember one individual who is disabled and lives by herself. Her monthly cost for fuel has gone up about 50 percent for what she pays every month. I think she qualifies for $232 in LIHEAP funding. I mentioned that to somebody after I met with these people. I mentioned I had this meeting and this one woman who was disabled lived by herself and she qualified for $232 in energy assistance to pay her heating bills. One of the individuals in the group I talked to said, ''That ought to pay her monthly bill.'' I said, ''Wait a second, that $232 is for the year.'' They thought it was for the month. I said that is for the year—October, November, December, January, February, March, and probably April. That is $232 for 6 or 7 months. ''I didn't realize that,'' she said, ''I thought it was for the month.'' I said, ''No, that is for the whole year.''

Yet we are cutting back on that. We are not providing enough money to take into account the increased price of propane and heating oil and natural gas prices. I have heard: Don't worry, Harkin, we will come back in January and, if we need to, we will pass a supplemental or something at that time.

Don't hold your breath. What about the people who are out there who don't know how to pay their heating bills, who need to get propane delivered, especially in rural communities such as where I live? We have propane tanks. I have a propane tank outside of my house. You call up the company to come fill it. Well, all right, you have to pay the bill. If you have not paid the previous month's bill, you are not going to get it delivered. Unlike natural gas where they cannot cut you off, they can cut you off of propane.

So we are going to come back and do this in January or February. Yet we will let anxiety rise, let people worry about it. I can tell you right now, in my State of Iowa, there are people living on the edge. They have food stamps, they are getting LIHEAP, many are disabled, and many are elderly. They are thinking, I know that next month is going to be cold—in January and February. Maybe I should not buy the drugs I need now because I will need that money next month. Maybe I will cut back a little bit on some of the food I have been buying or I will cut back on some of the things I want to do in order to have the money for the heating bills. That is what is happening now. There is anxiety out there. We are saying: That is okay, be anxious; we will come back in January or February and fix it.

Is that any way to treat people? Put yourself in that position. What if you didn't know whether you could pay your heating bill next month? What if you didn't know whether you were going to be able to pay? They say don't worry about it, we will come back in January and February and we will fix it.

When we passed a continuing resolution at the end of September, I took the floor to beg my colleagues to reject this part of the continuing resolution that would cut the community services block grants by 50 percent. Well, we didn't get that done. Then it was put on the DOD bill, and they told us we will take care of that. The funding for community services block grants goes out to help programs such as Head Start and LIHEAP. In other words, if you are going to apply for LIHEAP, you usually go to some agency—an

area agency on aging or you go through one of these community action agencies. They help you with the paperwork and do the necessary things to show that you qualify. If you don't have that, chances are you probably would not qualify.

In our continuing resolution, we cut that by 50 percent. We are told we will take care of it, we will fix it. But that was in September. We have gone through October, November, and December—3 months—and the community services block grant is still cut by 50 percent. They say we will take care of LIHEAP, too. When? In March, April or May?

So whether it is health, human services, education, medical research at NIH—no matter what it is in this bill—what can I say; it is awful. This bill is awful. It is not something we ought to hold our heads up and be proud about. We ought to be ashamed of this, ashamed that we cannot find it in ourselves to meet the needs of the poorest people in our country, the neediest.

This bill ought to be rejected, and we should go to an honest continuing resolution, not one that cuts programs but one that at least keeps last year's level. If we want to, then we will come back and fix it again next year. But this bill is not deserving of our support. It sends the wrong—I don't want to say it sends the wrong message, that is not it; it doesn't do the right thing. It doesn't do what a generous, compassionate nation ought to do for its neediest citizens.

Mr. President, I see my distinguished colleague, Senator KENNEDY, is on the floor. Again, I yield the floor to him. There has been no one who has fought harder for these programs in education and health and human services for all of his adult life, no one who has spoken more passionately and forthrightly about the obligation we have as public servants to meet the needs of our neediest citizens than Senator KENNEDY.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I join with those on our side and I think most Americans in commending the Senator from Iowa, Mr. HARKIN, for his steadfastness and determination to make sure we are a fairer country, a country that is going to offer better opportunities for many of those who have been left out and left behind.

I listened carefully to his excellent presentation earlier in outlining the choices, the alternatives for the American people presented in this particular legislative proposal. Once again, he has made the convincing case that we can, as Americans, do a great deal better in terms of those who have been left behind. With this recommendation that has come back from the conference which represents basically the Republican priorities, there are going to be millions and millions of Americans who are going to have a dimmer Christmastime this particular year.

There is an extraordinary irony that we are within 9 days of Christmas Eve when families will gather around the Christmas tree, exchange gifts, will attend church services, and think about the spirit of Christmas. When they realize what their representatives have done in Congress, they know they will have a dimmer Christmas with fewer opportunities for their children and their parents and for the lives of working families in this country.

I thank the Senator from Iowa for his excellent presentation and for the continued battle for decency in our country.

As the Senator from Iowa has pointed out, this is an issue of choices for our Nation. Budgets are an issue of choices and priorities. He mentioned that during his presentation, and he has repeated the areas where we are going to see further reductions that are going to make it more difficult for families in this country.

But you can't get away from the major fact, that a judgment and a decision has been made by the majority for a tax giveaway, effectively, to the wealthiest individuals in this country of $95 billion. Someone has to pay for it. The judgment that has been made by the majority party is that it is going to be the neediest members of our society who are going to have their belts tightened over this period of time. Nothing illustrates it better or more effectively than this chart illustrating where the House bill leaves tax cuts for the wealthy individuals under the Christmas tree but leaves middle-class families out in the cold. Families with incomes over $1 million will receive $32,000, and those families with incomes under $100,000 will receive $29. And people can say, Is that what this legislation is all about? Why in the world are you doing that?

We just listened to the Senator from Iowa talk about all these cuts. What does that have to do with tax cuts? The fact is, if you are going to provide $32,000 in tax incentives to families making over $1 million in income and only $29 for families making under $100,000 in income, you not only have the issue of fairness if you are going to go for the $95 billion—it is grossly unfair in the distribution—but then you have to ask, How are we going to pay for all of that? The Senator has done a very comprehensive job in presenting that issue.

I will take a couple of areas. We have gone through these at other times with the Senator from Iowa—and I commend him—in the health area, the neighborhood health centers, the training of personnel, all the range of public health programs. What I would like to do this morning is take a look at where we are with education funding.

This chart shows where we have been in 1997, 1998, 1999, 2000, 2001, 2002. Look what has been happening in the last 4 years, and this Republican bill contains a $59 million cut in education programs. Look at America's priorities as reflected in education. One can say money doesn't solve everything. It doesn't, but it is a clear reflection of a nation's priorities. This chart is backed up with budget figures. I have the budget items right here that reflect all of this. They indicate that this is what we are saying to Americans on the issues of education.

In my State, we have made some important progress in education. We have made some important progress. Quite frankly, we put in place in our State a number of the reforms that were eventually put into No Child Left Behind—smaller classes and better trained teachers. In the NAEP test, which is the national education test, Massachusetts scored higher than all other states in reading, and tied for first in the Nation in math. In Boston, we saw a 19 point increase in the number of Hispanic students proficient on the math test, and a 10 point increase for African American students. These are the first major breakthroughs in the history of our country in these disparities. We are beginning to see progress because we have been investing in children.

Not anymore. Here is where we are going: Right back to the good old bad days in terms of a nation's priorities in education.

Today, we will have an opportunity, on the issue of education, to reaffirm what we did in the Senate. That was a bipartisan effort that produced a decent bill. We met our obligations under what they call reconciliation and the budget items. In a bipartisan way, led by our chairman, Senator ENZI, and with the assistance of Republicans and Democrats, what did we do? We—in our committee and on the floor—virtually unanimously in our committee increased the maximum need based aid to Pell-eligible students to $4,500. Before that, we haven't been able to increase the maximum Pell grant. We have been flat on these Pell grants. These affect the neediest students. There are 400,000 students who won't go to colleges, who are academically qualified to go to colleges, because they can't afford the dramatic increase in the cost of tuition.

The Senate did something about it. We increased these grants to $4,500, and we gave an additional boost to those students in their junior and senior years who are going to be studying math and science. Why math and science? Because as all of us understand, if we are going to have an innovative economy, we are going to have to invest in the degrees that are going to permit us to have an innovative economy. That is necessary not only because we need an invigorated economy, but we need strengthened national security and defense. We were able to do this in the Senate.

What has the House of Representatives done? The House of Representatives has raised the interest rate caps for students to 8.25 percent.

At that rate, the typical borrower will pay as much as $2,600 more on

loans. They raise the origination fees on direct loans in the short term, which will cost the typical borrower $400; they impose a new 1-percent fee on all students who consolidate their loans. It is going to cost students, parents, and families thousands of dollars more to attend or to send their children to college. That is where the House of Representatives goes—increasing the cost of college for working families who are already struggling. That is why we believe it is so important that our negotiators hold firm to the provisions in the Senate bill. We meet our responsibilities, and we provide the kind of help which is so necessary for students in this country. That is what our bill does.

We will have a chance to vote on our motion to instruct conferees this afternoon. We do not always have a chance to offer amendments or motions to instruct conferees on every subject matter but we will in terms of the issues on education and higher education.

I want to mention one other item that the good Senator from Iowa has spoken to because I think it is enormously important to our fellow Americans. Here is the cover of Nature Magazine, publisher of the original human genome paper. The Senator from Iowa was visionary in ensuring that NIH was going to move forward in giving the support for the mapping of the human genome.

With the mapping of the human genome, we have seen all kinds of possibilities in terms of health care and medical breakthroughs. We have seen medical breakthroughs in the historic diseases that have affected every family across America, including all of us in the Senate and the House of Representatives. We have seen breakthroughs addressing the problems of Alzheimer's, the problems of Parkinson's disease, the problems of cancer, the problems of diabetes.

We have begun to see enormous progress that is being made. We are at the tip of the cusp. That is because we have had bipartisan cooperation. The Senate was working together, as we have in education. We worked together, Democrats and Republicans, all during period from the late 90's through 2002 to try to get investment in breakthrough research. Just about every scientist who has appeared before the Senate's Committee on Appropriations says this is the life science century. The possibility of achieving breakthroughs that benefit every family in America are virtually unlimited if we invest the resources.

Does anyone think that is what this administration is doing? No. They say, let us give $95 billion more in tax breaks to the wealthiest, and let us cut all of that potential right off at the knees. That is what they have done. That is what is before us. That is why the Senator from Iowa has said that this is an unacceptable budget. Do not take our word for it. Look at the budget, the choices that have been made. If one goes back, at least in my State, and talks with families, they will probably be talking to you now about the Medicare D Program and how they are going to deal with the confusion. But underneath it all, when it comes to the end of the conversation, they will say: What are the possibilities of getting some real breakthroughs? My father has Alzheimer's, my uncle has Parkinson's disease, what are the real chances of doing something about these diseases? We have to take care of them. We love our family members, what are the possibilities of finding breakthrough treatments to save them?

Every scientist and every researcher was moving along on this. We thought we had an agreement to consider the stem cell legislation, another area on which the Senator from Iowa has been a leader. We thought we had an agreement by the leaders that we were going to bring this up. The House of Representatives has acted on it. My State of Massachusetts has acted on it. Other States have acted on it. What is wrong with the Senate? They say, we have to take more time to pass more tax giveaways to the wealthiest individuals, we cannot afford to take the time to do the stem cell research. No, sir, we cannot do that. I say, this is the priority. That is why the Senator from Iowa is as worked up as he is.

This is the reality of the NIH budget. Dr. Landis, who is the Director of the National Institute on Neurological Disorders and Stroke, says:

> If we are to fund new programs, we will have to stop funding old programs. For every young investigator, a senior investigator will be unfunded. For every senior investigator who's refunded, it means a junior investigator won't be.

Mr. HARKIN. Will the Senator yield on that?

Mr. KENNEDY. Yes.

Mr. HARKIN. I appreciate the Senator pointing this out because yesterday a big story broke in the newspapers from NIH. A lot of times people ask what happened with the human genome project, what is it leading to, mapping of the entire human genome. A couple of years ago, I paid my first visit to Cold Spring Harbor Laboratory in New York, Long Island. It is run by James Watson, who is one of the codiscoverers of the structure of DNA. What they had embarked upon at that time was the beginning of mapping the genes of all of the cancers known to humans. It was a small project. It was funded and it went along. Yesterday, a story broke that Dr. Zerhouni, the distinguished and very capable head of the National Institutes of Health, announced that the National Institutes of Health was embarking upon a program to map and sequence the genome of every known cancer. They are going to go out and take cells of every cancer, take the DNA out, and map it. They think that it is going to take about 10 years to do. It will cost about $1 billion to $1.5 billion.

Is it worthy? Of course. These are the bullets we will have to really get at cancer. It is phenomenal in its concept and what it is going to do.

Here is the problem, as the Senator from Massachusetts pointed out. We do not give them any extra money to do it. That means if they are going to embark on this, they are going to have to take money out of other research on Parkinson's disease, Alzheimer's disease, and everything else.

Yesterday, I asked Dr. Zerhouni: Where is this money coming from? Already we are cutting down and cutting back on the number of grants that are being awarded, and now with this appropriations bill that we have, it is going to get even worse.

I say to my friend from Massachusetts, when we embarked on mapping and sequencing the human genome back in 1991 when I was chairman, we did not take money from some other place. We came to the Congress and said this is important, let us do it, let us fund it and we did it, and we paid for it.

Now, with this tremendous news yesterday that came out about mapping, sequencing the genomes of all known cancers, we are now cutting the funding basically for NIH. So I say to my friend from Massachusetts, what he pointed out, that is what we are confronting. We are confronting cutting back in other needed research to do this or maybe we will not do this after all. That is the dilemma we face. That is the position that this appropriations bill puts us in. I thank the Senator from Massachusetts for pointing that out.

Mr. KENNEDY. I welcome that very important statement. What we are seeing from the research community is not only the progress that is being made in basic research, but the acceleration of breakthroughs through the use of advanced engineering and computers to fast track this kind of research.

This chart reinforces the point that the good Senator has made. Four out of five new ideas will be rejected in fiscal year 2006. This chart states that 79 percent of grant applications to NIH will be rejected. This will be the highest percent of grant rejections in decades. In these grants lie the possibilities of life saving treatments and cures. When we are talking about the grants, as the Senator knows, we are talking about serious grants. These are not grants submitted by someone off the street saying: Listen, give me some dough, I think I think I have an idea. These grants have been researched, examined, and tested. They are the best, in the opinions of the scientists in that particular area, and are worthy of further progress. The opportunities for meaningful progress are in these projects. Eighty percent of those grants are being rejected. Why? Because we want $95 billion to go to the wealthiest individuals in this country. This is who is paying for the budget cut, this right here—the 80 percent of scientists whose grants will be rejected. With the budget squeeze and those few hundreds of

millions of dollars saved, we will be able to provide the additional tax breaks, giveaways to the wealthiest individuals.

Finally, I want to bring up the subject on which the Senator from Iowa has been the leader. I want to talk about the dangers of avian flu and the dangers of the pandemic. I have listened to the Senator make the persuasive case for our Nation that avian flu is a danger. I have listened to him stop this Senate and say: Look, we have to take action on this flu legislation. We have to provide the resources to deal with this challenge we are facing.

I know this chart is difficult to read, but it is a time line going back to 1990. It lists all the warnings from June, 1992 through today. We see the warnings all the way back 1992:

Policymakers must realize and understand the potential magnitude of a pandemic.

Here's the warning in Hong Kong, 1997.

Here it is in the GAO report:

Federal and State influenza plans do not address key issues surrounding the purchase and distribution of vaccines and antivirals.

Here it is from the World Health Organization:

Authorities must understand the potential impact and threats of pandemic influenza.

Here it is in Vietnam. Here is the December 2003 outbreak in Korea.

The Senator rightfully challenged this body to say we have to do something about the pandemic threat. And we responded. I had the opportunity to be at NIH when the President of the United States made his commitment to this deal with $7.8 billion. What happened? The money that had been requested by the President, the money that had been put into the budget by the Senator from Iowa was struck out. The President requested it. The Senate went on record. We have the warnings. We have been told about this. Secretary Leavitt has spoken passionately about this issue. Former Secretary Thompson has spoken out about this issue. But we are still falling behind on pandemic preparedness.

This chart is familiar to the Senator from Iowa but is one I think we need constant reminding of. Japan had their comprehensive flu plan in October of 1997; Canada, February '04; Czech Republic, '04; Hong Kong, '05; Britain, '05. We have gone through their plans and they are extensive. The United States released our plan November of '05, and it is incomplete.

Do we think in this budget we are giving the assurances to the American people that we are going to be leaders, able to deal with a possible pandemic? Absolutely not.

I share the real frustration of the Senator. He had mentioned earlier the problems they were going to have in terms of heating oil. Under current funding, families in Massachusetts will receive LIHEAP assistance that is effectively enough for only one tank of oil. Basically, low-income and middle-income working families use two to four tanks over the course of the winter, two to four tanks. They will have one tank under current funding levels.

I think of the number of people, primarily women, who are waiting to go back to work. There are some women who want to go to work, but they do not have the childcare to take care of their child so they can go to work. In Massachusetts, 13,000 children are on waiting lists for childcare slots. Most of these mothers have the opportunities to go to work, but they can't without childcare assistance. I think that is a long, difficult wait for so many of these families who are constantly challenged to protect their child while going out and working and providing for their family. They are constantly facing that every morning they wake up. Do you think we are helping them? Oh, no, we are adding more burdens to them. There will be fewer slots, under this particular proposal, for those families.

I think of the 160,000 people who are unemployed in my State and the 72,000 jobs that are out there waiting for people to be able to receive. The only thing that is missing is the training programs, to train part of the 160,000, train 72,000 so they can get those jobs. Do you think that is in this legislation so these families will be able to participate in their community, make even a greater contribution to their community, plus pay taxes? Oh, no. We are cutting back on that funding. There are further cutbacks on the training programs.

We are cutting back or eliminating the dropout prevention programs. We are cutting back on the afterschool programs. The list goes on. The point has been made very eloquently by the Senator from Iowa. As the Senator from Iowa has pointed out and as I mentioned, this day is about choices in the Senate. It is about choices—whether, on the one hand, we think in our national interest it is more important to give the $95 billion in tax giveaways to the wealthiest individuals in this country. It is not even a fair plan. If you were for a tax program that was going to be fair, at least you could make that case, I would think, and hold your head up. This is $95 billion, and the $32,000 to every family earning over the $1 million and $29 to every family earning under $100,000—that is not even fair, if you thought that was the Nation's priority, paid for by the most vulnerable people in our society.

I do not want to hear a lot from the other side talking about the Christmas spirit. We have seen how the Christmas spirit is reflected in real terms in their votes on these issues here. It is not going to be a happy one.

In our motion to instruct on higher education, which we will address in the afternoon, the following Senators have indicated support. There are others that have contacted me about it as well. Senator HARKIN and Senator DURBIN, Senator DODD, Senator REID, Senator LIEBERMAN, Senator KERRY, Senator REED of Rhode Island, Senator CORZINE, Senator CLINTON, and I will add others as the day goes on.

I thank my colleague and friend from Iowa for his excellent presentation, for his review of all these issues and questions, and for posing the vital issue for the American people, almost at the time of Christmas Eve. He has summarized it. There is no one more knowledgeable or understanding, or anyone who has been a more forceful advocate of all of these causes, than the Senator from Iowa. I thank him for his energy and persuasiveness and his presentation.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Madam President, parliamentary inquiry: How much time do I have remaining?

The PRESIDING OFFICER. Eleven and one-half minutes.

Mr. HARKIN. Madam President, I don't know if any others want to come over. That is why I asked for 90 minutes to point out how bad the bill is.

Looking at all the various programs that were cut, Senator KENNEDY did an outstanding job of going over how devastating some of these cuts are going to be in terms of health, education, and medical research. Going through a big bill like this, sometimes your eyes kind of glaze over some of the important aspects that people do not bring to the forefront.

But there is one other cut in this bill that people ought to know about. All the staff who are watching, the Senators who are watching, you ought to know about this cut. It is the maternal and child health block grant being cut by 3 percent. The real per-capita purchasing power is now 20 percent below what it was in 2002. What is the maternal and child health block grant? It helps low-income mothers get preventive health services and medical treatment for children who have disabilities and other special needs.

One of the best things we have ever done here to help low-income families have healthy babies and to make sure those babies get the best start in life is the Maternal and Child Health Block Grant Program, which goes out to the States, and it is cut by 3 percent.

Please justify that. When you vote later today on whether to accept this appropriations bill, please justify just that one thing: how you are going to justify cutting the Maternal and Child Health Block Grant Program.

As bad as this bill is, every time I look at it, I ask: Can it get any worse? The answer to that is, yes. It is going to get worse. Here is why.

This bill had a $1.4 billion cut. We have just gone over all of the things that are cut in this bill—the Maternal and Child Health Block Grant Program, to education, to medical research—all vital in defining the kind of country we are. Can it get worse? Yes. Here is what is going to happen. Hang on.

Tomorrow or Saturday or sometime, we will be voting on a Department of Defense appropriations bill. That Department of Defense appropriations bill will have a bunch of things in it that do not deal with the Department of Defense. By the way, it will also have in it a 1-percent across-the-board cut. We are already told it is in there—a 1-percent across-the-board cut.

All of the cuts we have talked about—Maternal and Child Health Care Block Grant Programs, title I funding, special education, geriatric training centers, and NIH—all of that is going to get an additional 1-percent cut.

The way that works out is, the $1.4 billion cut in this bill is going to be a $2.8 billion cut. It will double it.

As bad as this bill is now with the $1.4 billion cut, by the time we are through here tomorrow and voting on a 1-percent across-the-board cut, it will be twice as bad—a $2.8 billion cut in this bill.

That is because this bill is about $140 billion. You take a 1-percent across-the-board cut, that is $1.4 billion. So get ready. That is why this bill should not be passed in its present form because there is going to be that 1-percent across-the-board cut. It is going to double.

The Senator from Massachusetts mentioned the avian flu bill. We put money in here for the avian flu. I offered an amendment on DOD appropriations back in September. In December, the chairman of the Appropriations Committee said that is not the proper place for it, that it ought to be on the Labor-Health and Human Services bill. I agreed with him. But we didn't know if we were going to have a bill. So it was put on the DOD bill.

Later on when we got this bill before us, we added $8 billion to get us prepared to fight perhaps the biggest flu pandemic the world has ever seen, one that could kill hundreds of thousands of our fellow citizens, one that could hospitalize up to 90 million people in this country. We put $8 billion in this bill. Guess what. Look at the bill. It is not in there. It is all gone, all taken out.

They say they are going to put some more in the Department of Defense bill. We haven't seen it yet. But they took it out of this bill.

It is going to get worse. Today is December 15. By the way, it is also the anniversary of the adoption of the Bill of Rights to our Constitution. I hope it is not too much of a leap to ask on this anniversary of the Bill of Rights: What about the rights of poor people? What about the rights of low-income people? What about the rights of our people to be protected from the pandemic flu? What about the rights of our citizens to decent health care, the rights of our citizens to a decent education, no matter where they live or the circumstances of their birth? Should the quality of your education be decided by geography, where you live? What about our rights? This bill before us speaks to rights, human rights, the basic rights of an American citizen to decent health, housing, education, a shot at the American dream. So on this December 15, 10 days before Christmas, the anniversary of the adoption of our Bill of Rights, throughout much of the world it is a season of giving, but here in Congress with this bill it is a season of taking away education programs, taking away job training, taking away home heating assistance, taking away rural health programs, taking away maternal and child health care.

But what it really takes away is hope. It takes away hope from people, hope for a better life, hope for a better shot at the American dream, hope that their children will have it a little bit better than what they have had.

I remember when then-Governor Bush was running for President in 2000. He had a saying at that time—I haven't heard it lately, but he had a saying that the Government can't give hope to people. Well, I beg to differ. Government can give hope to people. It depends on who is running the Government as to who is getting the hope. As the Senator from Massachusetts just pointed out, we have a huge tax bill, more tax breaks for the wealthiest in our society. If you are making over $1 million a year, you have a lot of hope. You are going to get about $32,000 in your Christmas stocking. Thirty-two thousand, you are just going to get it, a nice tax giveaway for the most affluent in our society. A lot of hope has been given to them by this Government.

But if you are low income, if you live in small rural America, if you are elderly, if you are disabled, if you need the help of the Government to lift you up and to give you some hope for a better life, you don't get hope. It is taken away from you.

So what we are saying to low-income families who are working, trying to pay their bills, trying to scrape by, trying to keep their families together, trying to raise their kids, I guess what we are saying is, Merry Christmas, hang your stocking, and Congress is going to put a lump of coal in that stocking for you. That is what you get.

I don't understand how anyone can vote for this bill, especially at this time of the year. I hope our conscience would come to the fore. We all know the wonderful story from Dr. Seuss. We recall reading it to our kids, ''The Grinch Who Stole Christmas.'' This bill is a bill only the Grinch could love. No funding for avian flu, lowest increase in NIH funding in 35 years, cuts education funding as No Child Left Behind requirements are going up, no increase in college aid, cuts job training. I could have added a lot more—as I said, cuts in maternal and child health care, cuts in geriatric training, cuts in Head Start.

Well, if you like the Grinch, I suggest you might want to vote for this bill. But we need to reject it and insist that the leadership provide enough funding to write an acceptable bill. They have the power to do it. We did it in the Senate. I repeat, under the leadership of Senator SPECTER, on a bipartisan basis, we passed a bill here 97 to 3. We can do it. If only the President of the United States just said to the House leadership, We want the Senate bill, we want what the Senate did to be fair and just to all our citizens, we would have this. We would have it. That House of Representatives, they will do whatever the President tells them to do. And if he had waded in there and said, Look, we don't accept this, we will have the Senate-passed version, that is what we would have. We would all vote for it and hold our heads up high and say we did the right thing for the citizens of our country. Yes, leadership has the power to do it. They have the White House, the House, and the Senate.

What is stopping them from giving us a decent bill? As I said, we did it here. We did it on a bipartisan basis in the Senate. But if we pass this bill now, this conference report, and give this very cruel rush—well, we have to get out of here. We have to go home for Christmas. We have to pass the bill. No, we don't. No, we don't. What we need to do is to say no, go back to the drawing board, get us a bill that is acceptable, and if we have to go on a continuing resolution for a month until we come back, or 2 months, until February, we have done that before. We would be better off going on a real continuing resolution, I say to my friends in the Senate. We would be better off than accepting this bill and putting the pressure on the White House and the House to come back with a better bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. That is really the essence of it, Madam President. We need a better bill. We should not vote for this one.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I share the concerns and frustrations expressed by the distinguished ranking member of this subcommittee, Senator HARKIN, and I believe he will agree with me that this bill, the bill that the Senate passed was structured as well as we could have structured it, given the allocation which we had.

Mr. HARKIN. I just said so, yes.

Mr. SPECTER. My question to the Senator from Iowa would be, on this conference report, where I have already said publicly in the conference that I thought it was grossly inadequate, $5 billion under last year on health, which is our No. 1 capital asset in this country, and education, which is a major

capital asset—health so we can function, education to prepare us for the future, and job training in the Department of Labor, I would ask him if—and I have said publicly that I intend to vote against this bill as a protest unless my vote is needed. And I know that is unusual for the chairman of the subcommittee to take that position. But I believe that Senator HARKIN and the subcommittee and full Senate and I have done what we can on a bill subject to limitations that we have. I would ask the Senator from Iowa if there is anything more we could do given the restrictions as to allocation of what we were facing?

Mr. HARKIN. First, I say to my friend, and he is a dear friend of mine—we have exchanged chairmanships on this committee going back over 15 years—as I said earlier in the Chamber, and I say again, the bill that our chairman, Senator SPECTER, put together and that we brought out on the Senate floor, we worked it. Our staff worked it. We got a 97-to-3 vote, I say to my friend. The bill that the Chairman brought to the floor we passed 97 to 3. It was a good bill. We always want to do more, but given the restrictions, that was a good bill. That is the bill we ought to have before us now. The problem is that the House wouldn't go along with it. But that doesn't mean that we have to go along with it.

I appreciate the position the chairman is in. I have been in that position, too, in the past. I appreciate the difficult position he is in. But I want the record to be clear that this chairman brought out a good bill, a bill that was passed 97 to 3 by the Senate. I point out that this chairman fought very hard for our priorities and for health funding. I don't want anyone to mistake what I am saying. But I am just saying that the House and I have to say the White House, maybe through inaction or not being involved, let it happen and are now confronting us with this conference report that is totally inadequate. That is totally inadequate.

I might add to my friend from Pennsylvania that what we are facing now is the result of a bad budget. That is what it is. We have a bad budget forced on us. This is sort of the end result of that. But even with that bad budget, we came out with a decent bill. I say to my friend from Pennsylvania, I only wish the White House had been actively involved in this conference and came down and told the House leadership: We want nothing less than what the Senate did.

If we had that, we would have had a bill out here that would pass 97 to 3 again. It might even pass unanimously.

So I say to my friend from Pennsylvania, we can do better than this. I say to my friend, I do not enjoy voting against this bill. I do not enjoy it. I do not enjoy not signing the conference report. But we can do better. We do not have to accept this. We can go on a continuing resolution, a real continuing resolution, and say to the White House and the House: No, we need to do better than this.

That is why I say to my friend from Pennsylvania—I have the greatest respect and admiration for him, as he knows, and he has fought hard for us—sometimes at the end of the day you have to say no, we are not going to accept it. So that is our position and that is my position on this bill.

I say to my friend from Pennsylvania, I know he has other things he has to work on today on different legislation and everything, but we have to send a signal to the House and the White House that this is unacceptable. I say to my friend, I thank him for his leadership and for bringing out a good bill here in the Senate, something we were proud of and voted for. I was proud to work with Senator SPECTER on that bill. I am sorry the House and, yes, I say the White House—they should have been involved in this—are now confronting us with a bill that is unacceptable.

I thank my chairman.

Mrs. MURRAY. Madam President, to keep America strong, we need to keep our families and communities strong. That is why I am very concerned about the fiscal year 2006 Labor, HHS and Education appropriations bill.

The Senate is scheduled to take up the final conference agreement on this bill, and it is bad news for the American people. This bill is filled with the wrong priorities for our country.

If we pass this bill as a result, it will tear apart what is left of America's health care safety net and provide fewer investments in education and workforce training.

Instead of investing here at home—in our people, our children, and our communities—this bill will move us in the wrong direction and will undermine America's strength.

If we can rebuild schools and hospitals in Iraq out of emergency funding, why can't we provide the resources our own communities need here at home?

We know that rebuilding safe and stable communities in Iraq requires investments in education, training, and health care. And the same is true in communities across America.

If we want to be strong here at home, we need to invest here at home, but this falls far short of what we need.

That is really a disappointment because this bill is the most direct tool we have each year to improve the health and education of the American people.

More than any other appropriations bill, the Labor-HHS bill directly impacts almost every family and every community. This is a bill that funds all of the Federal commitment on education. It provides funding for our investment in biomedical research. It funds all of the Older Americans Act programs. And it provides the funding to retrain our workers to succeed in a very competitive global economy.

This is an important bill and it should be used to invest in America, but instead—this bill cuts funding by $540 million from last year's level. When we add in the Medicare administrative funds, the total cut soars to $1.4 billion.

That means we are moving in the wrong direction—and families are going to feel the impact in health care, education and job training.

Let me start with health care.

This bill cuts total health care funding by $466 million. It cuts programs that help the uninsured get health care, efforts like community health centers, the maternal child health block grant; health professions training, rural health, and CDC disease prevention programs.

This bill also moves us in the wrong direction on disease research. We can all be proud of the National Institutes of Health. It is the leading source of biomedical research into deadly diseases like cancer, MS, Parkinson's, ALS, heart disease, and AIDS. But this bill provides the NIH with the smallest increase since 1970. It would move us backward in our fight against cancer and other terminal illnesses. How can we expect to be able to find vaccines for new global pandemics when we are cutting our investment in critical research?

This conference report will also make it harder for uninsured families to see a doctor. Specifically, this bill eliminates the Health Community Access Program, which I have fought to protect for many years now.

This is a program that helps our local communities to coordinate care for the uninsured and provide integrated health care services for vulnerable families.

I have seen the Community Access Program at work in my home State of Washington, and I know it is making a tremendous difference.

These are the very programs we should be investing in today. The HCAP program was authorized with broad bipartisan support in 2002. But this bill would eliminate this successful community-based model for helping the uninsured.

Not only is this bill bad news for health care, it also moves us in the wrong direction on education.

This bill represents the smallest increase in education in a decade. Today, schools are facing increasing requirements under No Child Left Behind. Today, family are facing rising college tuitions. Today is no time to short-change education. We know the burdens on our local community are growing.

In the coming year, school districts will face higher academic standards, and they will have to meet new requirements for highly qualified teachers. That means they need more help. But the conference reports cuts funding for the No Child Left Behind Act by 3 percent.

Funding in the conference report is $13.1 billion below the authorized funding level.

This bill also marks the first time in 10 years that the Federal Government will slide backward on its commitment to students with disabilities. The Federal share of special education costs would drop from 18.6 percent in fiscal year 2005 to a flat 18 percent in fiscal year 2006.

Every time we cut back our investment in special education, we are putting a higher burden on local school districts, children, and their families.

In addition, funding for disavantaged students-through title I—will receive its smallest increase in 8 years. In fact, the funding level in this bill is $9.9 billion less than what Congress and President Bush committed to provide. The bill would leave behind 3.1 million students who could be fully served by title I if the program were funded at the committed level.

Many students are feeling the impact of higher tuition. This year, tuition and fees grew by 7.1 percent at 4-year public universities. But the conference report fails to increase the maximum Pell grant award for the fourth year in a row.

It also fails to increase funding supplemental educational opportunity grants, the Work-Study Programs, and the LEAP Program, which supports State need-based aid.

In addition, the conference report also fails to increase funding for GEAR UP and the TRIO Programs, which help disadvantaged students complete high school ready to enter and succeed in college.

This bill also moves us in the wrong direction on helping America's workers.

We hear a great deal about economic recovery and building a strong economy. Yet this conference report will cut adult job training by $31 million. It will cut youth training by $36 million. These programs serve over 420,000 people nationwide. How can we hope to strengthen our economy and help those who lost manufacturing jobs if we are reducing our investment in job training?

All of the tools we need to build a strong economy—and a strong America—are on the chopping block in the Conference Reports.

Worst of all, this is not the end.

We know that there will likely be an across-the-board cut in all discretionary programs, including those funded in the Labor, HHS and Education appropriations bill.

That means even more families will lose access to affordable health care, more children and schools will go without the resources they need to meet the Federal mandates of the No Child Left Behind Act, and more workers will see the American dream slip away when their plant closes.

This is not the right message to send to our families and communities.

Let's show them that we want to make America strong again and that we are willing to invest here at home.

I urge my colleagues to reject this conference report and force the Republican leadership to invest in making America stronger.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, there is time available on the bill, the Labor, Health and Human Services, and Education bill, for those who wish to speak in favor of it. If any of my colleagues wish to do so, I invite them to come to the floor at this time. If there are no speakers in favor of the bill on our time, I intend to utilize this time for a discussion on the PATRIOT Act, which has a very limited amount of time to debate and discuss these issues. But I renew my statement. If anybody wants to speak in favor of the bill, they should come to the floor at this time and we will find time for them to speak.

## USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005—CONFERENCE REPORT

The PRESIDING OFFICER. The order on the floor at this time is to go to the conference report to the PATRIOT Act. So under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3199, which the clerk will report.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, parliamentary inquiry: I understood Senator HARKIN had an hour and a half on Labor-HHS and that I would have half an hour on Labor-HHS, and we would then go to the conference report on the PATRIOT Act.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania is preserved, but it is contemplated that time will be used later in the day.

Mr. SPECTER. Reserved, but later?

The PRESIDING OFFICER. Correct.

Mr. SPECTER. May I inquire when later, Madam President?

The PRESIDING OFFICER. At a time to be determined by leadership.

Mr. SPECTER. Will it be in advance of the 3:30 vote on the Labor-HHS bill?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, while this discussion is going on, if I could also make a parliamentary inquiry.

Once we begin on the PATRIOT Act, is it my understanding the distinguished senior Senator from Pennsylvania is in control of an hour and the Senator from Vermont is in control of an hour?

The PRESIDING OFFICER. The Senator is correct. There will be 2 hours equally divided between the two leaders or their designees.

Mr. LEAHY. Thank you. I appreciate that, Madam President.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, parliamentary inquiry: We are now proceeding for 2 hours on the PATRIOT Act, as the distinguished senior Senator from Vermont has said, with 1 hour under his control and 1 hour under my control?

The PRESIDING OFFICER. That is correct.

The clerk will now report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3199, an act to extend and modify authorities needed to combat terrorism, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours equally divided between the two leaders or their designees.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I encourage anyone who has issues of concern to come to the floor at this time so we may consider them. This is a very complicated Act. We have had some debate already. On Monday, I spoke at some length to describe the Act. On Tuesday, Senator FEINGOLD and I had an extended discussion on the act. I talked to other of my colleagues who have raised questions about it, specifically the Senators who have favored a filibuster. And anybody who has an issue which they wish to raise, I would invite them to come to the floor so we can take up their concerns one by one. It will be illuminating, I think, to other Senators to hear what we are doing on these issues.

At the outset, I will address some issues which have already been raised. One contention has been raised by one Senator on a change in the Senate bill to the conference report on challenging efforts to obtain documents under section 215. The conference report permits the recipient of a 215 order to ''challenge the legality of that order by filing a petition [with the Foreign Intelligence Surveillance Court].'' That provision omits a phrase from the Senate bill which says that they may ''challenge the legality of that order, including any prohibition on disclosure, by filing a petition with the Foreign Intelligence Surveillance Court.'' And the provision is illuminated on, including any prohibition on disclosure.

Now, one Senator has contended that limits the challenge on disclosure, on the so-called gag order, which is not true. Under the conference report, under section 215, you may challenge the order, and that includes challenging a gag order on nondisclosure.

This phrase ''including any prohibition on disclosure'' was stricken by the conferees, and I believe, on a fair representation, on agreement by the distinguished ranking member and me. He is, of course, free to speak for himself. But the reason it was stricken—whether it was with Senator LEAHY's concurrence or not—was we did not want to limit the grounds for the court on reviewing the order.

If you say there is a specification on prohibition of disclosure, it may raise the inference that is the reason the court would challenge legality. But there is no limitation on the challenge

to legality. That would enable the petitioner to challenge legality on disclosure or for any other reason. So the opportunity to stop a gag order is preserved under the conference report.

A second contention which has been raised is that the conference report, on section 215, should not have gone beyond the three criteria for establishing a foreign power. In a closed-door briefing, the Government presented persuasive reasons to have latitude for the court to authorize an order for other tangible things, records, where there was a terrorism investigation and there was good reason to believe these other tangible records were important for that terrorism investigation.

That was not in the Senate bill, but that was a provision that was insisted upon and pressed for by the House, and I thought it was within the realm of reason, and we included it. But the protection of civil liberties is present in the conference report because the court has to find that it is a justifiable request on a terrorism investigation and important to that terrorism investigation.

I have already gone into some detail on the protections in the bill for delayed notice provisions, so-called sneak and peek, where the Senate bill had a 7-day requirement, the House bill had 180 days, and we compromised at 30 days. The Ninth Circuit said that 7 days was presumptively reasonable. The Fourth Circuit has set the time at 45 days. In putting in a 7-day notice, we were not unaware of the fact that was a good negotiating position from which to start. The House made a concession of 150 days, going from 180 to 30. We made a concession of 30 days.

Bear in mind, on the delayed notice, that is where there is a surreptitious, secret search. There has to be justification to get a search warrant to have a delayed notice, and it has to be shown to the satisfaction of the judge that if there was not that delay, the investigation would be impeded.

Bear in mind, for those listening, the traditional safeguard on civil liberty is to interpose an impartial magistrate between the police, law enforcement, and the citizen, so that when you have a delayed notice provision on a showing of cause, that it would impede the investigation if that were not the case.

We have already gone over in some detail in the RECORD the tightening of the provisions on roving wiretaps, where you have to identify the person involved and show that individual is likely to seek to evade the wiretap as a justification.

A key provision we added on the Senate side was the sunset provision, where the Senate bill was a 4-year provision, and the House bill was 10 years. The House wanted to compromise at 7, and we held fast. We had assistance from the White House. The President was personally notified about this. The Vice President participated. We got that 4-year sunset, which is vital, so there will be a review of all of these provisions within the 4-year period.

Bear in mind that the sunset applies to the three controversial provisions in the PATRIOT Act. It does not apply to the national security letters because the national security letters were not authorized by the PATRIOT Act. They have been in existence for decades.

Now I come to a key consideration under the national security letters, where some have objected to the conclusive presumption, where there is a certification as provided for in the conference report by ranking officials that nondisclosure is required because disclosure would hinder national security or would hinder diplomatic negotiations. I have discussed this in the past, but it is worth repeating. The Senate bill that was adopted unanimously, 18 to 0, in committee, and without consent on the Senate floor, had the provision which is virtually identical to the conference report. The Senate bill provides that in reviewing a nondisclosure requirement:

> The certification by the Government that disclosure may endanger the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the certification was made in bad faith.

That language is carried over in identical form in the conference report, with the addition that the conference report is more protective of civil liberties because the certification cannot be made by just anybody in the Government; it has to be made by a ranking official, such as the Attorney General or Deputy or head of the FBI.

Again, let me invite those who have questions on the bill to come to the Chamber so we can have a discussion. If anybody has challenged any of the provisions, I invite them to come and state their concerns. I believe it is in the interest of the consideration by the Senate that we consider the bill in detail so that the Members can understand it and we can deal with specific objections that anyone has.

How much time remains of the hour in the morning session?

The PRESIDING OFFICER. Four minutes 25 seconds remains.

Mr. SPECTER. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Madam President, I should note while the distinguished chairman, the senior Senator from Pennsylvania, is on the floor, that nobody has worked more diligently or with more of an effort to reach out to both Republicans and Democrats than he has, and to the other body. In many ways, he has a thankless job, because he is committed, as I am, to having the best antiterrorist legislation this country can have. He is committed, as I am, to having the best tools for law enforcement. He is committed, as I am, to making sure our liberties as a people are protected.

I am concerned that in the process—not through the fault of the distinguished chairman—many wished to raise further issues involving our liberties, and people were excluded. That is why we are running into a somewhat contentious issue as to whether this conference report should go forward.

Earlier this week, I spoke about how the world changed on September 11, 2001. Nearly 3,000 lives were lost on American soil. In the aftermath of the attacks, Congress moved to quickly pass antiterrorism legislation. The fires were still smoldering at Ground Zero when the PATRIOT Act became law on October 30, 2001, just 6 weeks after that horrible day. I know how hard we worked. I was chairman of the Judiciary Committee when we moved that legislation through.

Security and liberty are always in tension in our free society, and especially so in the wake of the attacks of 9/11. The American people today and the next generation of American citizens depend on their elected representatives to strike the right balance. Preventing the needless erosion of liberty and privacy requires constant vigilance and vision from those whom the people have entrusted with writing the laws. It is the 100 men and women in this body who have to protect the rights and liberties of 290 million Americans.

I see the distinguished Senator from New Hampshire on the floor, Mr. SUNUNU. He made reference yesterday to one of my favorite quotes from one of our Founding Fathers, Benjamin Franklin, in which he reminded Americans that those who give up their liberties for security deserve neither, and I might say in the long run get neither.

I negotiated many provisions of the PATRIOT Act and am gratified to have been able to add some checks and balances that were not contained in the initial proposal. But as I said at the time, the PATRIOT Act was not the final bill that I or any of the sponsors on either side of the aisle would have written if compromise had been unnecessary.

In reviewing the PATRIOT Act this year, Congress once again tried to strike the right balance between the security and the liberty that is the birthright of every American. The public expects and deserves that we will diligently fight to achieve that balance. But regrettably, the PATRIOT Act reauthorization bill that is now before the Senate does not accomplish the goal of balance. The bipartisan Senate bill which the Senate Judiciary Committee, under the leadership of the distinguished Senator from Pennsylvania, and then the Senate adopted unanimously—unanimously, Madam President—reached a better balance. Even that, because it was a matter of compromise, was not a perfect bill. None of us thought it was, and we knew there were matters others insisted be added which we hoped to be improved in conference.

But the Senate bill, such as the PATRIOT Act itself, was a legislative compromise achieved through good-faith, bipartisan negotiations. Chairman SPECTER and I were able to

achieve a good enough bipartisan compromise that we were able to gain the support of all the Republicans and all the Democrats serving on the Judiciary Committee, including Senators who sponsored the SAFE Act. As a result of that bipartisan compromise and bipartisan effort, it passed unanimously in the Senate last July.

Then the Senate leadership very responsibly moved promptly to appoint conferees. But, unfortunately, the other body did not act as swiftly, and we lost several months that could have been used to seek common ground between the two versions of the bill. The House delayed appointing conferees for several months. They pushed us up against the December 31 deadline from the sunsets in the PATRIOT Act.

In fact, it was only last month that the House finally acted to name conferees, and then the conference met only once and that was for opening statements. There was never a working meeting of the conference in which positions were debated and the conferees were able to offer improvements and vote on them. There was no opportunity to debate this conference report at a public meeting of conferees, and no opportunity to offer improving amendments for consideration by the House-Senate conference and votes.

Instead—and this is most regrettable—there came a point where Democratic conferees were shut out of the process. Key negotiations took place only among Republican conferees and the administration, especially the Department of Justice. The earlier informal bipartisan discussions of which I had been involved had been promising. Republicans and Democrats were working to come together, and a good deal of progress was being made.

Much of what is good about the conference report that is before us is owed to those discussions. I can't help but think what a better bill we would have on the floor today had we not been locked out of those discussions.

I thank Chairman SENSENBRENNER for acknowledging this week that we came to those discussions with good ideas for accountability, for sunshine, for increased oversight, for judicial review, and for better standards by which to measure the authorities being considered for the Government. Tentative agreements were also being reached on removing a number of extraneous provisions, particularly from the House-passed bill.

The House version of the bill was loaded with extras, many of which had no connection to fighting terrorism. These provisions were tacked onto the bill as floor amendments, with little or no debate. Some raised very serious concerns. For example, the original House bill made significant procedural changes to Federal death penalty laws, including the opportunity for Federal prosecutors to convene a new jury and effectively get a do-over whenever they fail to persuade a jury to impose a death sentence. Can you imagine what this is saying? A jury comes back and says we cannot agree to give this person the death penalty. One of the greatest things about our jurisprudence system is our jury system. They come back and the prosecutor says: We don't like that; throw them out, bring in a new jury; let's do it over; let's keep doing it over until we get the result the Government wants. This and other provisions were dropped or substantially modified during the early days of bipartisan meetings.

No one will be surprised to hear that after Democrats were excluded, the negotiations took a turn and resulted in a one-sided conference report. The media reported in banner headlines on November 17 that Congress had arrived at a deal on the PATRIOT Act; it is all over, we are finished. A tad premature. In fact, our first draft conference report was widely criticized by Members of Congress in both parties and across the political spectrum. Among the Republican Senate conferees, there was not the minimum support needed.

Since that time, I have continued to work with other Senate conferees to push for improvements. I also reached out to the White House. I was concerned because the administration had gone along with having us excluded and basically stopping the good progress we were making. But I spent time with them; I reached out to them. And I had many discussions with Chairman SPECTER. The chairman and I have joked on occasion that we spend more time talking with each other, more telephone calls back and forth to each other than anybody else. I say that as a compliment to Senator SPECTER because, as chairman, he has worked to include Republicans and Democrats in all these matters. I especially commend the other Senate Democratic conferees—Senators KENNEDY, ROCKEFELLER, and LEVIN. They have been constructive throughout the process.

Since November 17, when it was reported that this process had been concluded, our efforts led to significant improvements in the conference report. We succeeded in making this a better bill than the earlier one being insisted upon before Thanksgiving. The current bill contains 4-year sunsets, not 7 or 10-year sunsets. It no longer contains a provision that would have made it a crime to merely disclose the receipt of a national security letter. The ban against talking to a lawyer without first notifying the Government in connection with the receipt of a national security letter was modified. Imagine that, it basically said you can't talk to a lawyer before you check in with your Government first. We produced some improvements and better balance, and for that, Americans will be better protected.

I believe that there is still more that we can do and should do before finalizing this important measure. There are more improvements that we can make and, I believe, would have made in an open, bipartisan conference. There are more assurances we can include in the law so that the American people can have greater confidence in the law, how it will be utilized and how Congress and the courts will ensure their rights are protected.

This week, along with Senator SUNUNU, Senator CRAIG, Senator MURKOWSKI, Senator HAGEL and others, I cosponsored a bill to provide a short-term extension of the expiring PATRIOT Act provisions so that we can continue working to make additional improvements to the law. I was disappointed to hear that some are saying that unless this conference report is passed in this form, they would stand by to allow the PATRIOT Act provisions like that regarding sharing of important information with our intelligence community to expire. Those of us working to improve the bill are not taking that position. We want the best bill we can achieve and the greater protection of Americans' civil liberties.

In an editorial just yesterday, USA Today chided the Bush administration and its allies in Congress for ''resist[ing] calls for more meaningful protection against invasion of privacy and abuse of civil liberties.'' It supported the proposal that Senator SUNUNU and I have advanced to extend the PATRIOT Act for 3 months to allow more time to fix what is wrong.

I am encouraged that an FBI spokesman is now endorsing the improvements we have been able to achieve over the last month and which the administration had initially opposed. I know that together we can do better.

I did not sign the conference report in its current form. I understand that on Wednesday more than 200 Members of the House, both Republicans and Democrats, voted to recommit this conference report and continue working to improve it. I have spoken to Senators on both sides of the aisle who would like to see us work out a better bill and stronger protections for the American people. I agree and will continue working to achieve that. I believe that the approach Chairman SPECTER and I took of working together in a bipartisan manner is the better approach. I think that had we followed through with that approach we would have reached a better balanced bill and the American people would have more confidence in it.

It is not just the provisions of the law itself, but the way they are administered and enforced and the perception of the American people that matter. Let me give an example. As librarians and others across the country raised concerns about the use of the business records subpoena authority in the PATRIOT Act, Attorney General Ashcroft could have defused the situation from the outset. Instead he was secretive and scared the American people. He would not work with or share information with the Congress. He claimed variously that the provision had not been used with libraries but then obfuscated when asked whether national security

letters were being used in connection with library records. He then classified even the number of subpoenas served upon libraries. When that number was later unclassified, is there any wonder that people remained concerned?

He could and should have worked with Congress to develop better standards and review and oversight. This could have been done administratively or with a legislative correction. Instead, he hoarded the information, raised suspicions and attacked anyone who raised questions about how government power was being used.

I want to express my appreciation, in particular to Chairman SPECTER, but also to Chairman SENSENBRENNER. I do not question their motivation. I respect them. Together they have worked with us to correct several of the problems and concerns about earlier drafts of this conference report. As I have noted, Chairman SPECTER did speak with me and we had many, many discussions about these issues throughout this process. I appreciate his efforts. I regret that we were not able to achieve more of what we had achieved—both the bipartisan process and some of the specifics of the Senate-passed bill.

Both Chairman SENSENBRENNER and Chairman SPECTER share my interest in congressional oversight, and the conference report is a better bill because of it. Throughout the early informal, bicameral discussions and earlier during the Senate's bipartisan consideration of this matter, I advanced several ''sunshine'' provisions to facilitate oversight and ensure some measure of public accountability for how the government uses its powers. The conference report contains most of these proposals, including public reporting and comprehensive audits on the use of two controversial PATRIOT Act provisions—both business record subpoenas and national security letters.

In addition to sunshine provisions, I proposed that we retain the sunset mechanism that worked so well in the original PATRIOT Act. Back in the fall of 2001, Republican House Majority Leader Dick Armey and I insisted on 4-year sunsets for certain PATRIOT Act powers with great potential to affect the civil liberties of Americans. Those sunsets contributed greatly to congressional oversight. The fact that they were included is the reason we are going through this important review and renewal process now.

This year, I proposed and the Senate agreed to 4-year sunsets on three key provisions. The House initially approved 10-year sunsets on two provisions. With steadfastness and hard work on the part of Senate conferees, we were able to achieve the 4-year sunsets that were in the Senate bill. I commend, as well, Representative CONYERS and the House for passing an instruction to the House conferees to abide by the 4-year sunsets. Despite strong majority support in both bodies for 4-year sunsets and even after the House had voted to instruct its conferees, it took weeks to persuade Republican leaders in the House and the administration to accept this commonsense measure.

The enhanced oversight provisions and 4-year sunsets are positive features of the conference report to be sure, but many problems remain. Let me touch briefly on some of the flaws in this conference report that are still troubling to Senators from both sides of the aisle and to those concerned about civil liberties advocates from both the right and the left.

I will start with the conference report's treatment of section 215 of the PATRIOT Act, the so-called library provision. Under Section 215, the government can obtain a secret order that compels access to sensitive records of American citizens, potentially library records, and also imposes a permanent gag order on the recipient.

Before passage of the PATRIOT Act, there were two significant limitations on the FBI's power to seize business records. First, it could be used only for a few discrete categories of travel records, such as records held by hotels, motels, and vehicle rental facilities. Second, the legal standard for obtaining the order was demanding. The Government had to present specific and articulable facts giving reason to believe that the subject of the investigation was a foreign power or an agent of a foreign power.

The PATRIOT Act did away with these limitations. It both expanded what the FBI may obtain with a section 215 order and it lowered the standard for obtaining it. Under current law, the government need only assert that something—anything—is sought for an authorized investigation to protect against terrorism or espionage, and the judge will order its production. Under this provision, what counts as an authorized investigation is within the discretion of the executive branch.

The Senate, in its reauthorization bill, rightly reestablished a significant check on this power. Under the Senate bill, relevance to an authorized investigation is not enough; the government must also show some connection between the records sought and a suspected terrorist or spy. This is a fundamental protection that would not hamstring the government, but would do much to prevent overreaching in government surveillance. Unfortunately, it was stripped out in conference.

The conference report is deficient with respect to section 215 in two other respects. First, unlike the Senate bill, the conference report does not permit the recipient of a section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the first amendment. Contrary to what has been suggested this morning, I fought to keep the Senate language on this point, to make sure that a section 215 gag order could be challenged in court. I thought it had been accepted at one point during the early, bipartisan negotiations. It was removed from the working draft when the bipartisanship ended and Democratic conferees were shut out.

Second, the conference report allows the Government to use secret evidence to oppose a judicial challenge to a section 215 order. At the Government's request, the court must review any Government submission in secret, regardless of whether it contains classified material. This has the potential to turn an adversarial process into a kangaroo court, and will at a minimum make it extremely difficult for the recipient of a section 215 order to obtain meaningful judicial review that comports with due process. I proposed that we at least allow for limited disclosure, with appropriate security protections, if necessary for the court to make an accurate determination. Again, this modest attempt to allow for meaningful judicial review was tentatively accepted during early bicameral discussions, only to be stripped out when the administration stepped in.

The conference report also falls short on its treatment of National Security Letters, or NSLs. These are, in effect, a form of secret administrative subpoena. They are documents issued by FBI agents without the approval of a judge, grand jury, or prosecutor. They allow the agents to obtain certain types of sensitive information about innocent Americans simply by certifying its relevance to a terrorism or espionage investigation. Like section 215 orders, NSLs come with a permanent gag. The recipient of an NSL is prohibited from telling anyone that he has been served.

Proponents of this conference report have made much of the fact that it creates an explicit right to challenge an NSL in court. But even under current law, NSLs can be, and have been, successfully challenged. Indeed, in recent litigation, the Government has taken the position that NSL recipients have an implied right to judicial review. Making this right explicit makes sense, but it does not, in itself, offer significant protection.

That is particularly so given the one-sided procedures set forth in the conference report, which do not allow meaningful judicial review of NSLs' gag order. The conference report requires a court to accept as conclusive the Government's assertion that the gag is needed, unless the court finds the Government is acting in bad faith. This raises serious first amendment and due process concerns. I cannot understand why anyone would insist on provisions that tie the hands of Federal judges and further reduce our confidence in the use of these tools. Yet, despite strong opposition to this provision from the right and the left sides of the political spectrum, House Republicans refused to strip it out.

In an editorial this week, the Washington Post noted the conference report's deficiencies with respect to section 215 orders and NSLs, but called them ''not unsolvable,'' adding ''it's

hard to believe the government is today getting much data through uses of these powers that would be forbidden were they written more accurately.''

Alternatively, Democratic conferees proposed a 4-year sunset on the NSL authority. While a sunset is no substitute for substantive improvement, it would at least have ensured that Congress would revisit this issue in depth. We would have had an opportunity, then, to study how these judicial review procedures worked in practice. Again, House Republicans rejected this path to bipartisan compromise.

The conference report's treatment of the PATRIOT Act's so-called sneak and peek provision is another area of concern. Section 213 of the PATRIOT Act authorized the Government to carry out secret searches in ordinary criminal investigations. Armed with a section 213 search warrant, FBI agents may enter and search a home or office and not tell anyone about it until weeks or months later.

It is interesting to recall that 4 years ago, the House Judiciary Committee took one look at the administration's original proposal for sneak and peek authority and dropped it entirely from its version of the legislation. As chairman of the Senate Judiciary Committee, I was able to make some significant improvements in the Administration's proposal, but problems remained. In particular, Section 213 says that notice may be delayed for ''a reasonable period,'' a flexible standard that has been used to justify delays of a year or more. Pre-PATRIOT Act case law stated that the appropriate period of delay was no more than 7 days.

The Senate voted to replace the ''reasonable period'' standard with a basic 7-day rule, while permitting the Government to obtain additional 90-day extensions of the delay. The conference report sets a 30-day rule for the initial delay, more than three times what the Senate, and pre-PATRIOT Act courts, deemed appropriate. The shorter period would better protect fourth amendment rights without in any way impeding legitimate Government investigations. The availability of additional 90-day extensions means that a shorter initial time frame should not be a hardship on the Government.

This conference report also is loaded with extraneous provisions that have nothing to do with the expiring PATRIOT Act authorities, or even with terrorism.

I am particularly concerned that the conference report modifies habeas corpus law, a highly controversial move that is wholly improper to consider in this context. The changes to habeas added here at the insistence of a small number of Republican conferees have nothing to do with terrorism or even more general tools of federal enforcement. These changes were not included in the PATRIOT Act reauthorization bill of either the House or the Senate. They were added late in the conference process, after all Democratic conferees were shut out of discussions. They received no serious consideration by either body's Judiciary Committee, and have been strongly opposed by the U.S. Judicial Conference and others. And yet these modifications could have very serious consequences—possibly unintended consequences—in habeas cases that are already pending in California and other States.

The conference report includes a version of the Combat Methamphetamine Epidemic Act of 2005, a bill that, like the habeas provisions, is extraneous to the PATRIOT Act reauthorization. The version in the conference report contains troubling provisions that I wish could have been debated fully before we were forced to vote on them in this context. A portion of the bill lowers the threshold of the amount of money or drugs necessary for a defendant to qualify as a ''kingpin'' and to therefore be subject to a mandatory life sentence. This is an excessively harsh sentence for a pool of people who are not truly drug kingpins. No one has sympathy for producers and dealers of methamphetamines, but the punishment must fit the crime, and in these cases, mandatory life is disproportionate.

During early negotiations on the conference report, I fought to strike title II of the House bill, which included provisions that vastly expanded the Federal death penalty and removed important protections for the criminally accused. I already noted one particularly problematic provision, which allowed Federal prosecutors a ''do-over'' whenever they failed to persuade a jury to impose a death sentence. Another provision was designed to carve out a category of homicides that would be eligible for capital punishment despite the fact that the defendant did not himself kill, intend to kill, or knowingly create a grave risk of death. Yet another provision would have substantially narrowed the jury's power to consider, as a reason not to impose the death penalty, the fact that other equally guilty offenders in the same case were escaping such punishment. These extraneous and ill-considered provisions were ultimately dropped from the conference report, for which we should all be grateful.

House Republicans did, however, insist on keeping other death penalty provisions in the conference report. The most objectionable of these will revive a small group of pending death penalty prosecutions for aircraft hijacking murders committed in the 1970s and 1980s. Specifically, it is designed to overrule the district court decision in United States v. Safarini, which struck the death penalty for a 1986 hijacking offense on the grounds that the Federal Death Penalty Procedures Act of 1994 could not be retroactively applied to a pre-1994 crime, at least absent clear congressional intent to do so.

To my knowledge, Congress has never enacted death penalty legislation intended to allow the execution of a tiny number of known offenders for crimes they are alleged to have committed from one to three decades previously. Whether the Government can ultimately persuade the courts that this does not violate the letter of the Ex Post Facto and Bill of Attainder clauses, it certainly violates their spirit. It is telling that the Department of Justice, in its testimony before the House Judiciary Committee, strongly recommended adding in a severability clause, in case this provision was ultimately held invalid by a court of law. I share the Department's skepticism regarding the constitutionality of this wrong-headed provision, and deeply regret its inclusion in the conference report.

The reauthorization of the PATRIOT Act must have the confidence of the American people. I believe what we passed in the Senate would have the confidence of the American people. This conference report would not.

Congress should not rush ahead to enact flawed legislation to meet a deadline that is within our power to extend. We owe it to the American people to get this right.

The bipartisan bill I introduced with Senator SUNUNU and others to provide a three-month extension for the expiring provisions of the original PATRIOT Act will give us the time to achieve the best bill for all Americans.

This is a vital debate. It should be. These are vital issues to all Americans. If a brief extension is needed to produce a better bill that would better serve all of our citizens then by all means, let us take that time.

We should not finalize the conference report on the PATRIOT Act without fully addressing the privacy and civil liberties concerns that remain in the conference report. It is our job in Congress to work as hard as it takes to protect both the security and the freedoms of the people we represent.

A nation built on freedom, as America is, can do better, and if we work together, we will do better.

Mr. President, I yield to the distinguished senior Senator from California 5 minutes.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member very much. I would like to make a brief statement. I am not sure I can do it in 5 minutes. I may have to ask unanimous consent for a little additional time.

Today the Senate is taking up the conference report to accompany the PATRIOT Act. I am the original Democratic cosponsor of the unanimously passed Senate bill, as well as cosponsor of the Combat Meth Epidemic Act and the Port Security Crimes Act, both of which are incorporated in the conference report. Thus, it is only after careful consideration that I have determined to vote against cloture tomorrow, and I would like to take a moment to explain why.

I fear that it is going to be a very divisive and partisan vote tomorrow. The USA PATRIOT Act has been a valuable tool in our effort to combat terror, but it has also become a divisive point of contention between Democrats and Republicans and, as a result, doesn't have the broad support of the American people. Thus, it is extremely important that every effort be made to reach an accommodation before debate becomes contentious and even more partisan.

Outside the beltway, the USA PATRIOT Act has come to be terribly misunderstood. Many believe it is related to Guantanamo Bay and the detention of prisoners. Others believe it authorizes torture or the secret arrest of Americans. It does none of these things.

At the same time, some have irresponsibly sought to characterize anyone who seeks to improve or criticize the law as somehow playing into the hands of the terrorists. They have implied that the USA PATRIOT Act will expire in its entirety on December 31, and we will be left with no defense against terrorist acts. This, too, is untrue.

What is true is that when it comes to national security, it is so important to build consensus. Our efforts to combat terror in general, and the authorities in the PATRIOT Act specifically, are diminished in effectiveness if they are not seen by most Americans as the product of bipartisan effort in Washington.

I believe our Nation's safety requires this body to reach compromise on this bill.

That is why, when Senator SPECTER asked me to join him in introducing the Senate bill, I agreed. I want to say something. Senator SPECTER has been a wonderful chair of the Senate Judiciary Committee. He listens, he is open, he is smart, he is legally pristine, and he has been a fine leader for the committee.

I believed Senator SPECTER, working with Senator LEAHY and the members of the Judiciary Committee, would be able to build consensus, to reach compromise, and deliver legislation that the American people could be confident represented bipartisan agreement, not politics.

My confidence in Senators SPECTER and LEAHY and my colleagues on the committee was well placed. In July, the committee unanimously reported the bill favorably, and shortly thereafter the Senate, again unanimously, passed the bill.

Having a USA PATRIOT Act reauthorization bill, supported by Senators CORNYN and SCHUMER, KYL AND FEINGOLD, HATCH, KENNEDY, and every single Member of this body gave me great comfort, and I believe was an important step toward healing the divisive partisanship that has come to be associated with the bill.

Unfortunately, that spirit seems to have ended. The conference report process, instead of bringing unity, appears to have had the opposite result: dividing my colleagues by failing to adequately take into account differing views on elements of the bill. The simple result is that in the next day we are likely to divide into two camps.

In the end, of course, we will extend the PATRIOT Act's expiring provisions in some form because despite the rhetoric, nobody doubts that the provisions will be extended. What is at issue is whether and to what extent modifications are made.

What will be lost is the much needed sense that the PATRIOT Act represents a broad consensus. That may be more important than the specific details of provisions and issues. I believe it is. The bottom line is that having a consensus bill is of paramount importance. So I rise today because I still believe——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. Mr. President, I ask the Senator from California how much more time she requires.

Mrs. FEINSTEIN. May I have 5 minutes more, please.

Mr. LEAHY. Mr. President, I yield 5 additional minutes to the Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Vermont.

Yesterday, I urged Majority Leader FRIST to work as hard as he can to bring people back to the table before the vote. The day before, I urged Attorney General Gonzales to work with Senators LEAHY and SPECTER toward the same end. I have said the same thing to Senators SPECTER and LEAHY personally, and today I renew this request.

Press reports today quote insiders saying that efforts to reach compromise have been abandoned. Some seem to believe that a filibuster fight would be an opportunity to force Democrats into bad votes, thus securing partisan advantage in upcoming elections.

Others seem to believe that the American people can be tricked into thinking that Members such as Senators CRAIG, SUNUNU, MURKOWSKI, HAGEL, OBAMA, DURBIN, FEINGOLD, SALAZAR, and KERRY, all of whom signed a moving letter yesterday explaining why they would vote against cloture, are somehow helping terrorists. Still others, counting the votes, think the opportunity to embarrass the administration is too good to miss.

I reject these positions. Instead, I ask respectfully that we get back to work.

I strongly urge my colleagues to carefully read the letter sent by this group of Senators. While I do not agree with every one of their points, the key issues they raise have merit and should be addressed.

The most important of the issues they raise involve section 215—the so-called library provision—and provisions governing judicial review, particularly of national security letters. I believe on these two issues, as well as some of the others, continued good-faith negotiation will result in solving the problems in a way that will be acceptable to a vast majority of this body and will not in any way diminish the ability of our law enforcement and intelligence organizations to do their job.

Congress has a long and honorable tradition of putting aside party politics when it comes to national security. We were able to do that in the Senate with this bill. So it is critical that this approach be carried forward to the end.

I believe the unanimously passed Senate bill represents that compromise. And while I understand that some accommodations must be made to the House, these cannot be so great as to destroy the consensus in the Senate that we have built.

I know that Senator SPECTER and Senator LEAHY have worked long and hard. I also know that Senator LEAHY made some compromises to vote for the Senate bill that passed this body unanimously. I asked Senator SPECTER and Senator LEAHY to please try once again to achieve the compromise that we had when the Senate bill passed this body unanimously.

I believe national security deserves no less, and I believe the distinguished leadership of the Judiciary Committee, Senator SPECTER and Senator LEAHY, can achieve this if given the opportunity and if the leadership puts its clout behind bringing the House on board as well.

Absent that, I will vote for the Sununu legislation to provide an element of time. I also ask that the meth bill, as well as the port security bill, be added to his legislation. I thank the ranking member and the chairman and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, while the Senator from California is on the floor, I want to thank her for the complimentary comments, and I want to thank her for being a very productive and constructive member to the Judiciary Committee not only this year while I have been chairman but for many years. She and I had a 30-minute conversation yesterday by phone, after working hours, talking about these issues. If there are any specific points that trouble the Senator from California, I would be glad to discuss them with her, not only to try to deal with any issue she has, but I find that is a good method for acquainting all the Senators with what is at issue in the bill.

I note there were no specific issues raised, and I am not asking that specific issues be raised. I heard what the Senator from California said, and I agree with her about the point of consensus. Senator LEAHY and I have established a superb relationship, with bipartisanship, which has made the committee function this year, I think, very successfully. I do not think anyone could fault our efforts to come to terms. We just could not do it with the

House of Representatives, in a bicameral system, as to what we could accomplish.

I congratulate Chairman SENSENBRENNER for going the extra mile. But if we could just run it through the Senate without a bicameral legislature, it would be a little different. Then we would have the Senate bill.

But there is one thing I would disagree with the Senator from California about—when she says we are going to have a bill. We may not have a bill. The majority leader has said he is not going to go along with the 3-month extension. There is a real issue as to whether the House will take up a 3-month extension. We face many situations in the closing days of the Congress where the House finishes its work and departs. We have taken a lot of House bills where we had no choice, when they were gone. But we may well not have a 3-month extension, and this bill may well expire. That is an alternative which has to be considered by every Senator. I believe there are some Senators who would say they will take the responsibility for having the bill expire, the act expire. Some will take that.

If cloture is not invoked and somebody says, Arlen Specter, go back and work on it some more, I will salute and I will be a good soldier and I will go back and work on it some more. But there are going to have to be a lot of moving parts coming into place before there is going to be an extension beyond December 31. I think people ought to consider that.

When the majority leader says he is not for it—if he will not take it up, there will be none. Even if he does take it up and even if we pass it, which we might not—if it is not taken up by the House, there will be none. So I believe we have to consider the alternative that there will not be a bill if this bill is not passed. That brings me back to my point about the specific objections.

I see Senator SUNUNU in the Chamber, and I am anxious to have a colloquy with him, if he is willing to do so. But I just wanted to thank the Senator from California and raise those considerations.

Mrs. FEINSTEIN. I wonder, Mr. President, if you will allow me a brief response to the chairman and manager of the bill.

Mr. SPECTER. May I suggest it be on the time of Senator LEAHY.

Mrs. FEINSTEIN. I don't want to take Senator LEAHY's time.

Mr. LEAHY. How much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 38 minutes. The Senator from Pennsylvania has 45 minutes.

Mr. LEAHY. And the last colloquy with the Senator from Pennsylvania—

The PRESIDING OFFICER. It was on the time of the Senator from Pennsylvania.

Mr. LEAHY. I yield to the Senator from California.

Mrs. FEINSTEIN. I very much appreciate the conversation we had last night, where I tried to share this view. I thank the Senator for listening.

It seems to me, and Senator LEAHY will certainly correct me if I am wrong, that the crux of the problem revolves around two sections of the bill. It seems to me there is more than one way to solve that problem. I just think if the two of you got together, and the chairman of the Judiciary Committee of the House, that there might be consensus reached. I believe the rest of the bill certainly can go into play. I do not see any problems with those, on my part. But I think Senator LEAHY, who has participated in this—let me say another thing.

I believe there is a real problem in these conferences where people get shut out at certain points. It is counterproductive. I would urge that not happen in the future because when it does, I believe it conditions, negatively, the entire remainder of the conference.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, on my time, if the Senator from California would identify the two sections she is concerned with, I would appreciate it.

Mrs. FEINSTEIN. It is the national security letters and section 215.

Mr. SPECTER. I thank the Senator from California and yield the floor.

Mr. LEAHY. Mr. President, I also thank the Senator from California for her involvement. Nobody wants to kill the PATRIOT Act by this action. I know our distinguished majority leader has said he would oppose the extension. We will see what happens in that vote. Many of us say we will oppose things, and they happen. I am talking about the 3-month extension. Even if the other body has left, they always leave back a couple of people who can do things by unanimous consent.

The Senator from New Hampshire is in the Chamber. How much time does he wish?

Mr. SUNUNU. May I have 4 minutes to touch on a few points?

Mr. LEAHY. I yield 4 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SUNUNU. Let me begin by addressing a concern that was just raised. It was suggested that if cloture is not invoked tomorrow that there might not be a 3-month extension and the expiring provisions of the PATRIOT Act, which are now law, would effectively be killed. Why would there not be a some short-term extension of the PATRIOT Act of 3 months or 6 months? It would be because some Member of Congress—I hope no one in the Chamber at the moment—but some Member of the House or Senate thinks that we will be better off without a PATRIOT Act, rather than with a 3-month extension.

I suggest, No. 1, that is absolutely irresponsible, and, No. 2, that anyone who would make that argument is suggesting that the President, Chairman SPECTER, and the ranking member, Senator LEAHY, are insincere in their suggestion that the tools provided to law enforcement under the PATRIOT Act are extremely important tools that law enforcement genuinely needs.

Anyone who would be willing to oppose a temporary extension and prevent some elements of the PATRIOT Act to remain in force is either behaving irresponsibly or they are arguing—and it may be a heartfelt belief on that person's part that current law actually is not as important as they had previously suggested. I believe everyone can decide for themselves what they think the likely option, the almost certain option would be if cloture is not invoked.

With regard to the substantive concerns, there are many. But let me first address the issue of the national security letters. Under the conference report, there is no meaningful judicial review of a national security letter or its accompanying gag order because the threshold that has to be met by an individual or a business served with a national security letter is a showing of bad faith on the part of the Federal Government. You will never win that argument in court. You will never be able to meet that high a threshold. Therefore, even in the most egregious cases, you will never overturn the national security letter or its accompanying gag order.

The suggestion that this concern is moot because similar language was in the Senate-passed version is irrelevant because that Senate-passed version also included a real standard on Section 215 subpoenas, which required the individual to be connected to a terrorist or spy; it included a judicial review of the gag order associated with a 215 order; and it included a 7-day notification period for delayed notice, or sneak and peak search warrants. All of this, which again, we approved in the Senate package, has been scrapped.

When we saw the Senate bill, many of us were not happy with that national security letter language. But in that bill we had other substantial gains for civil liberty protections, and those have been left at the doorstep by this conference report. To come back and say to us now that our concerns about national security letters do not count because they were part of some previous compromise that is no longer before us avoids the substantive concerns we have raised.

There are other problematic provisions that were put into the bill in conference that were not part of the Senate bill. Under the conference report, you have to tell the FBI if you want to challenge a national security letter or 215. That means you have to tell the FBI you have hired an attorney and you have to tell the FBI the name of the attorney.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SUNUNU. I ask for 1 additional minute.

Mr. LEAHY. I yield an additional minute.

Mr. SUNUNU. I am not a lawyer. I am an engineer by training. But I know of no other provision in law where that is required. Even if it is required in a few very limited cases in law, I believe this will provide a chilling effect on our right to counsel. I believe such a requirement is an unnecessary limitation on our civil liberties.

I have one final point about the arguments made by the administration and by some here in the Senate. The suggestion was made that changes do not need to be made because there has been no evidence of abuse of the existing law. We do not seek to insert protections for civil liberties in law because we do not trust a particular person. The Framers enacted the fourth amendment to the Constitution, not because they didn't trust George Washington but because they wanted to protect these freedoms in perpetuity.

I yield the remainder of my time.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the Senator from New Hampshire is wrong on what this law provides. When he picks up the national security letter and says it may be challenged only on the bad faith requirement, he is wrong. There may be a challenge and the national security letter may be quashed under the express terms of the conference report if it is unreasonable or oppressive. The national security letter was not created by the PATRIOT Act, but we took this occasion to put civil liberty safeguards in this bill on the national security letter by eliminating the prohibition against consulting with a lawyer. Today, if you get a national security letter, you can't talk to a lawyer.

The conference report gives an explicit right to talk to a lawyer. There had been a provision that before you talked to a lawyer you had to tell the FBI who the lawyer was. Senator LEAHY raised an objection to that point, and he was right, and it was corrected. Yet if the FBI asks you who your lawyer is, then you have to tell them. But you don't have to go to the FBI first and disclose who your lawyer is.

But there are significant changes in the conference report beyond the bad-faith issue that the Senator from New Hampshire talks about, and we ought to recognize that. But this conference report goes a long way to protect civil liberties by specifically saying you can go to a lawyer and get it quashed for certain reasons.

As to the bad-faith requirement, the Senator from New Hampshire skims lightly over the fact that the Senate bill was even tougher than the conference report by going on to other sections. That is obscuring the issue. Take up the bad-faith requirement. I already read it a couple of times, this morning and on Monday and on Tuesday. But the Senate language was identical.

But the conference report is more protective of civil liberties because, while the Senate bill said the Government had to certify anybody in the Government, the conference report requires a ranking official.

But the Senator from New Hampshire then skips over to the 7-day requirement on notification.

There is already a protection of civil rights because the court has to make a finding that the delayed notice is important to the investigation, or will hinder the investigation.

To have the Fourth Circuit saying ''45 days'' when you have the current law saying ''reasonable,'' which could be anything, as a bargaining matter, we come with the Senate report at 7 and the House is at 180. We compromised at 30, and I think that is not unacceptable. Is it what ARLEN SPECTER would like, or what Senator SUNUNU would like?

But when the Senator from New Hampshire talks about getting an agreement where the House and Senate disagrees and you have an impasse, you don't have a bill.

Chairman SENSENBRENNER went the extra mile. Is he going to go further? That is a big question? If there is an impasse, there is no bill.

To repeat, if cloture is not invoked, we don't have a bill, and I will go back to work. I will go back to the drawing board, and I will try to get a bill. But that doesn't say that there will be a bill when the majority leader has said he is not going to take up an extension and you have to get agreement from the House.

On the section 215 provision, the conference report does give additional leeway beyond the three-pronged test. But we still have judicial review which you do not have today; and that is the traditional way of interposing the impartial magistrate between the citizen, on the one hand, and the law enforcement officers on the other. There have to be many hurdles gone through to get a terrorism investigation authorized. It is only a terrorism investigation where the court can allow the latitude to get somebody's records where it is important to the investigation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I ask to be yielded 1½ minutes.

Mr. LEAHY. I yield 2 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SUNUNU. Mr. President, I want to be courteous to my colleagues who wish also to speak, so I will briefly address a couple of the points raised.

First, I never suggested that the ability, allowed under the conference report, to hire a lawyer to challenge an NSL is an improvement. I am for that. I don't know that is some great show of benevolence on the part of the Federal Government that now for the first time you will actually be allowed to contact a lawyer if you are served with a national security letter. So I appreciate that. But this is about much more than that simple fact.

Judicial review is important. But to have a meaningful judicial review you have to have at least a threshold, that the recipient of a NSL may actually be able to achieve. I suggest that the showing of oppressive or abusive behavior by the Federal Government, the showing of bad faith, is simply too high a threshold to make that judicial review process meaningful.

Finally, I come back to the suggestion that if this bill fails on cloture, we will not have a bill, and portions of the PATRIOT Act and the lone wolf provision will expire. I do not take that to mean that the Senator from Pennsylvania will not support a 3-month extension. I hope and I believe that he would in such an event. I hope and I believe that the House would support such an extension of the expiring provisions because having them remain in place on a short term basis of 3 months or 6 months, is much more important than having these provisions expire.

If those who do not agree with my opposition to cloture on the conference report really think they will have no bill, then obviously their arguments that the PATRIOT Act is a very important piece of legislation don't have credibility.

I yield the floor.

Mr. SPECTER. Mr. President, when the Senator from Hew Hampshire talks about a high bar for upsetting a national security letter, he overlooks the provision that you can quash, if it is unreasonable.

If the judge finds it is unreasonable, is that too high a bar?

Mr. SUNUNU. Mr. President, I will address the question and the concern. I think the threshold is too high. But I would prefer that time be provided to others—there are a number of others on the floor—who support my position and oppose cloture.

Mr. SPECTER. On my time, I redirect the question to the Senator from New Hampshire who says the bar is too high.

Is it a high bar to quash a national security letter, if a court finds it is unreasonable?

Mr. SUNUNU. Mr. President, that is not the only basis on which these will be reviewed. The national security letter and the gag order require showing of bad faith on the part of the Government. I believe that standard as written in the conference report will prove to be too great of a threshold for individuals or businesses to have any reasonable chance of meeting. We have had 30,000 national security letters issued. To the best of my knowledge, none of them have been overturned. I think we owe the public a clear, reasonable, and pragmatic standard in order for those to be overturned. I do not believe this conference report includes such a standard.

Mr. SPECTER. Mr. President, the Senator from New Hampshire is mixing apples and oranges. When he talks about bad faith, he is talking about disclosure. When he talks about a motion to quash a national security letter for its being unreasonable, it may be quashed on that ground alone.

I am not going to ask the question again. I asked it twice. On neither occasion was there an answer that it was too high a bar to quash a national security letter if it is unreasonable. I will let my colleagues decide that who are voting on this.

If the court has latitude to quash the national security letter because it is unreasonable, this is a fair standard.

When the Senator from New Hampshire—if I could have his attention before he leaves—talks about 30,000 national security letters, I already said on the floor that is the Washington Post. But that is not accurate. I have invited my colleagues, and I will not ask the Senator from New Hampshire if he has sought a classified briefing. But I can't tell you what the answer to that is. Although I have asked the Department of Justice to release information to show the Washington Post statement of 30,000 is out of line and not accurate, I ask my colleagues not to vote on this bill based on what they read in the Washington Post.

Where you have a contested issue—and I put this before the Senate on Monday—go to the Department of Justice, they will give you a classified briefing and tell you what the facts are. Don't vote on this bill by what you read in the Washington Post.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, one concern I have is, the Senator from New Hampshire is correct, you have an extraordinarily high bar in trying to overturn a gag order. It is extraordinarily high and raises in my mind some significant first amendment questions.

As to the 30,000, it is difficult to get an answer to this because the Justice Department has been remarkably tightlipped. They have not answered questions. Many times in the normal course of oversight they would not answer the questions. I don't know how many of my letters that have gone down there have been unanswered on these issues. It is extremely difficult to get an accurate and complete answer from this Department of Justice. That is one of the reasons we are so concerned.

I might say, the idea that we have to have a classified briefing which can't be questioned and is totally in the hands of the Department of Justice is one of the things that concerns Americans in the PATRIOT Act.

I yield 1 minute to the distinguished Senator from Wisconsin and 4 minutes to the distinguished Senator from Oregon.

Mr. FEINGOLD. Mr. President, the point the chairman was discussing with the Senator from New Hampshire, it is the Senator from Pennsylvania who is mixing apples and oranges on the NSL requests.

Let me point out these proceedings where you are supposed to challenge an NSL—they are in secret. They are in secret. The person challenging the NSL cannot see what the Government is arguing. So it is all well and good to say there is review of the NSL, but the challenge is not done in a fair proceeding. It is the chairman mixing apples and oranges.

This is the second time the chairman has urged me to get a classified briefing. I did and it did not change my view of the underlying points being made, whether the Washington Post was completely accurate or not. I had that briefing and I tell you I didn't have the same reaction the Senator had.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. On my time, what apples and oranges am I mixing, I ask Senator FEINGOLD?

Mr. FEINGOLD. By not acknowledging the difference of the kinds of proceedings that take place with regard to an NSL and normal criminal proceedings. Those are different kinds of proceedings.

Mr. SPECTER. Of course they are different.

Mr. FEINGOLD. That makes a difference on how one regards the ability to challenge.

And the secrecy, the person challenging the NSL cannot even see what the Government has. That is very different than a normal criminal proceeding.

Mr. SPECTER. Mr. President, I think the Senator from Wisconsin does not know the difference between an apple and an orange. This is not a criminal proceeding. If you have a criminal proceeding and a search warrant, you go into a court with a motion to quash and you put on witnesses, although some of those may be in camera.

I was a district attorney for 8 years and there are occasions where they are in camera. If there are national security issues involved, they are consistently in camera on a variety of procedures.

To say that I am mixing apples and oranges when you compare this to a criminal proceeding simply indicates the Senator from Wisconsin does not know the definition of an apple.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 4 minutes.

Mr. WYDEN. I have enormous respect for Chairman SPECTER and Senator LEAHY, and will say what is so troubling about this particular period: Virtually every single day, almost every day, we see another report about the administration trying to skew the bounds between fighting terrorism ferociously and protecting the civil liberties of the people of our country.

The front page of the paper today: Secret Pentagon databases are kept. Essentially, the administration, when somebody digs it up, finds out that all of this is being done—again in secret.

As I have said many times, the two concepts—security and civil liberties—are not mutually exclusive, and when crafting legislation, they be approached in tandem. In fact, it is my view that the promotion of American security and the protection of Americans' rights and freedoms should be mutually reinforcing principles. If one goal is abandoned for the other, or one goal carries less importance than the other, then a new solution must be found.

A new solution is certainly needed in this case. The PATRIOT Act conference report reflects the wholesale rejection of this two-pronged approach and relegates civil liberties to second class status.

The conference report strips out those Senate provisions that helped ensure good Congressional oversight. It limits the ability of law-abiding Americans to defend themselves from possible PATRIOT Act abuses. These changes do not make the PATRIOT Act a more effective tool for fighting terrorism; ultimately, they leave Americans more vulnerable to violations of privacy and the PATRIOT Act more susceptible to abuse.

I am not going to go through the whole bill, but would like to highlight one issue in particular that Oregonians have raised with me—National Security Letters. National Security Letters authorize the FBI, without judicial approval, to obtain Americans' sensitive information.

Senator SPECTER has enormous technical legal skills, and I am very concerned about the national security letters, as well. I sit on the Intelligence Committee. Of course we cannot get into any aspect of what goes on in those debates, but it seems to me any way you parse the legal language with respect to the conference report and the national security letters, it is not balanced. It is, once again, skewed against the rights of the individual.

The Washington Post recently reported that the FBI is using National Security Letters to go on fishing expeditions, and the FBI issued at least 30,000 NSLs in the last year alone. In these fishing expeditions, the FBI reportedly casts a wide net, gathering personal information on innocent Americans.

The Post article describes the experience of George Christian of Connecticut. Mr. Christian manages digital records for three dozen Connecticut libraries and reportedly received an NSL seeking ''all subscriber information, billing information and access logs of any person'' who used a specific computer at a certain library branch. The FBI reportedly instructed Mr. Christian that he could never talk to anyone about the request. In spite of this apparent gag order, he decided to challenge the NSL. The court files are

sealed, but the Post reported that the judge described the basis for the NSL as laughably vague.

With the FBI issuing at least 30,000 NSLs a year, how many other Americans like Mr. Christian are out there? How many Americans have had personal information turned over to the federal government—who they've called, where they've traveled, what they've bought—because someone didn't have the time or the money to fight an unreasonable NSL? Who is going to have access to all the information the FBI has reportedly gathered that may now be in vast government databases? If any one NSL can be used to gather information on thousands or even tens of thousands of Americans, one can only guess how many Americans have already been affected by these fishing expeditions.

As pointed out in the Post article, the FBI acknowledged from the beginning that the NSL was an incredible power that had to be used judiciously. As one FBI employee stated in a 2001 memo sent to all 56 field offices:

> NSLs are powerful investigative tools, in that they can compel the production of substantial amounts of relevant information . . . However, they must be used judiciously.

Thirty thousand NSLs a year doesn't sound judicious to me. And 30,000 NSLs a year shouldn't sound judicious to the citizens of Oregon.

The reporting on NSLs cries out for proper congressional oversight to ensure that abuse of NSL powers does not occur. For starters, Americans must be armed with the necessary tools to challenge unreasonable National Security Letters. But the conference report further inhibits the ability of Americans to challenge NSLs.

More specifically, the conference report requires an NSL recipient who consults with an attorney to give the name of the attorney to the FBI. Talk about a chilling effect on the right to counsel! I am not aware of a provision like this existing in any other area of law.

For instance, the conference report imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order. So even if the NSL recipient believes that the letter is unconstitutional and that his rights have been violated, he could go to jail for 5 years.

It is provisions in the conference report like these, which expand the federal government's powers and make it more difficult for ordinary Americans and Congress to challenge abuses of that power, that give me serious pause. And there are not just one or two of them. Look in the sections concerning requests for business and library records, roving wiretaps, sneak and peak searches, and of course NSLs: there is a recurring pattern here and it is very disturbing.

There are those who claim that there have been no abuses of the PATRIOT Act. With all due respect, that is, at best, disingenuous. At least two courts have held that the FBI used its NSL power in an unconstitutional manner.

And remember, we are talking about powers that include gag rules—so how many others are out there challenging PATRIOT Act activities in silence?

There are those who will say, ''I haven't done anything wrong and I have no problem with the government doing what needs to be done to fight terror—if they end up with my personal information, but don't use it against me, so be it.''

I wonder how that innocent person would feel if the FBI were watching over his shoulder as he surfed the Internet, standing by his side and noting whom he calls and when, or standing next to him at the cash register as he pays for a anniversary gift for his wife. Because I'll bet he wouldn't be ok with this. And while technology has made surveillance less obvious, this is exactly what some of the more controversial PATRIOT Act powers allow the government to do with only the vaguest of reasons and little or no oversight.

The obligation to demonstrate that the government is not abusing an individual's rights should not be on the shoulders of that individual. That burden should be squarely on the government's shoulders. The 9–11 Commission endorsed this notion, recommending that ''the burden of proof for retaining a particular governmental power should be on the executive . . . .''

With respect to the overall bill, in our part of the world we are terribly concerned about what is going on with methamphetamine. Senator SMITH and I have worked very closely on a bipartisan basis with our colleagues to get a good anti-meth program. The administration comes along at the 11th hour and politicizes this meth issue at a time when we could pass it with a 100–0 vote.

As a cosponsor of the Combat Meth Act, I intend to continue to fight for the passage of the meth bill but not as a part of this badly flawed legislation. And while my decision was made more difficult by the fact that legislation addressing the meth crisis was included in the conference report, I will be opposing the conference report and opposing cloture.

I want it understood I am anxious to work with my colleagues on a bipartisan basis, but given this particular climate and the need to constantly keep the teeter-totter balance—fighting terrorism aggressively, protecting the civil liberties of our country—it seems to me we have to be very judicious with respect to how tools such as the national security letter are being used. Any way you cut it, my colleagues, I don't see that taking place.

So more time is needed to make the necessary corrections to the conference report to ensure that the PATRIOT Act Reauthorization promotes Americans' security and protects their rights and freedoms. The Senate should not be coerced into accepting a piece of legislation that allows the Federal Government to reach, unchecked, further into the personal life of every American, with fewer means of appeal and less oversight.

I therefore urge my colleagues to support the proposal submitted by Senator LEAHY and Senator SUNUNU extending the expiring provisions of the PATRIOT Act for 3 months. I ask unanimous consent that my statement be printed in the RECORD.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, without getting into methamphetamine, where we have accommodated the interests of the Senator from Oregon and other Senators by putting them on this bill because it is a measure which ought to proceed, let me ask the Senator from Oregon, when he complains about the national security letters, I ask whether the conference report is not a big step over existing law? National security letters have been in existence for decades.

Mr. WYDEN. National security letters——

Mr. SPECTER. Mr. President, I have the floor. I have not propounded the question yet.

National security letters have been in existence for decades. While we take up the PATRIOT Act, we have used this occasion to add protections so that whereas today they are secret, we have explicitly provided the right to consult with a lawyer. I don't disagree there ought to be that right without providing it explicitly. Somebody ought to be able to go to a lawyer, but if they get a national security letter today, they are betwixt and between.

Originally, this legislation had a requirement you had to tell the FBI who the lawyer was. The FBI wanted that provision because there are some lawyers who have been alleged to be involved in collusion with the terrorist organizations. As I said earlier, Senator LEAHY objected to that and I agreed that you ought to be able to hire your own lawyer. If the FBI asks, okay, it is a fair request and you can tell them.

Then we provided you can quash those national security letters if they are unreasonable. If you go to a judge and you say, this is unreasonable, now the standard of reasonableness is all over the law, what a reasonable man would do. Is that too high of a bar? There is judicial review.

You come to the point of disclosure where you have the issue as to whether disclosure will impede the investigation. All through the law, there are limitations on disclosure where there is a legitimate law enforcement concern about not impeding an investigation. The determination as to whether you have a national security issue or are impeding diplomatic relations is a pretty touchy subject. We passed a Senate bill with a provision that on national security letters—until now there has been no challenge possible at all.

We put statutory challenges in our Senate bill, and renewing a nondisclosure requirement, the certification by the Government—anybody in the Government, no delineation as to who—''that disclosure may endanger the national security of the U.S. or interfere with diplomatic relations shall be treated as conclusive unless the court finds the certification was made in bad faith.'' That is a pretty tough standard. But that was the Senate bill. Then in the conference report, we kept it. The Senator from Oregon was one of 100 Senators who did not object to the PATRIOT Act being passed by unanimous consent. But in the conference report we said let's do a little more here. Before you have a certification, let's make sure it is somebody who has a lot of responsibility—the attorney general, Director of the FBI, deputy attorney general, et cetera.

My question to the Senator from Oregon is this: Aren't those at least somewhat meritorious in protecting civil liberties? Should we have gotten in conference—in a tough conference where Chairman SENSENBRENNER, head of the House Judiciary Committee, went the extra mile—should this bill go down? Should this bill be filibustered because of that provision?

Mr. WYDEN. As my friend knows, I think virtually everything the Senator from Pennsylvania does is meritorious. I am troubled, though, about where we are with the national security letters. Yes, they existed for years, but they were greatly expanded with the PATRIOT Act. We know that. I am also concerned as we consider this kind of legal language that there will be a chilling effect on the exercise of the right to counsel, and I get that again without being able to go into the details because of my examination of the issue. I am not going to debate the Senator's good-faith efforts; they have always been to try to strike a balance. But I am concerned that something that even the Government—the executive branch admits this is a tool that should be used carefully, at a time, as I said, when you open the morning newspaper and every day you see another effort to not strike this balance. I think we ought to stay at this national security letter issue and deal with concerns raised here with respect to secrecy and exercise of right to counsel.

My good friend from Pennsylvania and I have worked together on so many issues, and I want him to know of my desire to do it and my respect for his ability to get into some of these technical questions in a fashion that is almost unparalleled.

Mr. SPECTER. I want to call my colleagues' attention to the fact that we received a letter from nine Senators yesterday who are opposed to the PATRIOT Act. We have a detailed reply which is now being circulated. Again, I ask my colleagues to deal with the specifics. Anybody who has any concerns about any specific provisions, come to the floor and we are prepared to discuss them and see if we can satisfy those concerns. Beyond that, I will inform our colleagues as to what this bill is all about so there will be as much information as possible before the vote.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I ask how much time remains for the distinguished Senator from Pennsylvania and how much time does the Senator from Vermont have following the discussion the Senators from Pennsylvania and Oregon had?

The PRESIDING OFFICER. The Senator from Vermont has 24 minutes; the Senator from Pennsylvania has 28 minutes.

Mr. LEAHY. I suggest the absence of a quorum with the time charged equally to both sides.

Mr. SPECTER. I object. I don't want any time lost on the quorum call.

Mr. LEAHY. I withdraw that request and I yield the floor.

Mr. SPECTER. Mr. President, we don't have a whole lot of time to debate this bill. The Senator from Vermont is right. He and I are due at a meeting on asbestos. The Senator and I are due on many important meetings. I invite anybody who has a question or a doubt about this bill to come to the floor and raise their concerns. If not, I will join my colleague in suggesting the absence of a quorum so we can step across the hall to a meeting.

Mr. LEAHY. Mr. President, I see the Senator from Colorado on the floor. I understand he wishes to speak on this. I ask the Senator how much time would he require?

Mr. SALAZAR. Approximately 10 minutes.

Mr. LEAHY. I yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I rise today to discuss the PATRIOT Act conference report currently before the Senate.

I start by beginning to make absolutely clear my commitment to law enforcement and our fight against terrorism. I served as Attorney General for the State of Colorado for 6 years, and I am intimately familiar with the specific needs of law enforcement in the fight against terrorism and with the paramount importance of police work in this area. The peace officer's badge I carried with me was a constant reminder of the dedication, performance, and sacrifice that our men and women in law enforcement make every day as they work to keep us safe. At the end of the day, we will keep America safe when the 800,000 men and women who work in local, Federal, and State law enforcement are able to do their jobs and have the tools with which to do their jobs.

Accordingly, I wholeheartedly support extending all of the law enforcement powers provided by the USA PATRIOT Act. On September 11, 2001, the magnitude of the terrorist threat was something that galvanized the Nation, and it is imperative that we give law enforcement officers the tools they need to investigate and prosecute terrorists within our borders so that we never face another attack like the ones we saw 4 years ago.

While I strongly support measures that allow for the greater information sharing, it is worth noting that as the 9/11 Commission determined, even without the powers of the PATRIOT Act it was well within the reach of law enforcement to prevent the September 11 terrorist attacks. We knew al-Qaida was operating within our borders. We knew suspected terrorists were in flight schools in America learning how to fly planes. As the Presidential Daily Brief of August 2001 clearly showed, we knew of the possibility that Osama bin Laden was determined to strike our Nation with airplanes.

We had the information to prevent those attacks. Yet we failed to protect the homeland. As my colleagues know, the key goal of the PATRIOT Act was to lower the ''wall'' between our law enforcement and intelligence agencies that too often prevented the necessary sharing of information among them. That wall is real and existing; it is a legal wall and a cultural wall that is present even today. That wall was recently alluded to in the report card by the 9/11 Commission. That wall exists because in our history of intelligence gathering, every agency has operated within its own silo.

There was very ineffective information sharing about the bad guys laterally across the Federal Government agencies. That wall also exists with the failure to share information between the Federal Government and State and local law enforcement.

We must do more to break down that wall as we move to a more coherent and integrated approach to go after the bad guys. To the extent the conference report before us breaks down that wall of communication and continues to provide the tools to law enforcement to fight the war on terror, its provisions are positive, and I support them.

In addition, there are a number of other provisions in the conference report that are not related to the PATRIOT Act that are also deserving of the support of the Senate. For example, it contains provisions of the Combat Meth Act which I helped introduce at the beginning of this session. This legislation would place restrictions on the sale of products that contain the primary ingredients in methamphetamine to make it harder for criminals to produce the drug in the first place. The conference report also contains provisions to strengthen port security and combat terrorist financing.

Without question, the legislation before us contains provisions that are worthy of support, but I am disappointed about the bill's failure to adequately protect the civil liberties of Americans.

Today, December 15, 2005, marks the 214th anniversary of the ratification of the Bill of Rights in 1791. Among the freedoms enshrined in the Constitution is the fourth amendment's guarantee that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. Let me state that again because that is what is at stake in this debate. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

It is ironic that we are now considering passing legislation that would greatly undermine that principle. Instead, we should take this occasion to reflect on the importance of the liberties guaranteed to all of us by that document and to understand that we can give law enforcement officers the tools they need to fight terrorists without sacrificing our constitutional rights and freedoms.

I have worked very hard with my colleagues to achieve that goal. Earlier this year, I joined with five colleagues from both sides of the aisle in introducing the SAFE Act. I am proud of the leadership and courage shown by Senators CRAIG, DURBIN, SUNUNU, FEINGOLD, and MURKOWSKI. That legislation, the SAFE Act, would have extended all of the expiring sections of the PATRIOT Act. It would also have placed reasonable limitations on the way those powers are used to protect America's fundamental freedoms.

As the Senate began its work on the process of reauthorizing the PATRIOT Act, I continued to work closely with the SAFE Act sponsors to incorporate our commonsense proposal into the Senate reauthorization bill. Although the legislation reported out of the Senate Judiciary and Intelligence Committees was not perfect, it took important steps to protect the freedom of innocent Americans and passed the full Senate with unanimous support from among the Republican, Democratic, and Independent membership of this body.

That is why my colleagues and I fought so hard to see that the conference committee remained true to the Senate-passed bill. Unfortunately, when the details of the draft conference report were released in the week before Thanksgiving, it became clear that the conferees had retreated from the modest civil liberties protections included in the Senate bill.

My colleagues and I renewed our request that the civil liberties concerns be addressed. We did not ask for all the provisions of the SAFE Act. We did not even ask for all the provisions in the Senate legislation. Although we could have easily put this issue behind us now if the House had taken up and passed the bill we unanimously adopted in this Chamber, we simply asked the conferees to make modest changes to a handful of critical provisions. Yet those changes were not made.

Let me review what some of the remaining concerns are with respect to the conference report.

First, section 215. One of the most controversial provisions of the PATRIOT Act is section 215. Section 215 allows the Government to go to a secret court to obtain financial, library, medical, travel, and a whole host of other kinds of records that fall under the extremely vague definition of ''any tangible thing.'' The conference report would also impose an automatic permanent gag order preventing the holder of those records from revealing information about the request. It would not permit the recipient to challenge the gag order.

To be clear on that point, in order to obtain a search order under section 215, all the Government has to do is to go to a secret court, the secret FISA court, and claim that the order is relevant to an ongoing terrorist investigation, an application that the court has no discretion, no authority whatsoever to reject. It simply has to do what the Government asks it to do.

The legal standard of relevance is extremely low. ''Relevant evidence'' is a very low threshold that can provide no protection to the civil liberties we are trying to protect.

In contrast, the Senate bill would have restored a clear and specific standard of individualized suspicion, meaning that the Government would have to show that the records in question are linked to a suspected terrorist or an agent of a foreign power. In addition, the Senate bill would give the recipient of a FISA order the right to challenge the gag order and to receive meaningful judicial review of that order.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SALAZAR. Mr. President, I ask unanimous consent for another 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SALAZAR. Mr. President, another controversial provision of the PATRIOT Act is section 505, which authorizes the use of national security letters. National security letters are requests for certain specific categories of information, including financial records, business dealings, and telephone and e-mail records.

Under the conference report, NSLs can be issued without the prior approval of a judge and can be authorized by any of several dozen FBI field offices. The Washington Post recently reported that the Government now issues 30,000 NSLs a year—100 times more than historic norms. I respect and honor my friends and the leadership in the Federal Bureau of Investigation with whom I have worked for many years, but when we start issuing 30,000 NSLs a year, we ought to make sure there is some oversight with respect to how those NSLs are issued.

As with section 215, the conference report does not allow meaningful judicial review of an NSL's gag order. Because the Government does not need a judge's approval to send an NSL, meaningful judicial review of a gag order is a critical safeguard and is simply missing in the conference report.

I wish to finally spend just a second speaking about the sneak-and-peek searches under section 213. My colleagues and I expressed concern about the sneak-and-peek searches where the target of the search is not identified or notified for a period of several days or even weeks.

Prior to the enactment of the PATRIOT Act, law enforcement could delay notification of a search warrant in certain limited cases. The PATRIOT Act significantly lowered the standard for delayed notification, allowing sneak-and-peek searches in any case where ''immediate notification of the warrant may have an adverse result.'' The conference report before us is not much better, as it allows the Government to wait up to 30 days to notify the target of a property search.

I believe we can do better, and I believe the proposal which has been introduced on a bipartisan basis to allow us an additional 90 days to try to work through some of these issues on the PATRIOT Act could, in fact, result in the kind of PATRIOT Act that receives a unanimous vote of the Senate.

In my own State, liberal and conservative newspapers have said that this Senate has an obligation to protect the constitutional liberties of Americans.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SALAZAR. I ask unanimous consent for 30 additional seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SALAZAR. The Rocky Mountain News said last month that we in the Senate should hang tough because fundamental freedoms of America are at stake.

The Colorado Springs Gazette, a very conservative newspaper, said those insisting on added protections for civil liberties and stricter sunset provisions are doing the right thing by holding their ground.

The Denver Post editorial said: We support a bipartisan effort to block final passage unless safeguards are reinstated.

I believe the Senate can do better in helping us move forward in the fight against terror, giving law enforcement the tools they need in that ongoing battle, and at the same time assuring that we are protecting the cherished freedoms of our democracy enshrined in our Constitution and the Bill of Rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, with all due respect, I think we do not need any newspaper editorials to tell the Senate to hang tough or to tell Senators to hang tough or to tell this Senator to hang tough. I think we have hung tough, mighty tough.

Let me take up the specifics about what the Senator from Colorado has had to say.

Mr. FEINGOLD. Mr. President, we have many speakers on our side, and I just want to be clear that this time is charged to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator is in control of the time.

Mr. SPECTER. There is no doubt about that. I sought recognition, and it is on my time. There is no doubt about that at all.

Mr. FEINGOLD. I just wanted to clarify that.

Mr. SPECTER. The interruption of the Senator from Wisconsin can be charged on his time.

As to section 215, the Senator from Colorado is wrong. The conference report provides that there may be a ''challenge to the legality of the order by filing a petition with the FISA court,'' and that petition can take up the gag order.

When he talks about the standards, there are the three criteria from the Senate bill, but there is an additional provision that the judge, judicial review on a terrorism investigation which has been authorized by going through quite a number of hurdles, those records are important for a terrorism investigation. If the Senator is talking about library records, it has to be the Director of the FBI or the Assistant Director, or the number-three man. They cannot be delegated. So there are really safeguards and protections for civil liberties in this bill. We hung tough and we got them.

When the Senator from Colorado talks about the conference report on delayed notice, so-called sneak and peak, not much better, I will let my colleagues evaluate whether the Senator from Colorado is right or the Senator from Pennsylvania is right. Currently, under the PATRIOT Act, the only limitation is a reasonable period of time, which can be anything. The Senate bill came in at 7 days. The House bill came in at 180 days. The Fourth Circuit has said that 45 days is a reasonable period of time.

Bear in mind that these delayed notice warrants are not issued unless the impartial judicial official standing between the citizen and the law enforcement officer, the judicial official, is satisfied that there ought to be a delay. If there is a customary search-and-seizure warrant which goes out, the target knows they have been served, but these are surreptitious. These are secret. There has to be a showing that the investigation will be harmed. When we put in 7 days, we were not unaware that there would be negotiations and that the House came in at 180 days. I think we had a pretty good result from the Senate's point of view to concede 23 days and the House conceded 150 days.

So if the Senator from Colorado thinks that is ''not much better,'' I will rely on my colleagues to decide whether the Senate bill is not a whole lot better as a result of what we did.

When he talks about the national security letters, I made this point several times on the floor, but perhaps the Senator from Colorado has not heard it because he continues to assert the Washington Post story. There have been briefings available, as I said earlier, and the Senator from Colorado can get one from the Department of Justice, that 30,000 figure is wrong. I cannot say what it is because it is classified, and I have asked the Department of Justice to make it an unclassified disclosure, which they have not done so far. I ask the Senator from Colorado, and I ask all of my colleagues, not to vote on this bill based on what they read in the Washington Post. If they have some concerns, come to the floor and we will find time to listen to their concerns and we will see if we can satisfy them, and certainly in that process inform other Senators as to what this bill is all about.

I think we have come to grips with the concerns which the Senator from Colorado has articulated.

Mr. SALAZAR. Mr. President——

Mr. SPECTER. I have the floor, Mr. President—on the national security letters. We have put in safeguards. The national security letter can be quashed if it is unreasonable. The conference report has set the Senate standard for the conclusive presumption, and I think we have been cognizant of civil rights.

I take second place to no one—I know the Senator from Colorado's record as an attorney general and a protector of civil rights, and I have great respect for it, but I take second place to no one in my tenure in the Senate on protecting civil rights, and I think this bill does that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, a point of inquiry: May I respond to the Senator from Pennsylvania on his time for 30 seconds?

Mr. SPECTER. No, the Senator may not respond on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania does not yield.

Mr. SPECTER. Thirty seconds?

The PRESIDING OFFICER. Thirty seconds.

Mr. SPECTER. Go ahead, on my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, first and foremost, I want to say that I have the utmost respect for the Senator from Pennsylvania as a leader and mentor of all of us. Second, I disagree with his conclusions with respect to the protections for civil liberties because when there is a secret court and the leadership of the FBI essentially in charge of giving those protections to these kinds of provisions in the PATRIOT Act, it is not going to the point where we need to go to protect our civil liberties.

I yield the floor and I thank my good friend and colleague from Pennsylvania.

Mr. SPECTER. One more point before I yield to the Senator from Arizona. It is a secret court because they are discussing national security matters. National security matters are always classified. We are briefed in Senate 407 all the time. We go to a secret room where there are classified materials. There is nothing unusual about that.

I yield 10 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I do want to agree with one thing my colleague from Colorado said just a moment ago. He said the fundamental freedoms of Americans are at stake. I agree with that. But they are not threatened by the U.S. Government. They are threatened by foreign terrorists who struck us on September 11 and who have continued to threaten us since that time.

There was much criticism of our Government as a result of our failure to prevent that attack on September 11, particularly when the 9/11 Commission reported that there were some things that could have been done that just might at least theoretically have prevented that attack. We quickly acted in the Congress to put in place the legal mechanisms to enable our law enforcement and intelligence people to begin protecting the American people. What we found was that there were a lot of loopholes in our laws that needed to be filled in order to give our law enforcement and intelligence people the weapons, the tools, the support that they needed to protect us.

We did that with the PATRIOT Act. However, because of concerns that possibly some of these authorities could be abused, we said we are going to sunset them so that we have to come back and reconsider what we did, and that is what we are all about here now.

As a result of significant debate in this body and in the other body, we each passed different versions of a reauthorization of the PATRIOT Act, and since then accommodated those differences in what is called a conference committee. We are now considering that compromise between the House and Senate versions in a compromised conference committee report. Those of us who helped to write the original PATRIOT Act and were very anxious to get these authorities in place believe that in some respects we have gone too far. We have leaned over too far backward to those who are so afraid that somehow somebody's freedom might be stepped on in this country, that they have not enabled us to fight the terrorists that are the real enemy. They have not given us the tools we need. But in order to get the conference committee resolved and get the bill on the floor here, we agreed to sign the report and have this debate.

Now we find there are people on the other side who insist on having it all

their way. Every single thing they want has to occur or else they are going to filibuster the bill. What does that mean? It means they are going to talk it to death, refuse to allow us to have a final vote on it, with the result that the PATRIOT Act is gone on December 31.

They say: We will agree to extend it for a little while. That is no answer. We have a process. We have gone through the process. It has been very difficult. It has been long. It has been hard. We have gotten a product that is the result of compromise. That is the way we work in the Senate and in the House and in this country, and that compromise has to be voted on, yes or no. If you don't like it, then vote no.

Here is what I suggest. We are at war. We have to be responsible and serious about what we do. I will say it right now, if the filibuster results in this act ceasing to exist, if there is no more PATRIOT Act next year and an attack occurs in this country and it could have been prevented by the provisions of the PATRIOT Act, then everyone who votes to support a filibuster will have to answer for that attack.

There were some things we could have done in the past. I would like to refer to what they are because, from the 9/11 Commission, we know that some of the things we put in the PATRIOT Act might prevent an attack in the future, some of the very things that are being criticized by those who are suggesting they might filibuster. Let me give just a little bit of the detail.

We now know that one of the things that stood in the way of a successful investigation was the previous law, gaps in our terrorism law that prevented the FBI from doing certain things—in particular, to exploit leads that related to al-Qaida.

We came tantalizingly close to substantially disrupting or even stopping this terrorist plot. The investigation to which I refer involved a person by the name of Khalid Al Mihdhar. He was one of the eventual suicide hijackers of American Airlines flight 77, which crashed into the Pentagon, killing 58 passengers and crew and 125 people on the ground. An account of the pre-September 11 investigation of Mihdhar is provided in the 9/11 Commission's staff statement No. 10. Here is what that statement says:

During the summer of 2001 a CIA agent asked an FBI official * * * to review all of the materials from an Al Qaeda meeting in Kuala Lumpur, Malaysia one more time. * * * The FBI official began her work on July 24, of 2001. That day she found the cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application—what was later discovered to be his first application—listed New York as his destination. * * * The FBI official grasped the significance of this information.

The FBI official and an FBI analyst working the case promptly met with an INS representative at FBI Headquarters. On August 22 INS told them that Mihdhar had entered the United States on January 15, 2000, and again on July 4, 2001. * * * The FBI agents decided that if Mihdhar was in the United States, he should be found.

At this point, the investigation of Khalid Al Mihdhar came up against the infamous legal ''wall'' that separated criminal and intelligence investigations at the time. That is a wall, by the way, which will be re-erected if this filibuster succeeds and the PATRIOT Act falls. That wall, everyone agrees, had to come down. The Joint Inquiry Report of the House and Senate Intelligence Committees describes what happened next:

Even in late August 2001, when the CIA told the FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other ''Bin Laden-related individuals'' were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers. * * * FBI attorneys took the position that criminal investigators ''cannot'' be involved and that criminal information discovered in the intelligence case would be ''passed over the wall'' according to proper procedures. An agent in the FBI's New York field office responded by e-mail, saying: ''Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.''

You would think we would have learned the lesson of 9/11. If the filibuster succeeds, those who vote for the filibuster will be voting to allow this wall to be reerected. The very wall that we tore down with the PATRIOT Act so the FBI and CIA could talk to each other, the very wall that might have, had we torn it down before 9/11—that wall might have prevented us from discovering two of the key people involved in 9/11, and had we stopped them from getting on the airplane, we might have stopped at least one of the attacks of 9/11.

Whatever has happened to this, someday, someone will die, and wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.

Unfortunately, this grim prediction turned out to be true; almost 3,000 people died.

We then acted to make sure it would never happen again. Now there are people threatening to filibuster the PATRIOT Act, which will go out of existence on December 31 if the filibuster succeeds, and people will wonder how it is that this wall was resurrected after the experience we had.

Here is what the 9/11 Commission said about the effect of the wall between the criminal and intelligence investigations with respect to the investigation of Khalid al Mihdhar:

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except to follow him onto the planes. We believe this is incorrect. Both Hazmi and Mihdhar have been held for immigration violations or as material witnesses in the Cole bombing case. Investigation or interrogation of these individuals, and their travel and financial activities, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

As we know, Mr. President, the PATRIOT Act dismantled this legal wall between intelligence and criminal investigations. It was enacted too late to prevent 9/11, but it will prevent future acts of terrorism unless we allow it to expire.

I would like to talk about another key investigation prior to September 11. I will probably have to get just about 5 more minutes of time. Before I do, let me make just this one point about those who say we do not have to let it expire, we could just extend it for another 3 months or so.

Why do they say that? Because they think they can get some more concessions. The House of Representatives is done making concessions, and I agree with them. I would say the concessions already made could go too far, could hamper our law enforcement capability of catching terrorists or infiltrating their organizations or finding evidence to implicate them in crimes. Nonetheless, that time is passed. There is no more conference committee to go back to. We have reached all of the compromises, and not everybody can get everything they want. I certainly have not gotten everything I want. But I understand that at a certain point, the people of the United States have to pull together and act in a unified way to ensure that we have a law in place that will help us fight this war on terrorism.

I think it is extraordinarily selfish to say we have to have our way or no way, let the Act expire. Oh, we will maybe let it go for another 3 months. What kind of uncertainty does that create? Three months, using one set of procedures and not knowing what the law is going to be.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KYL. I ask the Senator from Pennsylvania how much more time he can yield me?

Mr. SPECTER. We have only 10 minutes left. Senator CORNYN wants to speak. I need to engage Senator CRAIG in a dialog.

Mr. KYL. I will not ask for any more time, then, except to say at a later time I will tell the story of Zacarias Moussaoui and how the PATRIOT Act helps to resolve the situation we couldn't resolve with Zacarias Moussaoui, either, and had we done that, he may not have been involved in the 9/11 activities.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Vermont has 8 minutes 22 seconds. The Senator from Pennsylvania has 9½ minutes.

Mr. LEAHY. I yield my remaining time to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Vermont for yielding. I am glad I

have been able to follow my colleague, my friend and associate from Arizona, and to say to him: Senator, you are wrong.

You are just flat wrong—that this Senate or this Congress is going to allow the PATRIOT Act to expire.

I find it fascinating, if not almost humorous, that I am on the floor defending the position of JON KYL and my chairman, ARLEN SPECTER, who brought a bill to the floor which brought unanimity to the Senate; that they accepted, that the House rejected, in part; and that they are now saying we should not revisit it again. It is a phenomenally unique responsibility.

Folks, when we are dealing with civil liberties, you don't compromise them, and you don't let the bad guys win.

The Senate of the United States and the Congress and this President will not let the bad guys win. But we are sure not going to compromise civil liberties.

How do you do it? The check and balance that has always been within the law is what we strive for today.

When I began to become involved in the PATRIOT Act, looking at its reauthorization, I knew it would be an uphill battle. I knew it would be an uphill battle because Americans have grown to be frightened. But now they have grown to be emboldened when they recognized that some of their freedoms were and are at risk.

I began to work, as did some of my colleagues. And out of that, knowing it must be reauthorized, we produced a piece of legislation.

I must say Chairman SPECTER took us seriously. I am pleased he did. The Judiciary Committee took us seriously. I am glad they did. Out of that commitment came a work product of which all of us were very proud. And it passed the Senate unanimously.

I think those charges are simply untrue, that somehow we wanted to destroy the act or that we wanted it to expire and go away. I know the rest of the country doesn't believe us anymore in that sense because they now understand the importance of the balance we are striving to create.

I also find it very unique that we are talking about and focusing on a very small part of the PATRIOT Act itself. It is not sweeping change we are proposing. It is not sweeping change we hope to achieve by opposing cloture and asking the House to reconsider the work we have done. Is it an impossible task and is it a leap too far? Not at all.

Look at the House vote yesterday. Two hundred and twenty four voted for the conference report we are now considering. That isn't the important vote, fellow Senators. The important vote was the 202 who agreed that we ought to agree with the Senate on what they had accomplished. That is simply 13 short of a majority in the House. Rarely—and we know that, those of us who have been around a while—do you ever get the House to agree with the Senate as much as the House agrees with the Senate on this issue.

I am very confident, if the Senate revision of the PATRIOT Act and the reauthorization provision we provided, which passed the Senate unanimously, had been on the floor of the House yesterday and that had been the document being voted on, the vote would not have been 224; it would have been 240 or 250 or possibly 300. It is very possible that they would have been able to achieve that kind of broader support. Why? For all of my colleagues who have joined the debate today, and this is why I think the issues we are talking about are so important.

If we had wanted to kill the PATRIOT Act, we would not have gone as far as we have to work with the chairman and the ranking member of the Judiciary Committee to fine-tune it and to make sure those safeguards are in place.

Americans clearly understand we are at war. That does not need to be restated on the floor of this Senate. Blood has been spilled on our soil, and we know that.

We recognize the very important task at hand, and the authority we have given our security organizations and our intelligence and law enforcement organizations in this area.

But it is incumbent upon me, and it is incumbent upon all of us, to make sure that we don't gray or in some way make it easier for free citizens to have their rights violated, either by accident or if by a rogue investigator who found he or she could use the privilege granted here to somehow leverage a situation of a free citizen. And that is not what we are about.

There is so much to be said here, and my time is very limited.

I ask unanimous consent that the ''Dear Colleague'' letter that many of us sent out yesterday to our colleagues that breaks down part by part what we have done be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
*Washington, DC, December 14, 2005.*

DEAR COLLEAGUE: Prior to the Thanksgiving recess, several Senators expressed strong opposition to the draft Patriot Act reauthorization conference report that was circulated by the conferees. We were gratified that Congress did not attempt to rush through a flawed conference report at that time, and we hoped the conferees would make significant improvements to the conference report before we returned to session this month.

We write to express our grave disappointment that the conference committee has made so few changes to the conference report since then. And now, in the last week of the session, the Senate is being asked to reauthorize the Patriot Act without adequate opportunity for debate. If the conference report comes to the Senate in the same form that it was filed in the House last week, we will oppose cloture on the conference report. We urge you to do the same.

As you know, the Senate version of the bill, passed by unanimous consent in July, was itself a compromise that resulted from intense negotiations by Senators from all sides of the partisan and ideological divides. That bill did not contain many Patriot Act reforms that we support, but it took important steps to protect the freedoms of innocent Americans while also ensuring that the government has the power it needs to investigate potential terrorists and terrorist activity. Although the conference report contains some positive provisions, it unfortunately still retreats too far from the bipartisan consensus reached in the Senate. It fails to make some vitally important reforms and in some areas actually makes the law worse.

Last week, Chairman Specter circulated a Dear Colleague suggesting the conference report as drafted addresses the concerns raised about potential civil liberties abuses. We credit Chairman Specter for improving the conference report. However, the most important substantive reforms from the Senate bill were excluded from the conference report. The original cosponors of the SAFE Act (Senators CRAIG, DURBIN, SUNUNU, FEINGOLD, MURKOWSKI, SALAZAR) identified several items before Thanksgiving as problematic and indicated they would not support the conference report unless additional changes were made in those areas. Those issues were not adequately addressed. They include the following:

The conference report would allow the government to obtain library, medical and gun records and other sensitive personal information under Section 215 of the Patriot Act on a mere showing that those records are relevant to an authorized intelligence investigation. As business groups like the U.S. Chamber of Commerce have argued, this would allow government fishing expeditions targeting innocent Americans. We believe the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy, as the three-part standard in the Senate bill would mandate.

Some conferees argue that the language in the conference report would permit the government to use the ''relevance'' standard only in limited, extraordinary circumstances, and that the Senate bill's three-part standard would continue to apply in most circumstances. To the contrary, the conference report never requires the government to demonstrate that the individual whose records are sought is connected to a terrorist or spy; rather, it permits the ''relevance'' standard to be used in every case.

It has also been asserted that the government should not be required to abide by the three-part Senate standard because the Department of Justice demonstrated in a classified setting that ''circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist but may nevertheless be crucial to an authorized terrorism investigation.'' We are convinced, however, that the three-part standard provides the necessary flexibility in such circumstances. Indeed, the government need only show that the records they seek are relevant to the activities of a suspected terrorist or spy, a very low burden to meet, but one that will protect innocent Americans from unnecessary surveillance and ensure that government scrutiny is based on individualized suspicion, a fundamental principle of our legal system.

Unlike the Senate bill, the conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. While some have asserted that the FISA court's review of a government application for a Section 215 order is equivalent to judicial review of the accompanying gag order, the FISA court is not permitted to make an individualized decision about

whether to impose a gag order when it issues a Section 215 order. It is required by statute to include a gag order in every Section 215 order; the gag order is automatic and permanent in every case. The recipient of a Section 215 order is entitled to, but does not receive, meaningful judicial review of the gag order.

The conference report does not sunset the National Security Letter (NSL) authority. In light of recent revelations about possible abuses of NSLs, which were reported after the Senate passed its reauthorization bill, the NSL provision should sunset no more than four years so that Congress will have an opportunity to review the use of this power.

The conference report does not permit meaningful judicial review an NSL's order. It requires the court to accept as conclusive the government's assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. As a result, the judicial review provisions do not create a meaningful right to review that comports with due process.

The conference report does not retain the Senate protections for ''sneak and peek'' search warrants, as Chairman Specter's letter suggests. The conference report requires the government to notify the target of a ''sneak and peek'' search within 30 days after the search, rather than within seven days as the Senate bill provides and as pre-Patriot Act judicial decisions required. That seven-day period was the safeguard included in the Senate sneak and peek provision. The conference should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90–day extensions means that a shorter initial time frame will ensure timely judicial oversight of this highly intrusive technique but not create undue hardship on the government.

While the issues discussed above are the core concerns about the conference report that the original cosponsors SAFE Act asked to be modified, they are not the only problems that we see with the conference report. There are a number of other areas where we believe the conference report falls short.

''LIBRARY RECORDS'' PROVISION (SECTION 215)

Unlike the Senate bill, the conference report requires a person who receives a Section 215 order to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement any other area of law.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging a 215 order, regardless of whether the evidence is classified. This will make it very difficult for the recipient of a Section 215 order to obtain meaningful judicial review that comports with due process.

Under the conference report, the target of a Section 215 order never receives notice that the government has obtained his sensitive personal information and never has an opportunity to challenge the use of this information in a trial or other proceeding. All other FISA authorities (wiretaps, physical searches, pen registers, and trap and trace devices) require such notice and opportunity to challenge.

NATIONAL SECURITY LETTERS (SECTION 505)

The conference report would allow the government to issue NSLs for certain types of sensitive personal information simply by certifying that the information is sought for a terrorism or espionage investigation. This would allow government fishing expeditions targeting innocent Americans. As business groups have argued, the government should be required to certify that the person whose records are sought has some connection to a suspected terrorist or spy.

Unlike the Senate bill, the conference report requires a person who receives an NSL to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

Unlike the Senate bill, the conference report for the first time imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order, even if the NSL recipient believes his rights have been violated.

The conference report for the first time gives the government the power to go to court to enforce an NSL, effectively converting an NSL into an administrative subpoena. An NSL recipient could now potentially be held in contempt of court and subjected to serious criminal penalties. The government has not demonstrated a need for NSLs to be court enforceable and has not given any examples of individuals failing to comply with NSLs.

The conference report would give the govemment unilateral authority to keep all its evidence secret from a recipient is challenging an NSL, regardless of whether the evidence is classified. This will make it very difficult for an NSL recipient to obtain meaningful judicial review that comports with due process.

As with Section 215, the conference report fails to require notice to the target of an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and fails to give the target an opportunity to challenge the use of those records.

''SNEAK AND PEEK'' SEARCHES (SECTION 213)

The conference report does not eliminate the catch-all provision that allows sneak and peek searches any time that notice to a subject would ''seriously jeopardize'' an investigation. This exception could arguably apply in almost every case.

ROVING WIRETAPS (SECTION 206)

The conference report does not include meaningful checks on ''John Doe'' roving wiretaps, a sweeping power never authorized in any context by Congress before the Patriot Act. A John Doe roving wiretap does not identify the person or the phone to be wiretapped. Unlike the Senate bill, the conference report does not require that a roving wiretap include sufficient information to describe the specific person to be wiretapped with particularity.

The conference report does not require the government to determine whether the target of a roving intelligence wiretap is present before beginning surveillance. An ascertainment requirement, as has long applied to roving criminal wiretaps, is needed to protect innocent Americans from unnecessary surveillance, especially when a public phone or computer is wiretapped.

PEN REGISTERS AND TRAP AND TRACE DEVICES (SECTION 214 AND 216)

The conference report retains the Patriot Act's expansion of the pen/trap authority to electronic communications, including e-mail and Internet. In light of the vast amount of sensitive electronic information that the government can now access with pen/traps, modest safeguards should be added to the pen/trap power to protect innocent Americans, but the conference report does not do so.

DOMESTIC TERRORISM DEFINITION (SECTION 802)

The conference report retains the Patriot Act's overboard definition of domestic terrorism, which could include acts of civil disobedience by political organizations. While civic disobedience is and should be illegal, it is not necessarily terrorism. This could have a significant chilling effect on legitimate political activity that is protected by the first Amendment.

It is not too late to remedy the problems with the conference report and pass a reauthorization package that we can all support. The House could take up and pass the bill the Senate adopted by unanimous consent in July, or, if the additional modest but critical improvements to the conference report that the original cosponsors of the SAFE Act laid out priot to Thanksgiving are made, we believe the conference report can easily and quickly pass both the House and the Senate this month.

We appreciate that since Thanksgiving, the conferees agreed to include four-year sunsets of three controversial provisions rather than seven-year sunsets. But we should not just make permanent or, in the case three provisions, extend for another four years the most controversial provisions of the Patriot Act. The sunsets this year provide our best opportunity to make the meaningful changes to the Patriot Act that the American public has demanded. Now is the time to fix these provisions.

We urge you to join us in opposing cloture on the conference report, and in supporting our call for the conferees to make additional improvements. We still have the opportunity to pass a good reauthorization bill this year. But to do so, we must stop this conference report, which falls short of the meaningful reforms that need to be made. We must ensure that when we do reauthorize the Patriot Act, we do it right. We still can—and must—make sure that our laws give law enforcement agents the tools they need while providing safeguards to protect the constitutional rights of all Americans.

Sincerely,

Larry E. Craig, John E. Sununu, Lisa Murkowski, Chuck Hagel, Barack Obama, Dick Durbin, Russ Feingold, Ken Salazar, John F. Kerry.

Mr. CRAIG. Mr. President, let me, for a moment, touch on something I think is important. This issue has spread beyond these walls and beyond this building.

The Idaho Legislature, my legislature in Idaho, by a resolution, a house joint memorial and a senate joint memorial to the Congress, asked that we support the SAFE Act. The SAFE Act was the passage of amendments that the Senate Judiciary Committee incorporated within our version of the reauthorization of the PATRIOT Act that passed this body unanimously.

From the beginning, those of us who have concerns about PATRIOT have had an uphill battle. Practically before the ink was dry on our bill—and certainly well before any committee had reviewed it—we faced a veto recommendation. Before they even read our reform proposals, some of PATRIOT's defenders charged us with wanting to repeal the law and do away with all the tools it provided law enforcement to protect our country against terrorism.

Those charges were not true when we began, and they're not true today. We are not trying to undo PATRIOT. If some Senators still believe that, well, the rest of the country does not.

Most of PATRIOT isn't even at issue today—just a small part of the law is up for renewal. Of that small part, we are only focusing on a few controversial and very important provisions. And even for those few provisions in the small part of the law up for renewal, we are asking for modest checks and balances, not repeal. And we have even been flexible about what shape those reforms should take. We introduced the SAFE Act, offering one way to ''fix'' what we saw as problems, but in the end, we accepted a Senate Judiciary Committee bill that took a couple of different approaches.

Here is an interesting reaction: When we are dealing with constitutional freedoms, just a little can make all the difference. Some are saying that we are asking for so little, we should just drop it altogether. Our point is that it would take very little to close the gap and provide the assurances we are seeking. Our ask is very do-able. The conference on this bill was squeezed into the very end of the year; changes were being made in the conference agreement even up to the day of its filing. We believe a limited timeframe would allow further discussion and an opportunity to get beyond whatever political issues are in the way. Some of us have even introduced legislation that would extend the expiring provisions of PATRIOT for 3 months, for this purpose.

Furthermore, it's worth emphasizing that our concerns are not about insignificant or technical issues—they relate to what happens when innocent Americans come within the sphere of surveillance in antiterrorism investigations.

Regardless of what Americans think about the PATRIOT Act's effectiveness, they also care about preserving their freedom within the fight against terrorism.

Let me read the resolution passed by the Idaho State Legislature earlier this year on the subject:

A JOINT MEMORIAL TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, do hereby respectfully represent that:

Whereas, citizens of the state of Idaho strongly believe that basic civil liberties must be preserved and protected, even as we seek to guard against terrorist and other threats to the national security; and

Whereas, there are some principles of our democracy which are so fundamental to the rights of citizenship that they must be preserved to guard the very liberties we seek to protect; and

Whereas, legislation known as the SAFE Act has been introduced in the Congress of the United States to adopt amendments to the Patriot Act which would address some of the most problematic provisions of the Act; and

Whereas, the SAFE Act amends the Patriot Act to modify the provision regarding the roving wiretaps to require that the identity of the target be given and that the suspect be present during the time when surveillance is conducted; and

Whereas, the SAFE Act revises provisions governing search warrants to limit the circumstances when the delay of notice may be exercised and to require reports to the Congress when delays of notice are used; and

Whereas, the SAFE Act requires specific and articulable facts be given before business records are subject to investigation by the Federal Bureau of Investigation; and

Whereas, the SAFE Act provides that libraries shall not be treated as communication providers subject to providing information and transaction record of the library patrons; and

Whereas, it is appropriate that the Legislature of the State of Idaho, on behalf of the citizens of Idaho, express support of the efforts of Senator Larry Craig to adopt the SAFE Act, and encourage the full support of the Idaho congressional delegation.

Now, therefore, be it *Resolved by the members of the first Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein*. That the Idaho Legislature endorses the efforts to amend the Patriot Act to assure that it works well to protect our security but that it does not unnecessarily compromise essential liberties of the citizens of the United States. We urge the congressional delegation representing the State of Idaho in the Congress of the United States to support legislation introduced by Senator Larry Craig, known as the SAFE Act.

This is just one of hundreds of such statements issued by states, cities, and communities across the Nation on this subject.

I have actually heard colleagues saying that because there have been no publicly reported abuses of PATRIOT Act powers, there is no justification for changing the law. Since when do we have to wait for the Constitution to be breached to take action? Since when do the American people have to justify demanding checks and balances that will make sure there can be no such abuses? Since when did it become the American people's burden of proof to support protecting their civil liberties?

I thought the government worked for the people, and not the other way around

We are not the ones who should have to be justifying a call for checks and balances. It's up to the government to prove those checks and balances are not workable and not in the best interests of the Nation.

Now, we have heard a lot about the civil liberties protections that have been included in this conference report. I stand second to none in giving credit to our Judiciary Committee chairman, ARLEN SPECTER, for achieving these reforms. I well know the opposition he was up against, and I am very pleased he was able to persuade conferees—as he persuaded some in this body—that we can have both: protection of the privacy and civil liberties of innocent citizens, and aggressive fighting against terrorism.

It is worth noting that even those of our colleagues who opposed our original SAFE Act proposals ended up supporting the Senate bill that contained civil liberties reforms. Today these same colleagues are praising the conference report's provisions along those lines—and my message to them is: why not go just a little further toward the Senate's version in some of these areas? You voted for them once before—why not again?

That's how much confidence I have in Chairman SPECTER—that with this additional expression of support from the Senate, he will be able to make a few last—but important—improvements.

The other body voted yesterday on the PATRIOT Act conference report, and a motion to reject that report and instead accept the entire Senate-passed version was narrowly defeated, 202–224. This is a remarkable vote. The U.S. House is a body of 435 Members. 215 is the majority, they were 13 short of passing the Senate bill, the very reform I am asking for today. But those of us seeking more time for negotiations aren't asking that the entire conference report be defeated; we aren't asking for the House to swallow the entire Senate bill. Instead, we have identified a few areas where we believe improvements could and should be made, and I think the House vote shows these changes would be welcomed by a substantial number in that body.

To those of my colleagues who are telling us to ''quit while we're ahead,'' I say: where would we be if they had stopped at the First Amendment of the bill of Rights? Should they have quit while they were ahead, and forgotten about those other nine amendments?

These are important issues. let's allow a little more time for the process to work, and respond to the concerns that our citizens have expressed.

1. The changes we are seeking:

The conference report that we are voting on would allow the government to obtain library, medical and gun records and other sensitive personal information under Section 215 of the PATRIOT Act on a mere showing that those records are relevant to an authorized intelligence investigation. As business groups like the U.S. Chamber of Commerce have argued, this would allow government fishing expeditions targeting innocent Americans. We believe the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy, as the three-part standard in the Senate bill would mandate.

Some conferees argue that the language in the conference report would permit the government to use the ''relevance'' standard only in limited, extraordinary circumstances, and that the Senate bill's three-part standard would continue to apply in most circumstances. To the contrary, the conference report never requires the government to demonstrate that the individual whose records are sought is connected to a terrorist or spy; rather, it permits the ''relevance'' standard to be used in every case.

It has also been asserted that the government should not be required to

abide by the three-part Senate standard because the Department of Justice demonstrated in a classified setting that ''circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist but may nevertheless be crucial to an authorized terrorism investigation.'' We are convinced, however, that the three-part standard provides the necessary flexibility in such circumstances. Indeed, the government need only show that the records they seek are relevant to the activities of a suspected terrorist or spy, a very low burden to meet, but one that will protect innocent Americans from unnecessary surveillance and ensure that government scrutiny is based on individualized suspicion, a fundamental principle of our legal system.

Unlike the Senate bill, the conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. While some have asserted that the FISA court's review of a government application for a Section 215 order is equivalent to judicial review of the accompanying gag order, the FISA court is not permitted to make an individualized decision about whether to impose a gag order when it issues a Section 215 order. It is required by statute to include a gag order in every Section 215 order; the gag order is automatic and permanent in every case. The recipient of a Section 215 order is entitled, but does not receive, meaningful judicial review of the gag order.

The conference report does not sunset the National Security Letter, NSL, authority. In light of recent revelations about possible abuses of NSLs, which were reported after the Senate passed its reauthorization bill, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

The conference report does not permit meaningful judicial review of an NSL's gag order. It requires the court to accept as conclusive the government's assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. As a result, the judicial review provisions do not create a meaningful right to review that comports with due process.

The conference report does not retain the Senate protections for ''sneak and peek'' search warrants, as Chairman SPECTER's letter suggests. The conference report requires the government to notify the target of a ''sneak and peek'' search within 30 days after the search, rather than within 7 days, as the Senate bill provides and as pre-PATRIOT Act judicial decisions required. That 7-day period was the key safeguard included in the Senate sneak and peek provision. The conference report should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial time frame will ensure timely judicial oversight of this highly intrusive technique but not create undue hardship on the government.

Unlike the Senate bill, the conference report requires a person who receives an NSL to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

Unlike the Senate bill, the conference report for the first time imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order, even if the NSL recipient believes his rights have been violated.

The conference report for the first time gives the government the power to go to court to enforce an NSL, effectively converting an NSL into an administrative subpoena. An NSL recipient could now potentially be held in contempt of court and subjected to serious criminal penalties. The government has not demonstrated a need for NSLs to be court enforceable and has not given any examples of individuals failing to comply with NSLs.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging an NSL, regardless of whether the evidence is classified. This will make it very difficult for an NSL recipient to obtain meaningful judicial review that comports with due process.

As with Section 215, the conference report fails to require notice to the target of an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and fails to give the target an opportunity to challenge the use of those records.

The conference report does not eliminate the catch-all provision that allows sneak and peek searches any time that notice to a subject would ''seriously jeopardize'' an investigation. This exception could arguably apply in almost every case.

Many of my colleagues say the PATRIOT Act is just giving law enforcement powers in terrorism investigation what they already have in drug investigation.

Well not here. The conference report does not include meaningful checks on ''John Doe'' roving wiretaps, a sweeping power never authorized in any context by Congress before the PATRIOT Act. A John Doe roving wiretap does not identify the person or the phone to be wiretapped. Unlike the Senate bill, the conference report does not require that a roving wiretap include sufficient information to describe the specific person to be wiretapped with particularity.

The conference report does not require the government to determine whether the target of a roving intelligence wiretap is present before beginning surveillance. An ascertainment requirement, as has long applied to roving criminal wiretaps, is needed to protect innocent Americans from unnecessary surveillance, especially when a public phone or computer is wiretapped. Yes, new technology is challenging but should not allow our privacy rights to be swept away.

The conference report retains the PATRIOT Act's expansion of the pen/trap authority to electronic communications, including e-mail and Internet. In light of the vast amount of sensitive electronic information that the government can now access with pen/traps, modest safeguards should be added to the pen/trap power to protect innocent Americans, but the conference report does not do so.

The conference report retains the PATRIOT Act's overbroad definition of domestic terrorism, which could include acts of civil disobedience by political organizations. While civil disobedience is and should be illegal, it is not necessarily terrorism. This could have a significant chilling effect on legitimate political activity that is protected by the First Amendment.

While the issues discussed above are the core concerns about the conference report that the original cosponsors of the SAFE Act asked to be modified, they are not the only problems that we see with the conference report. There are a number of other areas where we believe the conference report falls short.

Unlike the Senate bill, the conference report requires a person who receives a Section 215 order to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging a 215 order, regardless of whether the evidence is classified. This will make it very difficult for the recipient of a Section 215 order to obtain meaningful judicial review that comports with due process.

Under the conference report, the target of a Section 215 order never receives notice that the government has obtained his sensitive personal information and never has an opportunity to challenge the use of this information in a trial or other proceeding. All other FISA authorities—wiretaps, physical searches, pen registers, and trap and trace devices—require such notice and opportunity to challenge.

The conference report would allow the government to issue NSLs for certain types of sensitive personal information simply by certifying that the information is sought for a terrorism or espionage investigation. This would allow government fishing expeditions

targeting innocent Americans. As business groups have argued, the government should be required to certify that the person whose records are sought has some connection to a suspected terrorist or spy.

Again, what is important is to understand and plead with our colleagues—that how you negotiate is through power and leverage, not to give up and walk away. I am not going to suggest that the chairman did that at all. He and I dialogued many times over the course of the last 2 weeks as to what we might do to gain greater position, to gain the Senate position with the House.

My compliments to him for the successes that are in the conference report because there are some. But my frustration is that what we did in the Senate in this very important instance has not been adhered to. Those safeguards have not been put in place to the extent that we had asked. And I believe it is reasonable and right to say: No, let us live for 3 more months with the current law while we attempt to achieve even greater protection for the private citizens of this country but most importantly recognize that the law enforcement community needs that time to ask permission and to show that they have very real reason to believe that somebody is involved.

I think it has been a very excellent debate which has gone on on the floor of the Senate. But there is a reality check. That reality check is a vote on the conference report, and I ask my colleagues to vote against cloture so that we can reenter this debate one more time with the House to make sure we get it right so that the first amendment and the fourth amendment are not, in some way, in jeopardy.

I yield the floor.

Mr. SPECTER. Mr. President, I have worked very closely with the distinguished Senator from Idaho, as he noted, on this matter, with lots of discussions and lots of dialog. He and I worked together on the Ruby Ridge investigation, as Senator LEAHY was involved on the other side of the aisle. That was a high watermark of congressional oversight protection of the individual rights.

I have a long history with Senator CRAIG and agree with him that you don't compromise on civil liberties. What you do with civil liberties is you protect them.

But I submit to my colleague from Idaho that we have protected.

I ask him: He starts off with the delayed notice. The pejorative term is ''sneak and peek.'' Delayed notice is when the law enforcement official shows the judge, the impartial arbiter between the citizen and law enforcement, that there are reasons to have delayed notice.

Ordinarily, you have a search-and-seizure warrant. The target knows that right away.

The current bill provides for ''reasonable period of time,'' which could mean anything. Some have gone for enormous periods of time. The House came in at 180 days and the Senate came in at 7 days. We were not unaware in picking 7 days we were starting a negotiating track. We were not going to have our entire way. The Fourth Circuit said 45 days is presumptively reasonable and we ended up with 30.

I ask my colleague from Idaho, is it a compromise of civil liberties to have a 30-day notice period where you change the existing law from what is reasonable—which means anything—and the House comes down 150 days and we go up 30 days; is that a compromise?

Mr. CRAIG. I know my chairman thinks that is a success. First, we have broken and entered a private citizen's home without telling them. Does it take 30 days for law enforcement to determine that what they have found is so valuable that they cannot tell the citizen they have broken into their home? Why not 7 days? And then go to a judge and prove your worth with the evidence you have established by that ''break-in''—because that is what you have done. My home is my sanctuary. We have said, yes, we are going to let you break and enter, sneak and peek, but we are going to make sure it is very limited.

So I don't view 30 days as a compromise. Seven days. You were right to begin with. You are wrong now.

Mr. SPECTER. You cannot take all my time.

I will ask another question but may make the argument——

Mr. CRAIG. If the Senator will yield, I will be kinder.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. No, no.

Mr. CRAIG. All right.

Mr. SPECTER. All of this effort to get the floor and I will yield right away? Absolutely not.

The point of the time is not to show what they have gotten is valuable. The time is in order to enable them to conduct an investigation. They got the order initially because they showed a judge, an impartial magistrate, that there was a reason to think if the target knew, it would impede the investigation.

I will let my 98 colleagues evaluate whether that is a compromise on civil liberties.

The letter which the Senator from Idaho refers to, which was filed yesterday and printed in the RECORD, I have already put the reply into the RECORD, which we circulated today. In that letter, the assertion made that the Foreign Intelligence Surveillance Court is not permitted to make an individualized decision about whether to impose a gag order when it issues a section 215 order is incorrect. That is not right. The statute provides there may be a petition to have the court review the 215 order and the Foreign Intelligence Surveillance Court has the authority at that point to say there will be no gag order.

When the Senator from Idaho puts in his letter that they want a sunset on the national security letter, I point out to him the PATRIOT Act does not establish the national security letter. That has been in existence for decades.

Mr. CRAIG. It is broadening of the application, not the establishment.

Mr. SPECTER. Regular order, Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. The PATRIOT Act does not establish the national security letter. But the PATRIOT Act was used as a vehicle for extending civil rights, which the Senator from Idaho is concerned about. He is a civil libertarian and so am I. When he introduced the so-called SAFE Act to cut back on the PATRIOT Act, and he came to me and asked, Would you cosponsor it, I immediately said yes. But when we structured the PATRIOT Act, we took a look at the national security letters and we said, this is an occasion where we ought to rein in the national security letter. And we did so by saying the recipient did not have to keep quiet—which you have to do under existing law—but you could go to a lawyer. I don't think you ought to have to have legislative authority to go to a lawyer. But we made no bones about it. We were not going to leave that to chance, and we said you can go to a lawyer. Then that lawyer could go to court and quash the national security letter if it is unreasonable.

The standard of ''reasonable'' is all over the law. It is what a reasonable person would do. It controls tort law, accidents, reasonable personal negligence, it controls antitrust law, reasonable restraints. The court has plenary authority, full authority to quash the national security letter if it is unreasonable.

Now, when you come to the point about disclosure, you are dealing with some pretty tough stuff. You are dealing with national security. The Senate bill that went through without objection by anyone, including the Senator from Idaho, has a provision that there is a conclusive presumption if the Government certifies that it will impede national security or harm foreign relations. But in the conference report, in part because Senator CRAIG was vigilant in talking to us about the conference report, we said, that is not enough. It ought to be on the Government, some law enforcement officer in the field. We put in the requirement it had to be the Attorney General or Deputy Attorney General, head of the FBI, or Assistant Attorney General—all positions which are confirmed by the Senate, so they are ranking positions.

We saw to it that the national security letter was reined in. We also saw to it that the wiretaps were reined in. Then we had the big argument about the sunset. I almost had a feeling in one long telephone conversation with Senator CRAIG about 10 days ago that if we got a 4-year sunset, which was a

golden prize—the House wanted 10 years and the Senate had 4 years; the House wanted the compromise on 7, halfway between; we said no, we are not going to do that. This was a matter of great importance to many Senators, especially to Senator CRAIG. So we can review all of this and we can have oversight. I almost thought if we got 4 years, we would get Senator CRAIG. He is nodding in the negative.

Mr. CRAIG. It was third on my list.

Mr. SPECTER. We did not get Senator CRAIG.

Mr. President, when the six Senators wrote a letter with a lot of concerns, we responded with a seven-page letter. When yesterday we received a letter with nine Senators, we responded with an eight-page letter which the staff has worked on. We have had extraordinary staff working on all sides. This goes for my staff, this goes for Senator LEAHY's staff. The Judiciary Committee has not had any time off. We had an August recess for the Senate but not for the Senate Judiciary Committee.

The PRESIDING OFFICER. The time of the Senator is expired.

Mr. SPECTER. In that event, I stop.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:47 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. THOMAS).

The PRESIDING OFFICER. Under the previous order, the time from 2:15 until 3:30 shall be equally divided between the two leaders or their designees.

Mr. BAUCUS. I thank the Chair

(The remarks of Mr. BAUCUS pertaining to the introduction of S. 2107 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BAUCUS. Mr. President, I thank the Senators from Oklahoma and Idaho for their courtesy. There were three of us scheduled to speak at the same time. Obviously, that is very difficult to do. These two Senators graciously allowed me to go ahead. I thank them both.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Oklahoma.

## LABOR-HHS APPROPRIATIONS CONFERENCE REPORT

Mr. COBURN. Mr. President, I wish to spend a few minutes of my time talking about the Labor-HHS bill and a lot of the comments we have heard in the Chamber over the last couple days as to what we are and are not doing. I thought the American public should have a good perspective about what has happened in terms of the growth of this department since the fiscal year 1998 started.

This is a tight budget. I commend those who are in charge of it. It is a vast improvement over what we have done in other years. There is no question there are some unmet needs that can be claimed out of this appropriations bill. That is the time we face in our country. The Federal Government cannot meet every need.

In regard to history, Health and Human Services from 1998 to 2005, over that 8-year period, in real dollars has increased at over 10 percent per year. It has actually increased over 13 percent per year, but we have had inflation of 3 percent. So what we have seen is an actual doubling of the size of that component of the Federal Government from September 30 of 1997 to today. It has doubled in size. Education is the same. Actually, education more than doubled in size, net of inflation. That is in terms of real dollars. So when we hear the words that we can't do what we are doing, I would have our fellow colleagues look down the road a little bit. This is just a taste of what we are going to be facing if we don't start making the choices based on priority.

I tell you, we are on an unsustainable path even with this bill. We cannot meet those needs that need to be met if we continue to not prioritize in the functioning of the Federal Government.

Again, I take seriously the claim that we would take away food stamps from people who have no other source of nutrition. But I also take seriously the claim and the knowledge reported by the Department of Agriculture and the Food Stamp Program that last year they paid out $1.6 billion in food stamps to people who were ineligible, who had other sources of income. And yet they continued to spend $1.6 billion.

Why is all this important? It is important because this last year, ending September 30, we spent $538 billion more in that fiscal year than we took in. So the debate has to be in the context of what are we doing to our children and our grandchildren. We have to make a measured balance about how we make these decisions.

The decision of trimming programs that are not effective and doing the hard oversight—the real thing that is lacking is us doing the work of oversight. We have opportunities lost when we don't put money into those programs that are more effective and take money from those programs that are less effective.

The debate is centered about us and our constitutional duties to do oversight but also in terms of the future and what kind of heritage and legacy in terms of debt are we going to leave to our children.

Overall, the Congress has done a good job with this bill. There are still tons of waste in this bill. This bill totaled has $602 billion worth of spending in it.

I have one last comment, and that is there is $55 billion for the new Medicare Part D Program, of which only 1 out of every 15 people who are eligible for that program is a new person who would not have had drugs. So we are going to pay for 14 people who had insurance or other coverage to cover one additional person. And none of that money is paid for. That $55 billion is coming from our grandchildren.

This is a program on which I did not have an opportunity to vote. I would have voted against it. I also didn't have an opportunity to attach it to a supplemental, which I would have offered, to eliminate or freeze this program because our children and our grandchildren absolutely cannot afford it. It is $8.7 trillion between now and 2050 that we are going to put into this brandnew program that is starting today that helps 1 in 15. It helps 1 in 15 who need it. And yet we are saying it is OK for our children to pay that bill.

I commend Senator SPECTER on his hard work on the bill. This is the first time in years that the hard choices have been made. I remind our colleagues that as we face the future with Social Security, Medicare, and Medicaid and a war and natural disasters, hard choices is what we are here for. Yes, as Senator KENNEDY said today, we do need to be concerned about those who can't take care of themselves, but I put forward to my colleagues that with $600 billion—that is $20,000 per man, woman, and child in this country—we ought to be able to take care of them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. I thank the Chair.

(The remarks of Mr. CRAPO and Mr. THOMAS pertaining to the introduction of S. 2110 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Washington.

## SPENDING CUTS

Mrs. MURRAY. Mr. President, I have traveled throughout my home State of Washington throughout the past month. A lot of people have told me time and time again they want our country to be strong again, and to be strong we need to invest right here at home, in our people, in our infrastructure, and in our communities. But today the Republican leadership is trying to push us in the wrong direction by cutting those critical investments. Republicans today are attempting to interpose an across-the-board spending cut that will hurt our families, it will hurt our local communities, and it will even jeopardize the housing and safety of the American people.

I am speaking out today to explain how those misguided cuts will affect housing for vulnerable families and the safety of every American who plans to fly this holiday season.

I thank Senator BYRD for his tremendous leadership and his speaking out about this misguided Republican plan.

As the ranking member of the Appropriations Subcommittee on Transportation, Treasury, the Judiciary, Housing and Urban Development, and related agencies, I am here today to tell my colleagues that an additional 1-percent to 2-percent cut across the board will not be harmless. It will chip away at the Federal safety net that protects our vulnerable neighbors, and it will undermine the safety of our commercial aviation system.

Before I turn to those details, I want to make a broader point about priorities. There is something very wrong with the idea behind these broad, across-the-board cuts. Here is what the leadership in the Republican Party is saying with these cuts: When we need to rebuild in Iraq, we will pay for it out of the Treasury. But when we need to rebuild American cities such as New Orleans and Biloxi, we can only do it on the backs of vulnerable Americans. We can only do it by cutting other priorities at home.

That is the wrong message. It is the wrong priority, and America can do better than that. That Republican idea should offend every American taxpayer who believes that the first and greatest responsibility of our Federal Government should be the well-being of our own people. Nonetheless, that is the position of the Republican leadership in this Congress. As a result, we are now being told that, if we want to help the victims of Hurricane Katrina, we have to cut every Federal program across the board, no matter how much those cuts will hurt our safety, our economy, or our security.

Some Senators may try to suggest that a small cut will not have a big impact. I can tell you, as a member of the Appropriations Committee, that is not the case. Let me talk about some of the specific ways these cuts will undermine American families in areas such as transportation and housing and in aviation. I know those areas well because I have worked on them as the ranking member on the Transportation and Treasury and HUD committee.

First of all, these cuts will mean less progress in reducing highway congestion. We will lose more than $720 million in highway construction funds, and with that 34,000 good-paying jobs. Americans will waste more time in traffic, businesses will lose productivity, and our economy will suffer.

Second, those proposed Republican cuts will make life harder for the victims of Hurricane Katrina and for the vulnerable families throughout our country. Hurricane Katrina revealed the harsh truth about poverty in America in 2005. Many people lost what little they had. There are still thousands of victims of that hurricane who are without adequate housing. Some of them are living in tents. Some are still in hotels, wondering when they are going to be thrown out. Others are doubled up with their relatives. And still others have been dispersed all across the country, wondering how they are going to pay for housing when they are earning no income. Neither FEMA nor HUD have done an adequate job addressing the critical housing needs of these Americans.

So here we are trying to address those needs with a supplemental appropriations bill, and Republican leadership is saying if you want to help these Katrina victims, you have to cut housing assistance for other vulnerable families. I think that is the wrong way, to say the only way we will help the victims of Hurricane Katrina is by taking housing away from other needy families. Those cuts would mean that more than 35,000 families will lose the help in housing that they get today through HUD's tenant-based housing assistance program.

Those cuts also threaten to eliminate transitional housing for 1,200 homeless citizens. Think about it. Cutting housing for the homeless, taking help away from 35,000 vulnerable families right before the holidays—that does not reflect my values and that does not reflect my priorities.

In the immediate aftermath of Hurricane Katrina, public housing agencies across America opened their doors and sought to make emergency housing available to the citizens who had to evacuate New Orleans. I saw it even in my home State where housing agencies worked hard, thousands of miles away from the gulf coast, to help these families. Most of those housing agencies already had long waiting lists of low-income families waiting for a unit or for a voucher. By accommodating those Hurricane Katrina victims, those housing agencies effectively pushed their own local citizens further down that very long waiting list.

We should not now make it worse by eliminating vouchers for 35,000 families in order to pay for the additional aid for the Katrina victims. We must not come to the aid of victims of Hurricane Katrina by creating still other victims around the country through these misguided cuts.

These cuts will hurt jobs and transportation. They will hurt the homeless and other families who are living on the brink. And these cuts will affect the safety of our air travel in this country.

I addressed the Senate on this issue of aviation safety on October 6, and I did so because I thought it was critical that all Senators understand the relationship between the funding levels we provide to the FAA and the ability of that agency to ensure that the American people are safe when they board an aircraft.

The holidays are upon us. Thousands of American families are going to board planes shortly to gather with their families across America. When they do, they have the right to expect that we in Congress are doing everything in our power to ensure that they will continue to benefit from the safest aviation system in the world.

Yet the reality is that the FAA is facing an unprecedented budget challenge in adequately staffing its air traffic control facilities with fully trained professionals. And the agency is also challenged when it comes to deploying an adequate number of fully trained aviation safety inspectors to oversee the safety practices of our Nation's airlines.

As I explained back on October 6, over the last few years our national aviation enterprise, airlines, airports, and the FAA, have been under an unprecedented amount of financial pressure. We now have no fewer than six airlines in bankruptcy, and that number could grow.

In the interest of cutting costs, airlines have been cutting back on staff, renouncing their pension plans, and outsourcing an increased percentage of their aircraft maintenance.

I know many Senators like me who travel home every weekend have noticed those changes in the services the airlines offer. Staffing is leaner than ever, and flight delays and mechanical problems are on the rise.

Airlines are now contracting out their aircraft maintenance work to third parties, including, my colleagues should know, many overseas vendors who are known as foreign repair stations.

Let me say that again.

Aircraft maintenance work is being contracted out to overseas vendors who are known as foreign repair stations.

In the past, airlines maintained their planes with experienced veteran unionized mechanics. Today, they outsource more than 50 percent of their maintenance work to independent operators. Airlines, such as Northwest, send some of their aircraft as far as Singapore and Hong Kong for heavy maintenance. We have one major carrier, JetBlue, that sends a large portion of its all-airbus fleet to be maintained in El Salvador, Central America. That is where those planes have mechanics that work on them. America West Airlines, now merged with U.S. Airways, does the same thing. This outsourced work needs adequate oversight, and it needs inspection if the American people are going to be safe.

How has the FAA responded to this growing threat to aviation safety? Because of across-the-board cuts in the prior appropriations bills, the FAA has actually downsized its safety workforce by more than 300 personnel, including more than 230 inspectors. That is right. We have gotten rid of more than 230 inspectors, the very professionals who are charged with ensuring that maintenance operations are meeting adequate safety standards.

That was not the intent of the transportation appropriations subcommittee in either the House or the Senate. Indeed, just last year the Transportation appropriations bill provided every penny the President requested for the FAA's safety office. But the FAA still had to drop the number of inspectors because of the across-the-board cut that was imposed by the Republican leadership.

It also resulted from the fact that Congress granted all civilian Federal employees a higher pay raise than the Bush administration asked for, but none of the appropriations subcommittees were given adequate funding allocations to fully fund those pay raises.

Now we know the FAA's inspection efforts are falling short. We have troubling reports today from the Department of Transportation's Inspector General, from the Government Accountability Office, and the National Transportation Safety Board.

Yet despite all those dangers, the FAA had to go ahead and decrease the number of FAA safety inspectors dramatically last year because of those across-the-board cuts. No one can stand up today and say that an across-the-board cut has no impact.

Let us fast-forward to right now, this year. I am very proud to say that the House and Senate Appropriations Committees have worked to address this safety vulnerability. Both committees provided increased funds over and above the levels requested by the Bush administration to bring the number of safety inspectors back to reasonable levels.

In the fiscal year 2006 Transportation-Treasury-HUD appropriations bill that the President signed a few weeks ago, we provided $8 million dollars to boost employment in the FAA safety office by 119 inspectors. That is not going to restore all of the safety inspectors that we lost last year. But it will move staffing in this critical function in the right direction.

But if Congress enacts an across-the-board cut, it will completely eliminate all of the progress we just made in ensuring safety in our skies.

An across-the-board cut that threatens to be included in the final appropriations bill this year could cut the FAA's operations account by over $160 million and then put the FAA's budgetary situation right back where it was. That will require downsizing of the FAA inspector workforce while the critical workload continues to grow.

The situation is almost identical when it comes to the FAA's efforts to avoid the continued attrition in the ranks of our air traffic controllers. It is estimated that 73 percent of the FAA's air traffic controllers will be eligible to retire over the next decade.

In the fiscal year 2006 Transportation appropriations bill just signed into law, we provided almost $25 million to hire an additional 1,250 air traffic controllers. That funding is essential in order to replace the over 650 air traffic controllers who are expected to retire over the course of the next year and to build that workforce back up so we can handle retirements in the future.

Another across-the-board cut this year will completely nullify our effort to hire an adequate number of air traffic controllers. Such a cut will put America's flying public at great risk.

As I said, those across-the-board cuts have a meaningful impact, and they recklessly eliminate initiatives that are critical to the safety of American citizens.

If Senators don't want to take my word for it, they need to listen to the word's of George Bush's FAA Administrator, Marion Blakey. I have had several discussions with her about this topic in the last few weeks. She recently sent me a letter. I will read a portion of it. It says:

> Over the past two years, we experienced a net loss of 1,000 controllers and 231 safety inspectors. I don't believe Congress intended that to happen, but that has been the impact of unfunded pay raises.
>
> I am concerned it is going to happen again if Congress adopts an across-the-board reduction in the final bill.

Mr. President, I ask unanimous consent that the letter I received from the Bush administration's FAA Administrator, Marion Blakey, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> FEDERAL AVIATION ADMINISTRATION,
>
> DEAR SENATOR MURRAY: Before you complete work on the TTHUD bill, I would like to speak to you about the FAA's budget. Last fiscal year we significantly reduced costs, including contracting our Flight Service Stations and eliminating more than 400 non-safety jobs. Unfortunately, these efforts were not enough to cover our shortfall. Over the past two years, we experienced a net loss of 1,000 controllers and 231 safety inspectors. I don't believe Congress intended that to happen, but that has been the impact of unfunded pay raises and rescissions.
>
> I an concerned it is going to happen again if Congress adopts an across-the-board reduction in the final bill.
>
> MARION BLAKEY,
> *Admiminstrator.*

Mrs. MURRAY. Mr. President, in conclusion, I want to implore my colleagues to heed the warning of the FAA Administrator and me. We have to reject this absurd and reckless policy.

If we can declare an emergency under the Budget Act and provide the funding necessary to rebuild Iraq without offsets, then surely we can do the same when it comes to rebuilding Mississippi and Louisiana.

We certainly should not be cutting essential services to all Americans across the country, especially low-income Americans, for the purpose of funding the needs of the victims of Hurricane Katrina. Those cuts will simply create another wave of victims.

As I just outlined, it will put the well being of Americans at risk.

The PRESIDING OFFICER. The Senator from Illinois.

## PATRIOT ACT

Mr. OBAMA. Mr. President, 4 years ago, following the most devastating attack in our history, this Senate passed the USA PATRIOT Act in order to give our Nation's law enforcement the tools they needed to track down terrorists who plot and lurk within our own borders and all over the world; terrorists who, right now, are looking to exploit weaknesses in our laws and our security to carry out attacks that may be even deadlier than those that took place on September 11.

We all agree we need legislation to make it harder for suspected terrorists to go undetected in this country. And we all agree that we needed to make it harder for them to organize and strategize and get flight licenses and sneak across our borders. Americans everywhere wanted to do that.

Soon after the PATRIOT Act passed, a few years before I even arrived in the Senate, I began hearing concerns from people of every background and political leaning that this law, the very purpose of which was to protect us, was also threatening to violate some of the rights and freedoms we hold most dear; that it does not just provide law enforcement the powers it needed to keep us safe but powers it did not need to invade our privacy without cause or suspicion.

Now, in Washington, this issue has tended to generate into the typical either/or debate: Either we protect our people from terror or we protect our most cherished principles. I suggest this is a false choice. It asks too little of us and it assumes too little about America.

That is why, as it has come to time to reauthorize the USA PATRIOT Act, we have been working in a bipartisan way to do both, to show the American people we can track down terrorists without trampling on our civil liberties, to show the American people that the Federal Government will only issue warrants and execute searches because it needs to do so, not because it can do so.

What we have been trying to achieve under the leadership of a bipartisan group of Senators is some accountability in this process to get answers and see evidence where there is suspicion.

Several weeks ago, these efforts bore fruit. The Judiciary Committee and the Senate managed to pass a piece of bipartisan legislation that, while I cannot say is perfect, was able to address some of the most serious problems in the existing law. Unfortunately, that strong bipartisan legislation has been tossed aside in conference. Instead, we have been forced to consider a piece of rushed legislation that fails to address the concerns of Members of both parties as well as the American people.

This is legislation that puts our own Justice Department above the law. When national security letters are issued, they allow Federal agents to conduct any search on any American, no matter how extensive, how wide ranging, without ever going before a judge to prove the search is necessary. All that is needed is a signoff from a local FBI agent. That is it.

Once a business or a person receives notification they will be searched, they are prohibited from telling anyone about it and they are even prohibited from challenging this automatic gag

order in court. Even though judges have already found that similar restrictions violate the first amendment, this conference report disregards the case law and the right to challenge the gag order.

If you do decide to consult an attorney for legal advice, hold on; you will have to tell the FBI you have done so. Think about that: You want to talk to a lawyer about whether your actions are going to be causing you to get into trouble, you have to tell the FBI that you are consulting a lawyer. This is unheard of. There is no such requirement in any other area of the law. I see no reason why it is justified here.

If someone wants to know why their own Government has decided to go on a fishing expedition through every personal record or private document, through the library books you read, the phone calls you have made, the e-mails you have sent, this legislation gives people no rights to appeal the need for such a search in a court of law. No judge will hear your plea; no jury will hear your case. This is plain wrong. There are Republican Senators as well as Democratic Senators who recognize it is plain wrong.

Giving law enforcement the tools they need to investigate suspicious activities is one thing and it is the right thing. But doing it without any real oversight seriously jeopardizes the rights of all Americans and the ideals America stands for.

Supporters of this conference report have argued we should hold our noses and support this legislation because it is not going to get any better. That is not a good argument. We can do better. We have time to do better. It does not convince me I should support this report. We owe it to the Nation, we owe it to those who fought for our civil liberties, we owe it to the future and our children to make sure we craft the kind of legislation that would make us proud, not legislation we would settle for because we are in a rush. We do not have to settle for a PATRIOT Act that sacrifices our liberties or our safety. We can have one that secures both.

There have been proposals on both sides of the aisle and in both Houses of Congress to extend the PATRIOT Act for 3 months so we can reach an agreement on this bill that is well thought through. I support these efforts and will oppose cloture on what I consider to be this unacceptable conference report.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## DEFICIT REDUCTION ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the hour of 3:30 p.m. having arrived, the Senate will resume consideration of the House message accompanying S. 1932. The clerk will report.

The bill clerk read as follows:

A bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

Pending:

DeWine motion to instruct conferees to insist that any conference report shall not include the provisions contained in section 8701 of the House amendment relating to the repeal of section 754 of the Tariff Act of 1930.

Kohl motion to instruct conferees to insist that any conference report shall not include any of the provisions in the House amendment that reduce funding for the child support program established under part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.), and to insist that the conference report shall not include any restrictions on the ability of States to use Federal child support incentive payments for child support program expenditures that are eligible for Federal matching payments.

Kennedy motion to instruct conferees to insist that the Senate provisions increasing need-based financial aid in the bill, S. 1932, which were fully offset by savings in the bill, S. 1932, be included in the final conference report and that the House provisions in the bill, H.R. 4241, that impose new fees and costs on students in school and in repayment be rejected in the final conference report.

Reed motion to instruct conferees to insist on a provision that makes available $2,920,000,000 for the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), in addition to the $2,183,000,000 made available for such act in the Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Act, 2006.

Mr. GREGG. Mr. President, I ask unanimous consent that it be deemed that the yeas and nays have been ordered on the next four items which are set for votes.

The PRESIDING OFFICER. Without objection, it is in order to request the yeas and nays en bloc.

Mr. GREGG. I ask for the yeas and nays en bloc.

Mr. DEWINE. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. What is the request?

Mr. GREGG. The point of the request is to allow the yeas and nays on each item and that they be voted on seriatim.

Mr. DEWINE. I withdraw my reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered en bloc.

Mr. GREGG. Mr. President, I ask unanimous consent that after the first vote, the subsequent votes be 10 minutes in duration.

The PRESIDING OFFICER. Without objection, it is so ordered.

### MOTION TO INSTRUCT CONFEREES

The PRESIDING OFFICER. Who yields time on the first motion? The Senator from Ohio.

Mr. DEWINE. Mr. President, I urge my colleagues to vote yes on this motion to instruct the conferees to support something that 72 Senators have already supported in letters they have signed in the past, 72 Members of this body, and I have the list for anyone who would like to see it when they come to the Chamber.

This is to support a bill that is currently law, the Continued Dumping and Subsidy Offset Act. It is a bill that has helped companies in 48 States across this country. More importantly, it has helped workers in 48 States across this country. It has helped employers who create additional jobs. The idea is to compensate companies that have been victimized by illegal foreign dumping in this country. Instead of giving money to the Treasury, it goes to these companies, and these companies have the right then to reinvest and create jobs.

Some people have argued this is some sort of special interest. I ask Members of the Senate, when in the world did it become a special interest to protect American jobs?

This is a proven way to fight back against illegal trade. It is a proven way to protect American jobs. I urge a ''yes'' vote.

Mr. BYRD. Mr. President, I wish to join my Republican colleagues, Senator DEWINE, Senator SPECTER, and Senator CRAIG, all of whom have already spoken so eloquently in support of a motion introduced by Senator DEWINE yesterday to instruct conferees on the budget bill to strike an ill- conceived House provision that would repeal the Continued Dumping and Subsidy Offset Act, also known as CDSOA.

To repeal or abandon this trade law would be a travesty. The Continued Dumping and Subsidy Offset Act was enacted to save American manufacturing and our agricultural producers from wave after wave of unfairly dumped foreign imports.

CDSOA remains one of the most successful trade programs ever enacted. It maintains America's corporate competitiveness; it enables small and medium-sized businesses—and family-owned businesses—to invest in their futures. It keeps American workers employed, so they can receive health and pension benefits. This law is about American jobs. As Senator DEWINE said yesterday, this law is not about rewarding special interests: It is about keeping American jobs.

Five years ago, a bipartisan majority of the Senate approved our amendment to give U.S. companies injured by unfair trade the ability to invest in their factories and workers with funds collected by the Customs Service from unfairly traded imports. I particularly appreciate the continued strong support that Senator DEWINE and many of our colleagues on the other side of the aisle continue to express in support of this law. In fact, three-fourths of the Senate has publicly pledged support for the law.

Before this law was enacted, the Customs Service imposed antidumping and countervailing duties on dumped and unfairly subsidized imports—to make foreign exporters stop dumping and charge a fair price. Despite Customs' efforts, unfair foreign traders refused to trade fairly. Instead, they continued to dump—year after year. And the prices of the dumped foreign imports from China, Canada, the European Union, Japan, and other countries continued to unfairly undercut the prices of American-made products sold here in the United States.

Faced with eroding U.S. market share, American producers struggled to stay afloat, unable to invest in new plants or equipment or to meet their payrolls. This was particularly true for small businesses and many of our Nation's family farmers, ranchers, and aquacultural producers. Even today, valiant producers of shrimp and crawfish continue to suffer from having endured a double whammy: unending unfair trade and Hurricane Katrina.

CDSOA was enacted to restore conditions of fair trade, so that jobs that should stay in the United States are not sent overseas or ''outsourced'' as the result of unfair competition. Under the law, each year, Customs distributes duties collected from unfair imports to those American companies and workers who can prove that they have been materially injured by unfair trade.

While the amounts distributed under the program are not large from a budget perspective—approximately $226 million for fiscal year 2005—the law is critically important to American companies and workers who continue to work hard to stay in business, even when foreign producers refuse to stop dumping. American companies that rightfully receive distributions under the law include producers of crawfish, garlic, furniture, honey, lumber, wheat, shrimp, catfish, semiconductor chips, bearings, mushrooms, crawfish, pasta, steel, raspberries, cement, and a long list of others—all of which deserve to be reimbursed under the law for having suffered the negative effects of bringing successful trade cases against illegally traded imports year after year after year.

There was a claim on the Senate floor earlier this week that CDSOA claims may be fraudulent. That shows a basic misunderstanding of the law. To receive reimbursement under the law, companies must certify, in writing, that they have made qualifying expenditures in their workers and facilities. CDSOA reimburses them for those expenditures. And Customs may verify any claim submitted to make certain that a request for reimbursement is valid. So there are very careful safeguards in place under the law to be certain that funds are distributed fairly, honestly, and legally.

Critics of the Continued Dumping and Subsidy Offset Act also argue that the WTO has ruled against the law, so we should abandon it. But the WTO was wrong in opposing it. The WTO was overzealous in ruling against the law; it overreached. The WTO decision against this trade authority was technically beyond the scope of the WTO' legal mandate. The WTO incorrectly read into international agreements a prohibition against our law that was never agreed to by any U.S. trade negotiator. The WTO has no legal basis to request that the United States repeal this law.

Nearly 800 American companies and workers in nearly every State of the Nation receive distributions under its provisions. It is critical to family-owned businesses, like Warwood Tools in Wheeling, WV, and to Wheeling-Pittsburgh Steel, and to Mittal Steel's facilities in Weirton, WV. It is equally important to the thousands of steelworkers in Ohio, Pennsylvania, and elsewhere across the Nation. They, and all hard-working Americans, deserve to continue to receive these funds so long as foreign traders keep dumping. If our trading partners don't like this trade law, I have only two words for them: stop dumping.

In the fiscal year 2004 and 2005 Consolidated Appropriations Acts—and, now, in the fiscal year 2006 Commerce, Justice, Science, and Related Agencies Appropriations Act—both Houses of Congress included language that directs the administration to negotiate a solution to the WTO dispute concerning this law. In fact, the conference report on the CJS bill that contains this language was approved by the Senate on November 16 by an overwhelming vote of 94 to 5.

Pursuant to these congressional directives, the administration last year put this trade law on the table in the Doha Round of trade negotiations, and the USTR even told our trading partners that it agrees it is ''beyond question that countries have the sovereign right to distribute duties as they deem appropriate.''

Even if the WTO disagrees with the law, any retaliation by other countries against us is negligible—equal to only a few hours of trade among a few of our trading partners.

Currently, the United States and other nations are seeking to complete negotiations in the Doha Round of international trade talks by the end of 2006. Now is not the time to weaken the hand of our trade negotiators by attempting to repeal one of our Nation's most prominent and effective trade laws.

In fact, now is the time to do more to hold foreign unfair traders accountable, not less.

I urge my colleagues in the Senate to join me in support of this motion to instruct the conferees to strike from the budget reconciliation bill any provision that would repeal this critical trade law.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, this proposal is a motion to instruct which has no binding effect and, thus, I assume Members are just going to vote the way they feel like voting.

I will point out this: No. 1, the effect of this motion, if it had a binding effect, would be to take $3 billion away from the Federal Treasury and give it to specific companies in violation of a WTO ruling. It may have made sense at one time, but since the WTO ruling, it makes no sense. Because of that ruling, other companies are now being penalized inappropriately because we continue to assess this fine.

No. 2, it is very hard for me to understand why, in a bill that is supposed to be reducing the deficit, we would want to increase the deficit by passing this type of instruction. Therefore, I oppose the motion to instruct.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The Legislative Clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Georgia (Mr. ISAKSON), and the Senator from Louisiana (Mr. VITTER).

Further, if present and voting, the Senator from Pennsylvania (Mr. SANTORUM) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER), would vote ''aye.''

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

The result was announced—yeas 71, nays 20, as follows:

[Rollcall Vote No. 354 Leg.]

YEAS—71

| | | |
|---|---|---|
| Akaka | Domenici | Murray |
| Allen | Dorgan | Nelson (FL) |
| Baucus | Durbin | Nelson (NE) |
| Bayh | Enzi | Obama |
| Bennett | Feingold | Pryor |
| Bingaman | Feinstein | Reed |
| Bunning | Harkin | Reid |
| Burns | Hatch | Rockefeller |
| Burr | Hutchison | Salazar |
| Byrd | Inouye | Sarbanes |
| Carper | Jeffords | Schumer |
| Clinton | Johnson | Sessions |
| Coburn | Kennedy | Shelby |
| Cochran | Kerry | Smith |
| Coleman | Kohl | Snowe |
| Collins | Landrieu | Specter |
| Conrad | Lautenberg | Stabenow |
| Cornyn | Leahy | Stevens |
| Corzine | Levin | Talent |
| Craig | Lieberman | Thune |
| Crapo | Lincoln | Voinovich |
| Dayton | Lott | Warner |
| DeWine | Martinez | Wyden |
| Dole | Mikulski | |

NAYS—20

| | | |
|---|---|---|
| Alexander | Bond | Chafee |
| Allard | Brownback | DeMint |

| | | |
|---|---|---|
| Ensign | Inhofe | Murkowski |
| Frist | Kyl | Roberts |
| Grassley | Lugar | Sununu |
| Gregg | McCain | Thomas |
| Hagel | McConnell | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Chambliss | Isakson |
| Boxer | Dodd | Santorum |
| Cantwell | Graham | Vitter |

The motion was agreed to.

CHANGE OF VOTE

Mr. ROBERTS. Mr. President, on rollcall vote 354, I voted ''yea.'' It was my intention to vote ''nay.'' Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

• Mr. VITTER. Mr. President, I ask that the RECORD show that I would have voted ''aye'' on rollcall vote 354, the DeWine motion to instruct conferees on S. 1932. I continue to support the Continued Dumping and Subsidy Offset Act, and I agree that its repeal should not be included in the conference report.•

Mr. SANTORUM. Mr. President, I regret that I was unable to vote this afternoon on the DeWine motion to instruct conferees with respect to S. 1932, the deficit reduction bill.

The DeWine motion to instruct conferees was crafted with the goal of preventing Senate conferees to S. 1932 from agreeing with the House provision that repeals the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) during conference deliberations. Despite widespread support for this provision of law, the House companion bill repeals CDSOA. I have been a supporter of CDSOA since it was first crafted by Senator MIKE DEWINE of Ohio.

Mr. President, I ask that the RECORD reflect that, had I been here, I would have voted in favor of Senator DEWINE's motion to instruct conferees to not repeal CDSOA during conference deliberations on S. 1932.

I ask unanimous consent that my letter of November 29, 2005, to the Honorable CHARLES GRASSLEY, Chairman, Committee on Finance, on the need to maintain CDSOA, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEAR CHAIRMAN GRASSLEY: I write today concerning a provision contained in H.R. 4241, the House-passed savings reconciliation bill, that repeals the Continued Dumping and Subsidy Offset Act of 2000 [P.L. 106–387]. The Senate companion bill, S. 1932, does not include this repeal. I am optimistic that the Senate will not concur with the House action during conference deliberations on this bill. Please know that I was a cosponsor of the free-standing bill introduced by Senator Mike DeWine that was the blueprint for this amendment.

Over two years ago, the World Trade Organization (WTO) ruled that the Byrd Amendment is inconsistent with the United States' WTO obligations. The WTO has since authorized eight WTO members to retaliate against the United States. Canada, the European Union, Japan and Mexico have imposed about $115 million in retaliation on U.S. exports after the United States failed to meet a December 2003 WTO deadline for repealing the act.

However, in H.R. 2673, the Fiscal Year 2004 Consolidated Appropriations Act, Congress included a provision that directs the Bush Administration to immediately initiate WTO negotiations to recognize the ability of WTO members to distribute monies collected from antidumping and countervailing duties, and to provide regular reports on such negotiations.

Earlier this year, 25 Republican Senators wrote to Majority Leader Frist urging that the Senate not agree to any provisions that would repeal CDSOA. Prior to that letter, over 70 Senators wrote to President Bush expressing the view that U.S. negotiators needed to re-engage WTO members and to continue to push for maintaining CDSOA. It was the view of these Members that U.S. trade laws are designed to insure a level playing field for U.S. industries and their workers that are being harmed by unfair trade.

As you may recall, the Bush administration stated in its November 2002 appeal ''[T]he Panel in this case has created obligations that do not exist in the WTO Agreements cited. The errors committed are serious and many about a statute which, in the end, creates a payment program that is not challenged as a subsidy.''

With this in mind, I urge you to oppose efforts to repeal CDSOA during House-Senate conference negotiations on H.R. 4241 and S. 1932, the spending reconciliation bills.

Thank you for your kind consideration of this request.

Sincerely,

RICK SANTORUM,
*United States Senate.*

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

Mr. CONRAD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOTION TO INSTRUCT CONFEREES

Mr. GREGG. Mr. President, what is the regular order?

The PRESIDING OFFICER (Mr. CHAFEE). There is 2 minutes evenly divided.

Mr. GREGG. Is that on the Kohl proposal?

The PRESIDING OFFICER. That is correct.

Mr. KOHL. Mr. President, I call up my motion, which is at the desk, to reject the $16 billion cut to the child support program which is in the House bill but which is not in the Senate bill. The House position will result in $24 billion in child support payments going uncollected, and would impact families in every single State. The child support program is a proven success and it has won high praise in the President's 2006 budget for providing a $4 return on every dollar invested in the program.

The House conference report is opposed by a wide range of interests, including the National Governors' Association and the National Conference of State Legislatures. I strongly urge my colleagues to join me in sending a message to the conferees that the Senate will not support cutting benefits for over 17 million children.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. The motion of the Senator from Wisconsin is not binding so I am sure they will vote as they please. It is well-intentioned and I agree with the concept. However, there are issues within the child support questions which should be subject to conference and which, if you read the motion literally and which if it had any binding effect, would undermine our capacity to have flexibility in conference.

Specifically, for example, under the law today, you can use Federal money and make the State match, so what is happening is States are taking Federal money, and instead of using their State dollars to match, they are using Federal money to get more Federal money. That makes no sense at all.

The House has corrected this program. This language would undermine that. I hope we do not support the motion to instruct. The conference will do a good job on this. It does not need this instruction.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ''yea.''

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

The result was announced—yeas 75, nays 16, as follows:

[Rollcall Vote No. 355 Leg.]

YEAS—75

| | | |
|---|---|---|
| Akaka | Enzi | Murray |
| Alexander | Feingold | Nelson (FL) |
| Baucus | Feinstein | Nelson (NE) |
| Bayh | Frist | Obama |
| Bennett | Grassley | Pryor |
| Bingaman | Harkin | Reed |
| Burns | Hatch | Reid |
| Byrd | Hutchison | Roberts |
| Carper | Inouye | Rockefeller |
| Chafee | Jeffords | Salazar |
| Clinton | Johnson | Sarbanes |
| Coburn | Kennedy | Schumer |
| Coleman | Kerry | Sessions |
| Collins | Kohl | Shelby |
| Conrad | Kyl | Smith |
| Cornyn | Landrieu | Snowe |
| Corzine | Lautenberg | Specter |
| Craig | Leahy | Stabenow |
| Crapo | Levin | Stevens |
| Dayton | Lieberman | Talent |
| DeWine | Lincoln | Thomas |
| Dole | Lugar | Thune |
| Domenici | McCain | Voinovich |
| Dorgan | Mikulski | Warner |
| Durbin | Murkowski | Wyden |

NAYS—16

| | | |
|---|---|---|
| Allard | Cochran | Lott |
| Allen | DeMint | Martinez |
| Bond | Ensign | McConnell |
| Brownback | Gregg | Sununu |
| Bunning | Hagel | |
| Burr | Inhofe | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Chambliss | Isakson |
| Boxer | Dodd | Santorum |
| Cantwell | Graham | Vitter |

The motion was agreed to.

MOTION TO INSTRUCT CONFEREES

The PRESIDING OFFICER. There is now 2 minutes equally divided prior to a vote in relation to the motion to instruct offered by Senator KENNEDY.

Mr. KENNEDY. Mr. President, I will just take 30 seconds because the other 30 seconds will be taken by the chairman of the HELP Committee. All this motion does is insist that the student aid program—which provides $8 billion more for Pell eligible students—that passed out of our committee, virtually unanimously, will be affirmed in the conference. Effectively, we are taking what was the bipartisan agreement in our committee under the leadership of Senator ENZI and instructing the conferees to support that position.

Many of our colleagues have voiced their public support for this motion, including Senators DURBIN, HARKIN, DODD, REID, LIEBERMAN, KERRY, REED, CORZINE, CLINTON, and LAUTENBERG.

If you are for American competitiveness in the global economy, you will vote for this motion.

If you are for a strong national security, you will vote for this motion.

If you are for opportunity for every American, you will vote for this motion.

I urge my colleagues to join me in doing what is right for American families, especially at Christmas, and send a strong message that students need our help now.

I yield 30 seconds to the Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I concur with what the Senator from Massachusetts just said. As the body will remember, the Health, Education, Labor, and Pensions Committee had the heaviest lifting in the savings bill, and we met that requirement. We met that requirement while we provided for some grants for both low-income and people who would major in math and science and some special languages.

I would appreciate the support of this body on this instruction. I have been negotiating with the House for 5 full days, and this is one of the issues that is still up. This instruction would help us in that negotiation. I would appreciate the support.

Mr. DURBIN. Mr. President, I rise today to urge my colleagues to support Senator KENNEDY's motion to instruct conferees. The motion instructs Senate conferees to insist on preserving the Senate provisions that increase need-based financial aid in S. 1932. Forty years ago, President Johnson sought to increase accessibility to education by signing into law the Higher Education Act of 1965. In President Johnson's words, ''To thousands of young men and women, this [Act] means the path of knowledge is open to all that have the determination to walk it . . . a high school senior anywhere in this great land of ours can apply to any college or any university in any of the 50 States and not be turned away because his family is poor.''

Access to higher education has long been and remains a great American goal. The good news is that the number of students enrolling in institutions of higher education has nearly doubled over the past 35 years—from 8.5 million in 1970 to approximately 16 million in 2005. The bad news is that, despite the importance of a college education in the 21st century, so many millions of young adults never make it to college. Sadly, many fail to make it to college due to financial constraints.

Never has higher education played such a critical role in closing the gap between the haves and the have-nots. Over the course of their lifetime, college graduates earn over $1 million more than those without college degrees. Today, 6 out of every 10 jobs require some postsecondary education and training. By 2010, the number of jobs requiring advanced skills will grow at twice the rate of those requiring only basic skills.

In addition to the individual benefits of earning a college degree, investing in and producing more college-educated Americans is vital to our Nation's growth. Economists estimate that the increases in the education level of the U.S. labor force between 1915 and 1999 directly resulted in at least 23 percent of the overall growth in U.S. productivity.

Unfortunately, the cost of a college education is far out of reach for many American students and is hitting poor families the hardest—not just those from poverty-stricken areas but those who come from family farms and those who may be new immigrants. According to the College Board, the inflation-adjusted, real increase in tuition, fees, and room and board at public colleges over the last 5 years has been 2 percent. At 4-year private schools, the same costs have increased by 17 percent.

Federal financial assistance is simply not keeping pace with rising college costs. In the 1970s, the maximum Pell grant for low-income and working class families covered about 40 percent of the average cost of attending a 4-year college. Now it only covers about 15 percent. Smart, hardworking kids from low-income backgrounds deserve a chance to go as far as their talents will take them. According to Postsecondary Education Opportunity, a higher education research group, the percentage of the Nation's poorest students who earned a bachelor's degree by age 24 increased only from 7.1 percent in 1975 to 8.6 percent 2003. The students left behind represent a huge untapped resource for our country.

Recently, many reports have sounded the alarm that America is losing its edge as the world's technological innovator to countries such as China and India. These countries are moving from being the world's supplier of low-wage, high-labor work to becoming the world's technological leaders by investing in their talent pool. In recent years, Americans have felt the effects of the impact of education as newly educated workers from China and India compete for prime jobs once held in the United States. According to the National Academies, in 2004, China graduated 600,000 engineers and India 350,000, while the United States produced only 70,000 engineers. To keep America's edge, we must recognize the value of investing in higher education and provide our young adults with the assistance they need so that they can compete in the global economy.

The Senate provisions included in S. 1932 that increase need-based financial aid—Pell grants and new need-based aid programs such as ProGap and SMART grants—will help many deserving students reach their educational potential. In contrast, the House fails to seize an opportunity to expand Pell grants and other need-based aid. Instead, the House bill includes provisions that would make college more expensive for families. These provisions include: No. 1, a temporary increase in origination fees for direct loan borrowers; No. 2, repeal of a scheduled reduction in the maximum student loan interest rate—from 8.25 percent to 6.8 percent for students and from 9 percent to 7.9 percent for parents; No. 3, imposing a new 1 percent borrower origination fee that will make it more expensive to consolidate loans; and No. 4, requiring lenders to charge student and parent borrowers a 1 percent insurance fee on student loans.

By insisting on the Senate provisions, we will boost need-based aid and in turn help the United States maintain its competitive edge. But most importantly, we will be a step closer to living up to the promise that President Johnson made to America's youth 40 years ago: providing access to higher education for those determined to realize the American dream.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. We yield back the remainder of the time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the motion.

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ''aye''.

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

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 356 Leg.]

YEAS—83

| | | |
|---|---|---|
| Akaka | Durbin | Mikulski |
| Alexander | Ensign | Murkowski |
| Allard | Enzi | Murray |
| Allen | Feingold | Nelson (FL) |
| Baucus | Feinstein | Nelson (NE) |
| Bayh | Frist | Obama |
| Bennett | Grassley | Pryor |
| Bingaman | Harkin | Reed |
| Brownback | Hatch | Reid |
| Bunning | Hutchison | Roberts |
| Burns | Inouye | Rockefeller |
| Byrd | Jeffords | Salazar |
| Carper | Johnson | Sarbanes |
| Chafee | Kennedy | Schumer |
| Clinton | Kerry | Sessions |
| Cochran | Kohl | Shelby |
| Coleman | Kyl | Smith |
| Collins | Landrieu | Snowe |
| Conrad | Lautenberg | Specter |
| Cornyn | Leahy | Stabenow |
| Corzine | Levin | Stevens |
| Craig | Lieberman | Talent |
| Crapo | Lincoln | Thomas |
| Dayton | Lott | Thune |
| DeWine | Lugar | Voinovich |
| Dole | Martinez | Warner |
| Domenici | McCain | Wyden |
| Dorgan | McConnell | |

NAYS—8

| | | |
|---|---|---|
| Bond | DeMint | Inhofe |
| Burr | Gregg | Sununu |
| Coburn | Hagel | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Chambliss | Isakson |
| Boxer | Dodd | Santorum |
| Cantwell | Graham | Vitter |

The motion was agreed to.

Mr. GREGG. I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOTION TO INSTRUCT CONFEREES

The PRESIDING OFFICER. Under the previous order, there is 2 minutes equally divided on the Reed motion to instruct conferees. The Senator from Rhode Island.

Mr. REED. Mr. President, I offer this motion along with my colleague, Senator COLLINS from Maine. I will shortly yield to her the last 30 seconds. I also offer it on behalf of myself and other Senators, including Senator LAUTENBERG.

The reality is very clear to so many poor families in this country. Energy prices are rising, temperatures are falling, and they are going to be in a very vulnerable and very disadvantaged position. This amendment would add $2.9 billion in additional funding for LIHEAP. It would bring it up to the authorized level of $5.1 billion.

We have considered this proposal in various procedural means four times. A majority of the Senate has always supported it. I hope it continues to do so.

I yield my remaining time to Senator COLLINS.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I urge my colleagues to support this motion to instruct the conferees to add $2.9 billion for the LIHEAP program. The time is growing late. In northern Maine, the high temperature earlier this week—the high temperature—was 12 degrees. Let's act now to avert a real crisis for low-income families across this country.

Ms. SNOWE. Mr. President, I rise today for one very simple reason—to ask for the support of my colleagues for the Reed-Collins-Kennnedy-Snowe motion to instruct the conferees to S. 1932, to add $2.92 billion for the Low Income Home Energy Assistant Program, or LIHEAP. This funding, along with the expected $2.18 billion in fiscal year 2006 appropriations, will confirm the commitment we made just this past July and bring LIHEAP up to the level of $5.1 billion we authorized in the 2005 Energy bill.

In the Nation's colder States such as Maine, the days are relentlessly marching toward winter, the clock is ticking as the thermometer edges ever downward and it would be unconscionable for Congress to adjourn for the year without providing critical, additional assistance for LIHEAP at a time when home heating oil prices have been predicted to increase by up to 44 percent this coming winter.

There should be no mistake—this is an emergency and a crisis that is no longer an impending crisis as I have been saying for months—it is now here. I feel very strongly that it would be an abrogation of our responsibility to stand by and allow more and more of our elderly on fixed incomes and low-income people, including children, to suffer because of a lack of heat.

This past week, it was reported to one of my Maine offices that two elderly people—who have already used up their entire LIHEAP allotment for a winter that has not yet officially arrived—were admitted to the hospital with hypothermia. In one of the households, the residence was so cold the water in the toilet bowl was frozen. It has been said that a society is judged by how it treats its most vulnerable citizens. What a failing grade we would get for LIHEAP. The fact is, countless Americans don't have room in their budget for such a surge in home heating prices—but surely, in looking at our national priorities, we can find room in our budget to help Americans stay warm this winter.

It does not take a crystal ball to predict the dire consequences when home heating oil in Maine has risen to $2.59 per gallon, up 66 cents from a year ago, kerosene prices average $2.72 a gallon, 52 cents higher than this time last year, and propane is at $2.20 per gallon, 17 cents higher than last year. Some projections have a gallon of heating oil reaching $3.00 later in the winter.

So understandably, we are hearing the mounting concern ''how will I pay for home heating oil when it's already almost 30 percent more than last year, and I struggled to make ends meet then?'' ''How will I afford to pay half again as much for natural gas?'' People need to know now that they can count on us—U.S. Congress—for assistance, not the most disruptive country leader in the Western Hemisphere who comes bearing gifts of discounted oil to our communities and States. This country should take care of its own.

Home heating oil in my State is a necessity of life—so much so that 73 percent of households in a recent survey reported they would cut back on, and even go without, other necessities such as food, prescription drugs, and mortgage and rent payments. Churches, food pantries, and local service organizations are all hearing the cry and sensing the growing need.

Because of the supply disruptions caused by the Gulf hurricanes at a time when prices were already spiraling up, prices have been driven even higher and are directly affecting low-come Mainers and how they Will be able to pay for their home heating oil, propane and kerosene this winter. A recent Wall Street Journal quoted Jo-Ann Choate, who heads up Maine's LIHEAP program. Ms. Choate said, ''This year we've got a very good chance of running out.'' Eighty-four percent of the applicants for the LIHEAP program in the State use oil heat. Over 46,000 applied for and received State LIHEAP funds last winter. Each household received $480, which covered the cost of 275 gallons of heating oil.

The problem this winter is that the same $480 will buy only 172 gallons, which a household will use up in the first 3 to 4 weeks in Maine. What will these people do to stay warm for the four or five months left of winter? The water pipes will freeze and then break, damaging homes. People will start using their stoves to get heat. The Mortgage Bankers Association expects that the steep energy costs could increase the number of missed payments and lost homes beginning later this year. My State is anticipating at least 48,000 applicants this winter, so there will be less money distributed to each household unless we can obtain higher funding for the LIHEAP program.

Ms. Choate says that Maine plans to focus on the elderly, disabled, and families with small children, and is studying how to move others to heated shelters. This is why our efforts are so very important. And it isn't just Maine. It is happening in all of the Nation's cold weather States. Quite simply, without increased funding, we are forcing the managers of State LIHEAP programs to make a Solomon's choice as to who gets served.

The facts are that LIHEAP is projected to help 5 million households nationwide this winter. But that is only

about one-sixth of households across the country that actually can qualify for the assistance. So this is a perennial fight we wage even when prices aren't as high as today. And now, that battle becomes all the more pivotal.

I Thank Senators REED and COLLINS for their leadership on this motion to instruct the conferees for increased LIHEAP funding, and I am proud to stand shoulder to shoulder with them to secure what is, in essence, literally life-or-death funding for our most vulnerable Americans. The cold weather won't wait—and neither should we when it comes to helping citizens survive through the coming winter.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, let's remember what this amendment does in the context of the LIHEAP issue. This amendment will add $2.9 billion to the national debt and pass that debt on to our children in order to pay for energy costs which are being incurred today.

The correct way to do this is the way we proposed in the Senate, as Republicans, which is to pay for it. That is what we will do in the conference. There is already $1 billion additional money for LIHEAP in the conference, and it will probably go up. The difference between those dollars and what is being proposed in this amendment is we actually pay for it.

It is inappropriate to go to this number, which is a 130-percent increase in the LIHEAP program, when spending on oil is estimated to go up by 28 to 30 percent or maybe even 40 percent. Increasing the program by 130 percent when the oil costs are going up 30 to 40 percent is inconsistent on its face.

It is especially inconsistent when one is taking that bill and giving it to one's children and their children's children so they end up paying for today's oil costs rather than their oil costs 2 or 3 years from today or two or three generations.

The PRESIDING OFFICER. The Senator's time has expired.

The yeas and nays were previously ordered.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), the Senator from Georgia (Mr. ISAKSON), the Senator from Pennsylvania (Mr. SANTORUM), and the Senator from Louisiana (Mr. VITTER).

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from California (Mrs. BOXER), the Senator from Washington (Ms. CANTWELL), and the Senator from Connecticut (Mr. DODD) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ''aye.''

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

The result was announced—yeas 63, nays 28, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—63

| | | |
|---|---|---|
| Akaka | Feingold | Murray |
| Baucus | Feinstein | Nelson (FL) |
| Bayh | Grassley | Obama |
| Bingaman | Harkin | Pryor |
| Burns | Inouye | Reed |
| Burr | Jeffords | Reid |
| Byrd | Johnson | Rockefeller |
| Carper | Kennedy | Salazar |
| Chafee | Kerry | Sarbanes |
| Clinton | Kohl | Schumer |
| Coleman | Landrieu | Smith |
| Collins | Lautenberg | Snowe |
| Conrad | Leahy | Specter |
| Corzine | Levin | Stabenow |
| Crapo | Lieberman | Stevens |
| Dayton | Lincoln | Sununu |
| DeWine | Lugar | Talent |
| Dole | Martinez | Thune |
| Domenici | McCain | Voinovich |
| Dorgan | Mikulski | Warner |
| Durbin | Murkowski | Wyden |

NAYS—28

| | | |
|---|---|---|
| Alexander | Craig | Kyl |
| Allard | DeMint | Lott |
| Allen | Ensign | McConnell |
| Bennett | Enzi | Nelson (NE) |
| Bond | Frist | Roberts |
| Brownback | Gregg | Sessions |
| Bunning | Hagel | Shelby |
| Coburn | Hatch | Thomas |
| Cochran | Hutchison | |
| Cornyn | Inhofe | |

NOT VOTING—9

| | | |
|---|---|---|
| Biden | Chambliss | Isakson |
| Boxer | Dodd | Santorum |
| Cantwell | Graham | Vitter |

The motion was agreed to.

● Mr. SANTORUM. Mr. President, I regret that I was unable to vote this afternoon on the Reed motion to instruct conferees with respect to S. 1932, the deficit reduction bill.

The LIHEAP program is of critical importance to Pennsylvania. My State routinely faces very harsh winters. Now that the cold weather is here and bills must be paid, I believe we must act to provide additional funding for this program. My record shows that I have been a consistent LIHEAP supporter, and I am hopeful that an increase will be promptly approved.

Mr. President, I ask that the RECORD reflect that, had I been here, I would have voted in favor of Senator REED's motion to instruct.●

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER.

Under the previous order, the Presiding Officer appoints Mr. GREGG, Mr. DOMENICI, Mr. GRASSLEY, Mr. ENZI, Mr. ALLARD, Mr. SESSIONS, Mr. STEVENS, Mr. SHELBY, Mr. SPECTER, Mr. CHAMBLISS, Mr. MCCONNELL, Mr. CONRAD, Mrs. MURRAY, Mr. HARKIN, Mr. SARBANES, Mr. INOUYE, Mr. BINGAMAN, Mr. BAUCUS, Mr. KENNEDY, and Mr. LEAHY conferees on the part of the Senate.

## ORDER OF PROCEDURE

Mr. GREGG. Mr. President, I ask unanimous consent that the Senator from Massachusetts be recognized at this point for 10 minutes, and after the Senator from Massachusetts has completed his time, the majority leader be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from New Hampshire.

## SBA RESPONSE TO HURRICANES IN GULF STATES

Mr. KERRY. Mr. President, obviously somewhere in the next few days—we don't know when yet—we are going to be wrapping up our business here, and that will mark the end of the first session of the 109th Congress. Before we leave, Members on both sides of the aisle are very concerned that we will not have provided the assistance to the small businesses in the Gulf States region that they desperately need in order to recover from the effects of Hurricanes Katrina and Rita.

The effect is that literally hundreds of thousands of small businesses are in desperate need of assistance throughout that region. Without the jobs those small businesses provide, the economy of the gulf coast is going to have a much harder time coming back.

Since Hurricanes Katrina and Rita hit the gulf coast, regrettably—this has been commented on again by Senators on both sides of the aisle; it is not a partisan issue—there has been a stunningly slow response by the Administration to provide relief to small businesses.

The administration has now sent up three pieces of emergency legislation—three supplemental emergency spending bills worth more than $62 billion—and yet we have not adopted any direct relief for small businesses.

The latest supplemental request asks for $471 million in additional funding for SBA disaster loans and the SBA Inspector General. But, frankly, giving more money to the disaster loan program doesn't address small business needs. It's too narrow in scope and is not delivering relief with urgency.

Senator LOTT has talked about the problems—Senator COCHRAN has too—and there is a recognition that you have a lot of small businesses that can't wait till their disaster loans are processed or disbursed. They need access to capital immediately.

It is a matter of record now, commented on in many national journals, that the SBA has done a completely inadequate job—abysmal may be a better word—of getting disaster loan funds into the hands of small businesses in the gulf region.

It is not because of the lack of funds or the lack of employees. The SBA has enough funding to grant $1.4 billion in disaster loans, and $249 million for administration and staff. The staffing has been increased from some 800 employees to 4,000 employees.

As of Monday of this week, almost 39,000 small businesses had applied for

SBA disaster loans. Yet with all of these resources, both personnel and money, only 9,200 loans have been actually processed, which is 25 percent, and only 2,600, which is 7 percent, had actually been approved. Only 240 had actually seen a disbursement of money.

In addition, as of last week, the SBA had handed out only 10 of its new gulf opportunity loans the administration's answer to the business community's call for bridge loans.

We were assured by the SBA Administrator several weeks ago in a bipartisan committee hearing that those loans were on track, that they would respond rapidly, that they had enough people in place, that they were going to get the money out, and, indeed, here we are with the same record that was the incentive to have that hearing in the first place.

These loans, I might add, have an interest rate of as much as 13.5 percent. Why would we be providing a 13.5 percent loan to people who have been hit when you are trying to do it as a matter of disaster response? Frankly, that is beyond me.

The program has generated irate complaints from the very people whom it has been set up to try to help. One small business owner who called my office referred to the SBA and FEMA as ''blackwater mercenaries.'' They feel set upon, not helped. We are not going to help the small businesses down there until we pass comprehensive small business assistance.

Senators LOTT and COCHRAN have stated that the pace of reconstruction in their home State of Mississippi and the other Gulf States is ''unacceptable.''

Despite the assertion of the administration that the Nation's ''small business sector is vibrant,'' Senator LOTT has said that the slow pace of approving disaster loans ''is preventing small businesses from coming back and jobs from returning or being created. Not unexpectedly, the unemployment rates in the two largest coastal counties, Harrison and Jackson, are more than quadruple the national average.''

Senator LOTT is absolutely correct, and we need to do something about it.

So far, the best efforts of the Senate have been stymied. One bill passed 96–0 in the Senate during consideration of CJS. That was dropped in conference. Another bipartisan bill, S. 1807, the Small Business Hurricane Relief and Reconstruction Act, has been blocked by the White House since September 30. That is almost 2½ months.

Small business owners such as Dr. Edward Lang and Dr. Angela Lang, who rushed to complete their disaster loan application in the weeks following the hurricane, believing that assistance was going to be there, have been told that everything was going to be done to help people recover. They have gone months now without hearing any response from the SBA whatsoever.

In the immediate aftermath of the storm, their small but successful podiatry office based out of New Orleans was deluged with 5 feet of water.

With their savings all but gone, and the ever-shrinking list of patients, all of whom have been displaced by the storm, the Langs are in dire need of assistance. They want to stay there. They want to rebuild their business there. It is essential to New Orleans that people who make that choice are empowered to be able to do so.

Despite repeated offers from out-of-state hospitals, they are sticking by their plan to try to rebuild in the city they love and the place they want to work. But the cold shoulder they received from the SBA is a virtual death sentence for their livelihood. They are just one example of countless other gulf coast businesses that have been ignored by the very governmental agencies that exist to serve them. On its face, that is unacceptable.

The request that has been put forward by the Small Business Committee for $720 million is a little more than 1 percent of the $62 billion the administration has requested for Katrina relief. This legislation is a very small cost compared to the total amount of money the Government is putting in, but an enormous return for the small businesses that need it.

Once again, we are seeing a situation where big business is able to walk away with most of the funding while the vast majority of the job base is in small business, and they are not getting the assistance they need.

What our bill does is to authorize $450 million for the impacted States to provide immediate assistance to small businesses struggling to get on their feet. It authorizes additional funding for SBA's partners—such as the small business development centers that are out in the field trying to provide business counseling to the many people and to the owners who are trying to determine what comes next.

There are too many businesses on the verge of bankruptcy in the hurricanes' wake. Since the goal shared in a bipartisan way by all of the Senate and the House is to try to get those businesses to be leveraged as best as possible, to be able to return as soon as possible, and each small business that returns helps the other small businesses to be able to return, all of those things will make a difference. Tax breaks will help. But the fact is, tax breaks are not enough because tax breaks do not make an impact until you file your taxes. They have nothing to do with the assistance one needs now to be able to have cash in the pocket, to be able to survive the gap. Small businesses need that additional relief, access to capital, immediate and longer-term.

Our bill also addresses the Administration's failure to contract with small businesses to rebuild the region. The New York Times reported more than 80 percent of FEMA contracts alone were awarded on the no-bid limited competition basis. This bill we have introduced—Senator SNOWE, myself, and other members of the committee—encourages greater competition by implementing a 30-percent goal for prime contracts and a 40-percent subcontracting goal. With billions of dollars being allocated to relief and reconstruction, it is important to demand fair competition. We need to ensure that America's small businesses are not left behind.

The citizens of the gulf region are courageously and desperately trying to rebuild their communities. The empty promises of several weeks ago, ''we will do what it takes, we will stay as long as it takes,'' are ringing in their ears. Frankly, they are wondering where the actions are to back that up.

According to Mike Allen of Time magazine, one Presidential adviser is quoted as saying recently:

> Katrina has fallen so far off the radar screen you can't even find it.

We need to find it. We need to put small businesses back on the radar screen. We need to follow through on the commitments to the victims of these devastating hurricanes. We need to ensure that we do not leave the citizens of the Gulf States behind.

There is bipartisan support to do this. The Senate passed this legislation previously. My hope is before we decide to go home, we will do what is necessary for the citizens who have been so badly impacted in the Gulf State region get the relief they have told us they need.

I yield back the remainder of my time.

The PRESIDING OFFICER. The majority leader.

## UNANIMOUS CONSENT REQUEST—H.R. 2520

Mr. FRIST. Mr. President, over the next few moments I will be addressing an issue that affects potentially thousands of people today who are without therapy or who have debilitating diseases, and then begin a brief discussion on what is called the cord blood bill.

The bill, broadly supported in a bipartisan way, has widespread support in the Senate, as well as in the House of Representatives.

As my colleagues know, we plan to take up and debate the policy and issues related to Federal support and oversight for embryonic stem cell research early next year.

And I look forward to what I know will be a full debate on the science and ethics surrounding this important research.

Today, I ask consent to move forward with bipartisan legislation to encourage a technology that is producing cures and saving lives now.

This legislation is needed now.

Every day, patients young and old die waiting for transplants of hematopoetic cells because they can't find a suitable match.

Diseases like leukemia, sickle cell anemia, and as many as 70 other blood and genetic diseases have been helped or cured by Cord blood transplants.

Cord blood is a healthy byproduct of normal pregnancies, and is harvested from the placenta after the baby is safely delivered.

The placental byproducts yield blood cells that are genetically immature, but have the remarkable ability to help recreate blood cells in patients who have diseases that traditionally have only helped through bone marrow transplants.

This bill provides for the creation of a public inventory of 150,000 units of cord blood which is estimated to provide well matched transplants for 80–90 percent of the population in need.

These are units that can be available in days, not months, with a success rate in patients as high as 80–90 percent, as compared with 40–50 percent with traditional bone marrow transplants.

Because the cells are initially less mature and more pliable there is less chance of rejection, and therefore fewer complications.

In fact, over 7,000 cord blood transplants have been successfully done here in this country, and around the world.

Leukemia is a devastating blood disease that has been treated by traditional bone marrow transplants.

Unfortunately, although there is a large group of potential bone marrow donors in the United States and Europe, testing, harvesting and transplanting bone marrow cells can take often months, with less dependable success.

Although this is important technology, cord blood transplants may provide an alternative that has already shown to be faster, safer, and potentially reach a larger group of patients affected with leukemia.

Nonmalignant blood conditions such a Sickle cell and Fanconi's anemia are also devastating to those affected by the disease.

Sickle cell anemia affects as many as 50,000 African Americans, while many more are carries of the disease. Although very few unrelated cord blood transplants have occurred, the success has been staggering—Sickle cell anemia can be cured.

Krabbe's disease is a genetic disease that affects only 1 in 100,000, but as many as 1 in 125 Americans are carriers of the genetic deficiency.

To date more than a dozen patients have had a cord blood transplant and have been cured of the disease.

Passage of this bill is especially important for minorities. For example, African American patients have the lowest success rate in getting a transplant from an unrelated bone marrow donor.

A long time member of my staff, Cornell Wedge, experienced this first hand. His brother, Robert Wedge Sr., was diagnosed with leukemia and in spite of sibling typing and numerous bone marrow drives aimed at increasing minority donation, his brother passed away still waiting for a match.

While tragic, this is not uncommon.

It can take months to properly screen, match, test and retest potential donors of traditional bone marrow transplant recipients.

Once we establish and collect a national cord blood inventory, we can significantly increase the chance of every individual in need to obtain a nit for transplantation. Furthermore, because of the relative immaturity of cord blood, rejection of the transplants are fewer and less severe.

I want to thank my colleagues, Senators HATCH, BURR, ENSIGN, BROWNBACK, DODD and REED for spearheadng the effort to produce a bipartisan bill with broad support.

The House of Representatives passed H.R. 2520 with overwhelming bipartisan support.

Furthermore, Chairman ENZI and others in the Senate have worked in a bipartisan manner to achieve the compromise language represented in the bill as reported out of committee.

I'm told the House will move quickly on this bill as soon as the Senate completes action.

There is no question that this issue enjoys broad bipartisan support in the Senate.

We have a responsibility to authorize this program and provide appropriate guidance regarding the establishment of the program.

I will let my colleagues discuss the specifics of the legislation, but I must ask, how can we deny any longer the many patients waiting today to find that match?

Indeed, the patients don't understand.

This is literally a matter of life and death.

Proverbs 27:3 says ''Do not withhold good from those who deserve it when it is in your power to act.'' It is within our power to act.'' And I hope we do.

We have a responsibility in this body to authorize this program and provide appropriate guidance so we can establish this program and get it up and running. There may be several of my colleagues who want to comment on the specifics of the program.

I will ask consent at this point and hope that we do get agreement and then further comments can be made.

I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 256, H.R. 2520, the cord blood bill. I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

The Senator from Iowa.

Mr. HARKIN. Mr. President, reserving the right to object, I want to first pay my respects to Senator FRIST and his leadership. He has been a leader in this area. He knows it well. We served on the same committee together when our leader came here to the Senate. I also commend Senator FRIST for his leadership on the stem cell issue, a very courageous stand.

I want to make it very clear that I support the cord blood bill. I am a cosponsor of it. What's more, I joined with Senator SPECTER 2 years ago to create the National Cord Blood Stem Cell Bank Program, and as our leader said, we included $10 million for that purpose in the fiscal year 2004 Labor-Health and Human Services appropriations bill. We have been funding that program ever since. When I say I want this bill to pass, I have a record to back that up.

But I have said for months that we should consider the cord blood bill at the same time that we take up H.R. 810, the Stem Cell Research Enhancement Act. That is what the House of Representatives did. On May 24, the House approved both bills. We have been waiting in the Senate to do the same thing. Senator SPECTER and I, along with Senators HATCH, FEINSTEIN, KENNEDY, and SMITH all agree. Let's have up-or-down votes on cord blood and H.R. 810, as the House did. The House did them together. Then we can send them to the President.

We keep hearing that we want to bring up H.R. 810. In fact, I pay my respects to the leader for his very courageous speech. On July 29, our leader said he would vote for the bill. But we just can't seem to bring it up on the Senate floor. Members keep coming up with new bills to try to confuse things. They want to vote on 5 or 6 or 7 bills, some of which have nothing to do with stem cells or cord blood. I understand there is a lot of pressure on Senators to take up the cord blood bill before the end of the year. I have no problem with that, but under one condition—that we also take up H.R. 810.

I reserve the right to object. I ask the leader if he would modify his request to include H.R. 810 in his amendment at the desk.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. FRIST. Mr. President, reserving the right to object to the request for a modification, all of these issues are critically important to promoting the health and welfare of patients as we look to the future, especially with embryonic stem cells, diseases that occur today. But it is going to take some while to have the research fully developed to be able to apply it. I believe it has huge promise, as I have said on this floor many times. The reason I feel strongly about separating the bills now is that bill is contentious in the sense that it is going to take a lot of debate. This is the embryonic stem cell bill that my distinguished colleague from Iowa refers to. It is going to take some time that I will give on the floor of the Senate early in the year and have committed to do so because of its importance. It is important to address that in order for that research to be amplified. Much of that research needs to be

amplified for cures that may occur 5 or 10 years down the road.

The reason I feel strongly, since there is probably unanimous consent on the substance of this bill, that we should move ahead is that we can benefit people who are dying today from diseases such as Fanconi's anemia, diseases such as a whole range of leukemias, childhood leukemia especially, where cord blood is so particularly powerful, diseases such as Krabbes, a pretty rare disease for which there is no treatment today except for the therapy that is applied in terms of cord blood. The reason I think we can justify, and should justify, separating these bills is that we all agree on the substance. It is a good bill. The leadership of Senator HARKIN and Senator SPECTER have brought us to the point that funding has begun. But now is the time to make this registry available nationwide.

The one problem with cord blood today is that it is powerful. It is more powerful than a regular bone marrow transplant, but the quantity that you get out of the placental byproducts has to be accumulated. You need to accumulate it from several different sources. But you do have to have a degree of genetic matching. Therefore, the only way to take advantage of it is to have a national registry where you can go to a computer and see where it is all over the country. Then you pull it together to treat a child who is dying from leukemia today. Therefore, action on this bill will save lives, literally.

We always exaggerate. A lot of people exaggerate the politics about saving lives in a lot of legislation we do. But I do believe that by establishing the registry and the communications network, which has not been done in spite of the funding, we can have a dramatic impact.

Since we have the House bill, we have the bill that we are requesting today, and I have assurances that the House will deal with it before we leave in the next 48 hours, we literally can pass a bill that we all agree upon.

There are a number of other bills. One is the embryonic stem cell bill. But there is an alternative therapy bill. There are a whole range of bills that are very important that we need to take up that are going to take several days on the floor to look at ethical and scientific issues. We are committed to doing that in the early part of the year. This is an important topic, and that is why I will object to the modification because I believe the embryonic stem cell does deserve more thought than we can possibly give it in the next 48 hours.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the majority leader?

The Senator from Kansas.

Mr. BROWNBACK. Reserving the right to object, I want to enter into this discussion. I deeply appreciate the majority leader bringing the issue up. I appreciate the comments of my colleague from Iowa. He and I have been around this debate for some time. I personally want to bring up a human cloning ban. That is something I have had in the mill for 4 years. Each session we are getting close. I think it ought to be included right now and moved forward. Yet I recognize it has some contentiousness to it, as does my colleague from Iowa raising the embryonic stem cell issue. It has a contentious debate on it. I have objections, as a number of my colleagues do, to the use of young human life for research purposes.

The reason that we should go forward with this type of proposal the leader is putting forward is there is nobody opposed to cord blood research in the entire 100 Members here. Everybody supports cord blood research. It is real cures today. I have two pictures of people who are being treated right now, have been treated. This is Keone, sickle cell anemia, cord blood cured. Another one, the next one, Krabbes disease, 3-year-old, cured, cord blood. The problem is, we don't have a big registry of it around the country. So it is a real hit and miss. Some people are lucky enough to find it; others don't and die today.

With embryonic stem cell research, the researchers who are the most supportive of it are looking at decades before we have cures. We are researching on it today.

We can cure more kids such as Erik Haines today or more will die if we don't take up what the majority leader is asking for us to do, a bill for which there is unanimous support. There is not a single person who does not support a cord blood registry and getting the banking of it up so more people can live today.

So I hope my colleagues will look at this and say they don't object. The Senator from Iowa supports the bill; he is one of the sponsors. Let's let this one through, and next year I would love to have a debate on embryonic stem cell research. I would love to debate that and have a debate about cloning. Let's do that and let's have this robust discussion where we don't have agreement.

But here we can save lives today. I am not going to object. I would, though, ask that the majority leader's proffer be accepted so we can save some lives today.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Further reserving the right to object, and I will object, with all due deference to my friend from Kansas, and he is my friend, these two need to be together as they were in the House. I keep hearing about we will bring this up and debate stem cells. I didn't come prepared with pictures. I can show you pictures of people dying today because they could use stem cell transplants right now. My friend from Kansas says decades. No. It will be decades if we keep diddling around and not doing anything. I hear that we will bring it up and debate it. I have heard that for half a year.

Unless the majority leader can give us a date certain—give us a date—hopefully before May 24, 2006—if the majority leader can give us a date before then when we will bring up H.R. 810—if they want to bring up these other bills, fine, as separate bills, not as amendments to H.R. 810; bring them up separately and we will debate and vote on them, fine. I have no problem with that. But unless the majority leader can give us a date certain and not more of this ''maybe we will debate it sometime in the future,'' I will object. I reserve the right to object and I ask the majority leader, can he give us a date certain by which the Senate will take up H.R. 810 as a freestanding bill without amendments? If they want to bring up other bills, the cloning bill, that is fine, too—not as an amendment to H.R. 810, but as a separate bill. I ask the majority leader, can he give us a date certain by which this Senate will set aside time to bring up H.R. 810 as a freestanding bill without amendment, debate it, and vote it up or down?

Mr. FRIST. Mr. President, the case, I think, to be made is whether we can address this particular bill, where 100 percent of the body is for it. It will save lives today and tomorrow. There is a whole range of bills. We have the embryonic stem cell bill and we heard about the cloning bill. There is the alternative embryonic stem cell bill. We have about six or seven bills which I have tried to bring to the floor under a unanimous consent request objected to by the other side, where we bring each of these bills separately, freestanding, to the floor. That has been objected to by the other side of the aisle. Since that time, I have committed that we will be addressing these bills early next year. I cannot give a specific date. I cannot even tell people what we will be voting on tomorrow morning in this body, given our schedule. But the commitment is to address these issues in the early part of next year.

If we don't pass this now, people will be suffering who are waiting for transplants if they cannot find a suitable match. Yet if we were to pass this bill with this registry, the registry will put together a public inventory of 150,000. One person waiting for a transplant that is lifesaving for otherwise untreatable diseases or treatable by a traditional bone marrow transplant—we will have 150,000 units then in a registry where you go to a computer and get a match and that transplant can take place. You can match as many as 80 or 90 percent of the people who are waiting today if we had this registry. The neat thing is that these units are available not within months but days. For transplants, people usually have to wait months, but this is the sort of thing where once you have the registry, you wait not months but days to get the transplant.

One last point is that with these cord blood transplants, outcome is better

than with the traditional bone marrow transplants with more mature cells. Cord blood cells are less mature and less pliable than the more adult cells for traditional bone marrow transplants.

With that, I am disappointed that we have heard this objection tonight.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I echo the disappointment of the leader and will make a couple comments on the debate we have already had. I know it is not in the leader's power to bring up a bill that is unamendable. It is possible for the leader—and the leader has made speeches in support of having the embryonic stem cell—to bring up a bill, but when it comes before the body, it can be amended any number of ways. So it is not possible for any leader to be able to give the guarantee that has been asked for today.

Another important part of this debate is that we don't just have the 100 Senators in this body agreeing that this is important, necessary, and immediate legislation; we also have the House agreeing that this is important, necessary, and immediate legislation. This is something for saving lives now. This isn't a big thing to go into the research area. This is treatment that is readily available.

We have preconferenced this bill already with the House, so it is not a matter of debate or discord between the House and the Senate. I am noticing at this time of the year that there is quite bit of that. There are more fights between the House and Senate than between the Republicans and Democrats. I hope we can get all of the debate resolved that we have before us. This is one that ought to only take a few minutes, and it could be done yet today and to the President for signature tomorrow because of the preconferencing we have done. That is unusual for a bill. If any one of the stem cell bills were able to be even unanimous consented within this body, we would be able to take it up as we have a number of bills, such as the pension bill, which was not easy. To have one come up with absolutely an up-or-down vote isn't going to happen around here.

I know we were looking forward to the debate. We expected it. Then a little thing called Katrina happened. The time we would have been debating that, we were debating lives in a little different manner, trying to come up with solutions. We still have some of those outstanding. Time for debate here is a very precious thing, particularly as we are winding up a session. I appreciate the leader saying he would definitely bring it up early next year. I know that is about as strong a commitment as anybody can make around this body.

While we are on this bill, I want to express my support for its passage, and I want to particularly commend Senator HATCH for his work on it. In fact, the base bill we worked with was Senator HATCH's bill. He brought a lot of us along with him on getting an understanding of what this does and what it could do, and he not only had the experience with the bill he submitted, but has been working on this in various stages for years. He has a tremendous body of knowledge he was willing to share and able to share. That is what brought everybody into the picture. He worked with Senators BURR, ENSIGN, DODD, and REED to develop the HELP Committee product that now also the House can support. I appreciate his efforts, as well as the others within the HELP Committee, to reach this delicate compromise.

I also thank my colleagues who were critical to legislation, which would be Senators KENNEDY, BROWNBACK, KYL, and others. They played a significant role. Given that this is a preconference agreement with the House, I appreciate the work of Representative C.W. BILL YOUNG and Chris John, Chairman JOE BARTON, and others in the House who have worked with us to help develop this language, to take the contentiousness out, to get it to the point where it is now. One of the unfortunate things with preconferencing and unanimous consent is that without the wild debate on things, the media normally doesn't pick up when something significant happens around here.

This is one of those issues that is so critical, and we need to get it to the people who need it now. We ought not have a contentious debate just for the sake of getting the word out that we have done it. This is something the media ought to latch onto, if it gets completed, and help us get the word out that it has been done and get it into place.

The compromise we passed out of the HELP Committee in June recognizes the valuable contributions made by stem cells from both bone marrow and cord blood. This legislation establishes a sibling cord blood program in which qualified cord blood banks have the option of providing free collection and storage of cord blood units for families with an ill child or parent who could be treated with a cord blood transplant. In this way, we can ensure that sick children have the best possible chance to receive a closely matched transplant while still emphasizing the availability of private cord blood bank donations.

To make it easier for patients to have access to cord blood and bone marrow, this legislation also requires cord blood and bone marrow programs to collaborate in providing patient advocacy and case management services to patients. In this manner, patients can have access to single point of access to determine the best option for their transplant.

Additionally, this critical bill requires the Food and Drug Administration to provide a report on its progress in developing licensure requirements for cord blood units, given that such requirements will help improve the quality of units provided to patients nationwide.

Finally, I wish to mention a new outcomes database included within the legislation which provides the opportunity for the Health Resources and Services Administration and other researchers to examine the clinical benefit of a variety of these therapeutic products, including bone marrow and cord blood.

All of these critical changes will help improve the quality of care patients receive each day.

This week, I read about a little boy who benefited from a cord blood transplant. This little boy was born in December 1999.

Mr. HARKIN. Mr. President, regular order.

The PRESIDING OFFICER (Mr. CHAFEE). Regular order has been called for. Does the Senator object?

Mr. HARKIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Wyoming.

Mr. ENZI. Mr. President, thank you for the opportunity to continue. I know there are others who want to speak on this briefly, too.

I read about this boy who was born in December 1999. At age 1, he was diagnosed with a disease causing progressive damage to the brain and adrenal glands. Left untreated, it would lead to his eventual death. For this little boy, an unrelated cord blood or bone marrow transplant was the only known cure for his disease.

When he was just 2 years old, because of the disease progression, he received a cord blood transplant. Two years post-transplant, he is doing extremely well. He is a healthy, normal little boy. If you met him, you never would guess what he had been through and what awaited him without this transplant.

It is for this little boy and others that we are focusing on this critical legislation right now. Like others, I do think that it is important for us to discuss the broader issues of stem cells on the Senate floor. However, it is neither the time nor the place for such a debate. But we can help people now by passing this legislation which has broad bipartisan support. You can't get more bipartisan than 100 percent. So I urge my colleagues not to hold up this critical legislation until that other debate occurs. I urge my colleagues to think of this little boy and other little boys and adults and people in between who would benefit from cord blood or bone marrow transplants.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am hopeful that my dear friend and colleague from Iowa, Senator HARKIN, will withdraw his objection. I think everybody in this body knows it was only after years of study—a very sincere study—that I came out for embryonic stem cell research, as well as cord blood stem cell research.

I mention to my colleague from Iowa that the majority leader, even though he was against embryonic stem cell research, has had the courage to come out for it. Upon reflection and study, he has as great a desire to pass embryonic stem cell research as I do. So when we get down that road of being able to help the living with these tremendous maladies we have, it may be the final answer to health care costs as well. But we have to start now.

There is a difference. This bill is the cord blood research bill. I do not know one person in this whole body who is against it. Not one. I don't know one person in the House of Representatives who is against it. Not one. And by the way, we have preconferenced this bill. It is very difficult to preconference bills. But virtually everybody realizes that if we can pass the cord blood bill, we will go way down the road of being able to help people with these serious problems, especially these young children, as mentioned by our distinguished chairman, Senator ENZI.

I am grateful for all of the people he mentioned in his illustrious remarks. There have been a lot of people who have worked on this issue. I think we should take the majority leader's word as a supporter of embryonic stem cell research that he will bring that bill up for a debate. There are others who also want to debate their particular points of view with regard to embryonic stem cell research, but virtually everybody is for cord blood research.

I believe we should give unanimous consent to immediately call up and adopt H.R. 2520, the Stem Cell Therapeutic and Research Act. We should pass this bill immediately. Patients cannot afford to wait until next year, their families cannot afford to wait until next year, and we in the Congress cannot afford to wait until next year.

Passage of this legislation offers us a rare opportunity to make a difference in the lives of those who either have a serious illness or have a family member who suffers from a serious illness. I don't think we should let this opportunity pass. This is the season of the year when we try to put others before ourselves.

As everyone knows, I have been working on this issue for 3 solid years and, in fact, with my original cosponsors—Senators BROWNBACK, DODD, and SPECTER—introduced the first bill on this issue in the 108th Congress. I am pleased that I have introduced legislation with Senators DODD, BURR, ENSIGN, and REED to put aside our differences and let this legislation pass once and for all. It is the right thing to do because it is in the best interest of my fellow citizens.

My goal, which I share with the other sponsors of this bill, is to create the best possible system to provide patients, clinicians, and families with access to these lifesaving treatments. I believe H.R. 2520 does this by ensuring that the number of bone marrow donors and cord blood units available for transplant and research increases in the near future.

The integrated system will include not only the international bone marrow donor registry but also a network of qualified cord blood banks which will collect, test, and preserve cord blood stem cells. In addition, the system will educate and recruit donors, facilitate the rapid matching of donors and recipients, and quickly make such cells available for transplant centers for stem cell transplantation. The establishment of a national infrastructure for transplant material will help save the lives of many critically ill Americans.

We need to be sure that our Nation can meet the needs of patients and physicians by providing a strong future for both bone marrow and cord blood transplantation in this country.

My personal goal is to ensure that the amount of transplant material available for patient care and research continues to increase in the coming years. The only way that goal may be accomplished is through strong Federal support. It is the only way.

I look forward to working with my colleagues and doing everything possible to provide transplant patients with the best possible options by ensuring a strong future for bone marrow and cord blood transplantation in this country.

Mr. President, this is a good bill. I hope my colleague from Iowa will think this over because this puts us down the road of being able to get on top of some of the most innovative and important and remarkable health care processes this country and any country has ever seen.

If we do not pass this bill in this timeframe and it gets mixed up in the whole panoply of embryonic stem cell research, it could take at least another year, maybe 2 years, before we get even cord blood legislation passed by Congress. Why should patients have to wait another year or 2 for such a lifesaving bill to pass the Congress?

There are many illnesses where cord blood transplantation and research have already made the difference in people's lives.

I think I have made my point, and I urge my colleagues to pass this bill as quickly as possible.

It is apparent we are not going to be able to do the cord blood research because of objection, but I hope that my colleague will reconsider and allow this to happen before the week is out. I know my colleague from Iowa is very sincere. He has been one of the leaders on stem cell research in this country, and he certainly has a right to do whatever he wants, but I am thinking of the thousands, if not millions, of people who could benefit from this research if we get it going with Federal Government help at this time.

Mr. HATCH. Mr. President, I rise today in strong support of the USA PATRIOT Improvement and Reauthorization Act. This bill gives our national security and law enforcement communities, including the FBI, the tools they need to fight the war against terrorism, while at the same time adding new provisions to protect the civil liberties and privacy that all Americans rightfully expect and cherish.

The first responsibility of our national government is to protect the citizens of our country from foreign threats.

My fellow citizens of Utah and all of my fellow Americans expect that the Federal Government will help protect them against terrorist attacks but to do so in a fashion that does not open the lives of ordinary, law-abiding Americans to unjustified government intrusion. The PATRIOT Act protects our citizens by helping to keep us physically safe and protects our essential civil liberties.

The PATRIOT Act Conference report before us makes permanent 14 of the 16 expiring PATRIOT Act provisions, all of which have proven extremely useful over the last 4 years in preventing and prosecuting terrorism. Sometimes lost in the often charged political debate over the PATRIOT Act is the fact that there is broad, in fact almost universal, political consensus that each and every one of the major elements of the PATRIOT Act is essential to protecting the American public.

One hard and true measure of this reality is that there is wide agreement that 14 of the 16 expiring provisions in the PATRIOT Act ought to be made permanent. That is what this bill does. Another measure is that no major component of the PATRIOT Act is being repealed nor, to my knowledge, is anyone making any serious effort to repeal any major component of the PATRIOT Act. There is a simple reason for this simple fact. Overall, the PATRIOT Act is operating well and has not been abused. The PATRIOT Act is necessary to help protect the American public from terrorists.

The bill before us renews, for a 4-year period, the remaining 2 of the 16 expiring provisions of the PATRIOT Act that are not made permanent in this bill. Frankly, many of us think that these two provisions, section 206—the roving wiretaps, and section 215—the business records section, also ought to be made permanent. I know of no serious expert in counterterrorism or law enforcement who is calling for the repeal of either of these two important provisions or who believes that they will not be renewed again in 4 years. The fact is that the main reason that these two provisions have not been made permanent is not because they are fundamentally deficient. The reason is that there is an understandable concern shared by virtually everyone that there ought to be vigilant congressional oversight in the area of counterterrorism generally, and the PATRIOT Act specifically. Adopting these two sunset provision merely ensures that Congress will do what it is doing already—conducting consistent

and careful oversight of the PATRIOT Act.

I welcome this scrutiny and debate. We need to stay on top of how this important counterterrorism law is being implemented and enforced. We need, as we have done in this bill, make any necessary refinements that will improve the PATRIOT Act. I think the record is clear that Congress has not shirked its duty when it comes to conducting vigorous oversight of the PATRIOT Act. I understand that this year alone Congress has held some 23 hearings on various elements of the PATRIOT Act and that Department of Justice officials have testified at 18 of these hearings.

The Senate Judiciary Committee has held literally dozens of hearings on elements of the PATRIOT Act since it passed it 2001. During the 108th Congress, when I chaired the Judiciary Committee, we held some 30 hearings that touched on aspects of the PATRIOT Act.

Under Senator SPECTER's capable leadership, the Judiciary Committee held an additional series of more than a half dozen hearings this year that focused on the PATRIOT Act and that does not even count confirmation hearings for senior Department of Justice officials, such as the Attorney General, at which there have been a substantial number of questions related to the PATRIOT Act.

This House Judiciary Committee has held a similar comprehensive set of hearings on the PATRIOT Act.

We have heard from all the major critics of the PATRIOT Act. I think that the bill before us today shows that we have listened to, and where appropriate, have responded to the legitimate concerns of the critics. Frankly, in a number of areas I think we have bent over backwards to address concerns that were more hypothetical than real. To put a point on it, as Attorney General Gonzales says in his Washington Post op-ed published yesterday:

> During this important debate, Republicans and Democrats have discovered that concerns raised about the [PATRIOT's] act's impact on civil liberties, while sincere, were unfounded. There have been no verified civil liberties abuses in the 4 years of the [PATRIOT] Act's existence.

That is a good record by any measure. As with any complex piece of legislation, we should not be surprised that if one day some administrative official, intentionally or otherwise, does abuse their discretion under the statute. Unfortunately, that is only human nature. But just because someone applies the law in an abusive fashion, it does not follow that the law needs to be repealed.

I think it is a testament to the professionalism to the men and women of the FBI—led by its able Director Bob Mueller—and other law enforcement agencies that, to date, there have been no documented cases of PATRIOT Act abuse. Let me just say that many critics of the act have tried their best to make the facts match their critiques but have failed to marshal any definitive evidence.

We should all understand that the chief reason for the bill's inclusion of a 4-year sunset of two provisions acts chiefly as a belt and suspenders approach to help ensure that Congress will continue our extremely active oversight of the PATRIOT Act. In fact, the House bill contained a 10-year sunset renewal period for the two provisions that will not be made permanent.

While it would have been possible to compromise somewhere between the 4-year Senate renewal time period and the 10-year House sunset period, the conference report—which no Democrat signed—contained the lower Senate number of 4 years.

It always leaves you a little empty when you make a major compromise and your colleagues pushing for particular provisions still do not sign onto the compromise package. Whatever happened to compromise around here? The PATRIOT Act reauthorization has been through several drafts as the conference process has taken place. I do not necessarily support every change that we have made but I have always believed that compromise is part of the process of legislation.

I think that a fair reading of the record reveals that in the grand scheme of things the issues that have generated the remaining disagreement on the PATRIOT Act are relatively minor issues. No one is talking about repealing any major part of the PATRIOT Act although some of the outside groups would have you believe that the PATRIOT Act is somehow un-American and a threat to civil liberties.

Hogwash. I support the efforts of our law enforcement and intelligence officials in combating terrorism. They continue to fight terrorists who would wreak havoc and death on America. It seems to me, and many others, that we should at least give law enforcement the same tools to investigate and stop terrorists that we give to combat mail fraud or internet pornography and organized crime. Now that the shock and pain of 9/11 has begun to fade, I hope we do not go backwards in our efforts to prevent terrorism. We should not make it tougher for our law enforcement and intelligence officers to obtain and share information critical to investigate terrorists than we allow for common criminals.

Let me specifically address four provisions of the PATRIOT Act that are often misunderstood at best, and sometimes outright misrepresented by many in this debate. First, section 206—this is the multipoint or roving wiretap provision. Section 206 is an essential provision that addresses the terrorists' use of evolving technology by allowing law enforcement to obtain a wiretap order that covers the communications of a specific individual even when that person—whose name we may not know—changes telephones and locations to evade interception. We live in a day of relatively cheap and disposable cell phones, a reality that terrorists make use of each day to avoid detection.

The PATRIOT Act reauthorization bill requires a full description of a specific target in both the application and the court order, even if the target individual's actual identity is unknown. The act also requires the specific facts be alleged and documented that show how the target's actions may thwart surveillance efforts. Additionally, the act requires the FBI to notify the court within 10 days after beginning surveillance of any new phone. This notice must include the facts and circumstances that justify the FBI's belief that each new phone is being used, or is about to be used, by the target.

Second, section 213 of the PATRIOT Act covers delayed notice search warrants. This may be the most misrepresented provision of the PATRIOT Act in recent years. Its critics sometimes refer to it pejoratively as the sneak and peak provision. They suggest that it somehow gives the FBI carte blanche to rummage through each American home without ever telling the target individual what is being searched and why. That is simply not true.

Delayed notification search warrants always involve judicial review. In fact, delayed notification search warrants are a creature of judicial creation and first appeared about 20 years ago when judges agreed that there were some occasions when the interests of justice made it prudent not to tip-off suspected criminals that their premises were about to be searched.

Former Deputy Attorney General Jim Comey, a distinguished career federal prosecutor, explained at a PATRIOT Act field hearing held in Salt Lake City last year that he was personally involved in several investigations of suspected drug dealers in which judges agreed to allow the FBI to secretly search for drugs before effectuating arrest warrants in order to be able to bring to justice the greatest number of those involved in the drug ring.

In the same way that we have used the judicially created and sanctioned delayed notification search warrants to bring drug dealers to justice for over 20 years, I am certain that we want to continue to bring this same technique to bear against suspected terrorists so we can stop or catch the most senior members of a terrorist cell and to give us the best chance to understand who is involved, and what they are plotting to do against us.

Let me repeat again. Under this bill, delayed notification warrants always require a judge to find that delayed notification is justified.

And what was the big flap over this greatly debated provision?

Not, as some would have it, whether this was an un-American trampling of rights. No, the debate among conferees

was whether the initial period for the duration of this special type of search warrant would be 7 days, which was in the Senate bill, or 180 days, which was in the House bill.

Stop the presses, the conference report contains a decidedly un-shocking, 30-day compromise time period. And more important than the presumptive 30-day period contained in the final bill is the fact that a judge can effectively make the 30 days either shorter or longer depending on the facts and circumstances of the application before the court.

The bill permits extensions of the delay period, but only upon an updated showing of the need for further delay. Also, it limits any extensions to 90 days or less, unless the facts of the case justify a longer delay. Moreover, the bill also adds new public reporting on the use of delayed notice warrants.

Despite all of the exaggerated hoopla over the so-called sneak and peek provision, I am aware of no member of Congress that has taken the position that delayed notification search warrants should be eliminated and I am certainly aware of no information that this provision has ever been abused in the relatively few times it has been exercised under the PATRIOT Act during the last 4 years.

If it is constitutional and effective to use delayed notification warrants against drug dealers and child pornographers—which it is—I am all for using this tool against suspected terrorists—and that is what this bill continues to allow.

I doubt many Americans would be for a policy that would mandate that the FBI to knock on the door and tell every suspected member of al-Qaida that,

> Hi, we are here from the FBI and we would like to see if you are making a dirty bomb in your basement and please don't tell your housemates and associates that we have been here searching your home.

Delayed notification warrants are here to stay and will and should be used when circumstances justify as determined by a judge.

Third, section 215. Section 215 is often misleadingly called by its critics as the library records provision. Given the great amount of discussion this provision has engendered, I would like to first note for the record that before this authorization bill that the word library was nowhere to be found in this provision.

I love libraries. I love books. I have nothing but the greatest respect for librarians and patrons of libraries. Nobody in Congress would ever sit by and allow the Federal Government to undertake fishing expeditions to find out who is reading what in libraries.

At the same time, I do not think anyone wants libraries to become safe havens for terrorist research and other terrorist activities such as electronic mail communications with computers paid for by American taxpayers.

Under the new compromise bill, the law for the first time now does refer to libraries—but only in the most bend over backward sense that it allows a very limited, select group of senior government officials, consisting of the FBI Director, the Deputy FBI Director and the Executive Assistant Director for National Security to authorize the FBI to seek a court order under the Foreign Intelligence Surveillance Act for relevant library, book sales, firearms sales, tax return, educational or medical records.

This authority may not be further delegated to anyone else in the FBI. Obviously, this was a compromise that was made in response to the great concerns that many voiced about library and other sensitive personal records. I can live with this compromise but since there was not one documented case of abuse of this provision under existing law, I just hope we have not unintentionally created a bottleneck in the system by requiring the personal involvement of the senior-most FBI officials when local FBI agents might need to act as quick as possible.

There is a good argument to allow this authority to be delegated down further. I, for one, am uncertain why each of our 78 Senate-confirmed U.S. attorneys and each of the 56 career FBI Special Agents-in-Charge of local FBI Field Offices should not have this discretion. We entrust them with broad responsibility to protect us from a wide range of crimes each and every day and there seems no reason why we should not trust them to recommend which applications for business records should be brought before a judge.

I would remind my colleagues that one of the ways the Unibomber, Ted Kaczynski, was caught was through a garden-variety search of library records. I am aware of no complaints that the Unibomber was apprehended and I hope that no one takes the position that illicit users of libraries such as the Unibomber should be informed that, by the way, Mr. Kaczynski, the FBI was in last week comparing your withdrawal records with the Unibomber's written Manifesto and we thought you would be interested that they were asking about where you lived.

Section 215, the business records section allows the FBI to seek court orders—and let me repeat that—to seek court orders—to obtain business records from third parties in intelligence and terrorism cases.

The revisions in the law requires applications for orders for business records to include a statement of facts showing reasonable grounds to believe that the things sought are relevant to an authorized investigation to protect against terrorism or espionage.

Prior to this change there was no explicit relevance standard. Because of concerns that were raised, the relevance standard has now been codified. The administration supported this change. I support this change. Some, including my friend from New Hampshire, Senator SUNUNU, claim that the relevance standard contained in the bill is too broad.

Let us put this issue in perspective. The relevance standard has been used for years in the issuance of grand jury subpoenas. All across the country, dozens of these subpoenas are issued under the general relevance standard each and every day. For example, grand jury investigations routinely are conducted in conjunction with records—business records relevant to the case at hand.

As a matter of fact, in many criminal law contexts, including health care fraud and sexual exploitation cases, federal investigators—without prior judicial review—can issue what are called administrative subpoenas for relevant documents.

I believe that there are over 300 Federal statutes that contain the type administrative subpoena authority that is not included in either the current PATRIOT Act or in the reauthorization bill.

In some ways it is more difficult for the Federal Government to investigate suspected terrorists than it is to investigate Medicare fraud.

Leaving aside the wisdom of not allowing administrative subpoena authority for terrorism investigations, I think it is fair to say that the revision of section 215 that now contains an explicit relevance test is strictly in the mainstream of American criminal law.

It is not a new concept to have to go before a judge and convince him or her that the Government needs certain relevant records, such as hotel or car rental bills, to investigate potential criminal activity.

If the judge does not think it is a bona fide investigation and is just a fishing expedition, the judge can deny the request.

The revised version of the PATRIOT Act section 215 requires the Government to certify that the business records sought are relevant to an authorized investigation to obtain information not concerning a U.S. citizen or to protect against international terrorism or clandestine intelligence activities.

Further, the revision to section 215 creates a three-part test that presumes such information is relevant if it pertains to:

(1) a foreign power or an agent of a foreign power;

(2) the activities of a suspected agent of a foreign power under investigation; or

(3) an individual in contact with, or known to, a suspected agent of a foreign power under investigation.

Some have argued that this three part test is not strong enough or can be circumvented but the judges serving on the Foreign Intelligence Surveillance Court are neither potted plants nor is there any reason to believe that they will rubberstamp any application that is placed before them.

The new language includes additional procedural protections for section 215 orders including:

(1) The explicit right for recipients to consult legal counsel and to seek judicial review;

(2) The requirement that a senior FBI official approve requests for certain sensitive documents, such as library records;

(3) The use of minimization procedures to limit the retention and prohibit the dissemination of information concerning U.S. persons;

(4) Audits by the DOJ inspector general; and

(5) Enhanced reporting to Congress and the public on section 215 activities.

These are important protections, not all of which I believe are 100 percent necessary, but all of which I will support in the spirit of compromise.

Judicial review and approval is still required for every application for business records under section 215. All of these new provisions are intended to act to further safeguard against any potential abuse. Some during this debate have claimed that the new, explicit relevance standard on section 215 will allow the Government to sweep up the records of many innocent Americans.

We all share the concern about the Government getting too big for its britches. None of us would want to be on the wrong end of a misguided Federal investigation in which some overzealous bureaucrat with seemingly unlimited resources acted in an arbitrary and unfair way that could destroy our family's reputation and life savings. But that is not what the PATRIOT Act sanctions.

There is certainly no evidence that this is how the business records section of the PATRIOT Act has acted during the last 4 years.

Americans are right to have a healthy skepticism of government. A large part of what our job as Senators in Washington is to watch over Government agencies like the FBI and IRS.

Nobody wants Big Brother looking at our neighbor's personal financial, medical or library records without a very good reason. And that is exactly what the new protections that we have added to section 215 are intended to do—help make sure that when the Government investigators want to examine business records, they have a very good reason for looking at the records.

Let me repeat once again, the very same type of relevance standard that is being put into place in section 215 of the PATRIOT Act has long been the law of the land when grand juries routinely subpoena records in connection with many, many types of criminal investigations.

Again, these requests will not be in the hands of some rogue Federal agent—or an abusive grand jury—judges must decide on the issuance of a business records order under section 215.

We added additional congressional and public reporting provisions to help us in our oversight function. Additional audits by DOJ's inspector general will also act to check potential abuses.

Moreover, the Conference report requires the Justice Department to promulgate minimization procedures for every section 215 business record order that will direct the FBI not to retain or disseminate documents that are obtained incidentally.

The other day my friend, the junior Senator from New Hampshire, suggested that section 215, as amended, will place an undue burden on those entities required to produce records. I do not believe this and neither should you.

The conference report before us says that no section 215 order can be issued for material that would be beyond the scope of a grand jury subpoena, and since a grand jury subpoena can be quashed if it is unreasonable or oppressive, any section 215 application can be set aside or modified if it is unreasonable or oppressive.

In addition, the conference report expressly allows the recipient of a section 215 order to challenge an order and permits the judge to set aside any order found unlawful.

There are well-developed legal tests that can guide the courts to decide when these requests are, and are not, relevant. As well, judges are well equipped to know when these requests are, and are not, reasonable and will rule accordingly.

Fourth, finally, let me address the issue of National Security Letters or NSLs. National Security Letters allow the FBI to obtain certain third-party materials in intelligence cases. The bill before us adds further protections in this area. For example, the bill makes clear that recipients of such letter are free to disclose the receipt of this letter to their legal counsel.

I guess we can only hope that suspected terrorists do not share the same attorney and a whole terrorist cell will not be tipped off.

The bill provides further clarification that these requests may be challenged in court.

The bill makes clear that reviewing courts may modify or set aside the request if compliance would be unreasonable, oppressive, or otherwise unlawful.

The conference report language also permits judicial review of the nondisclosure requirement that attaches with NSLs.

The revised PATRIOT Act bill fosters congressional oversight by requiring the DOJ inspector general to conduct audits of the FBI's use of National Security Letters.

As well, the conference report adds annual public reporting on NSLs. Some are suddenly now loudly complaining in the last few weeks that the standard for obtaining an NSL—which is a showing of relevance—is too low.

Where were the complaints about this standard before now?

National Security Letter and the standards and practices that apply to them predate the original PATRIOT Act which passed in the fall of 2001 in the aftermath of the September 11 attacks.

The Senate bill—which was approved unanimously by the Judiciary Committee and by the full Senate by unanimous consent—did not make any changes in the standards for the issuance of National Security Letters. Nor did the House bill.

What is going on here?

It sounds a little like a case of, even if it ain't broke, let's fix it.

Yet in the spirit of mutual respect and compromise, I am not opposed trying to improve what is already working well, particularly if changes are important to many both inside and outside of the Congress. That is what has been done with respect to NSLs during the House-Senate Conference process.

As has been referred to repeatedly in this debate, part of the concern stems from a series of articles that appeared in The Washington Post that reports that some 30,000 of these letters have been issued in recent years.

As Senator SPECTER and others have pointed out, the Department of Justice is prepared to give any member a classified briefing that sets the record straight on this topic.

There is scant, if any, evidence that NSLs have been abused.

NSLs can only be used to obtain a very limited range of documents—mostly financial and communications records. They cannot, as some have alleged during this debate, be used to acquire medical records.

I said before and will repeat again that the conference document expressly allows a recipient of a National Security Letter request to challenge the request in court and have it set aside or modified if a judge determines it is unreasonable.

You would not know this from the way that some are describing this provision during this debate.

In fact, the conference report vehicle is actually more protective of civil liberties than the provision in the Senate bill, which was approved by unanimous consent earlier this year.

Specifically, the compromise language before us today requires a set of senior officials, including the Attorney General, Deputy Attorney General, Assistant Attorney General, or FBI Director to certify that disclosure will harm national security or diplomatic relations.

The Senate-passed bill gave that level of deference whenever any unspecified government officials made that certification. By confining the authority to issue NSLs to the most senior officers in DOJ and the FBI, the conference report helps ensure that it will be used with appropriate discretion.

Some are criticizing the so-called gag order provisions of the NSL procedures that forbid public disclosure of ongoing national security investigations involving NSLs.

But do we really want to let our sworn terrorist enemies know precisely

what communication and financial records that we are examining in our attempts to thwart future terrorist attacks?

I think not. Nor do I think the American public wants a system that inordinately tips our hand to our enemies.

At the end of the day, I think that the compromises made with respect to NSLs in this bill should be recognized as a good faith effort to strengthen the rights of those who have legitimate challenges to the reasonableness of the governmental request for information.

In the spirit of compromise and in recognition that many citizens have expressed concerns about this bill and are just now focusing on the longstanding NSL procedures, I think it appropriate to make these accommodations so long as we do not unduly burden legitimate law enforcement needs and longstanding practices.

Let me summarize my position on the PATRIOT Act.

I support the Conference report revisions to the PATRIOT Act, although I do not favor each and every particular change.

I urge my colleagues to vote yes on cloture and yes on final passage.

I congratulate the House of Representatives for its leadership in passing this bill yesterday with a bipartisan vote.

I commend my friend, Chairman JIM SENSENBRENNER, for his leadership of this conference committee.

I commend my friend, Senator SPECTER, for his leadership in working overtime to achieve a broad bipartisan consensus on this bill.

I want also commend all of my fellow conferees, including all of those Democratic conferees who did not sign the conference report.

These are important issues and I understand and respect that many in Congress and the American public comes to this debate from different perspectives. I do not question anyone's patriotism just because they are raising questions and concerns about this revised version of the PATRIOT Act. I might question their wisdom and judgment as pertaining to this particular bill but never the ism.

I hope that it comes time to vote that my colleagues will recognize that this is a good, compromise bill.

I understand that not everyone will agree with every jot and tittle of this bill—I certainly do not.

On balance the PATRIOT Act has worked well and we have every reason to believe that these changes will make the PATRIOT Act work even better.

This bill is good for Americans and bad news for the terrorists.

That is the way it should be.

I strongly disagree with those who would filibuster the motion to proceed to this conference report.

Let this body have the same up and down vote that the House held on Wednesday.

A three-month extension just shows the American public that this body cannot even do one of those rare and unusual must-do pieces of legislation in a timely fashion.

As well, no doubt some political pundits will likely interpret a 3-month punt on the PATRIOT Act as a short-term political defeat for the administration.

But this is a double edged sword: The American public will not be pleased if, after they have had the time and opportunity to reflect on the facts, they come to the conclusion that failure to accomplish a comprehensive renewal and strengthening of the PATRIOT Act before the end of this year is interpreted by our enemies as somehow inviting or even enabling further terrorist attacks on U.S. soil.

The Senate should vote to send this bill to President Bush's desk.

I ask unanimous consent that a letter to the Senate and House of Representatives from the board of directors of the 9/11 Families for a Secure America be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

9/11 FAMILIES FOR A SECURE AMERICA,
*Staten Island, NY December 14. 2005.*

To the United States Senate and House of Representatives:

The members of 9/11 Families for a Secure America ask you to vote ''yes'' on the conference report to HR 3199, the Reauthorization of the Patriot Act.

Our families understand that an important reason the 9/11 mass murderers were able to ''succeed'' in their conspiracy was the existence of ''the wall'' that blocked information sharing between law enforcement and the intelligence community. The Patriot Act removed that ''wall'' temporarily and it is important to now remove it forever so that the next 9/11 killers are not aided by the laws of our own country.

The Conference Report addresses many of the objections expressed by some Members to HR 3199 as passed by the House, and is a most reasonable compromise. It is quite apparent that the remaining objections, expressed by a few Members, are based upon theoretical possibilities for abuse of civil liberties. However, the four year history of the Patriot Act has shown what the Washington Post calls ''little evidence of abuse, and considerable evidence that the law has facilitated needed cooperation.''

Thus, the objections of the opponents of HR 3199 are simply illusions. In contrast, it is not an illusion that nineteen foreign terrorists took advantage of our government's refusal to give its law enforcement and intelligence officers the logical and obvious tools needed to catch the conspirators prior to September 11, 2001. The result was the murder of our parents, spouses, children and friends. We are convinced that the reality of 9/11 outweighs the minor, hypothetical objections that have been raised.

Some Members may think the final version of HR 3199 not quite perfect, but defeat of the Patriot Reauthorization means freedom of operation for terrorists and more needless deaths of innocent Americans. We think that concern for the safety of this country demands that these Members compromise and accept something that may be a little less than what they view as perfection. Please vote ''yes'' on the conference report to HR 3199.

Sincerely,

The Board of Directors, 9/11 Families for a Secure America:

Bruce DeCell, Sergeant, NYPD (retired), father in law of Mark Petrocelli, age 29.

Bill Doyle, father of Joseph, age 24, WTC North Tower.

Lynn Faulkner, husband of Lynn, WTC South Tower.

Peter & Jan Gadiel, parents of James, age 23, WTC, North Tower 103rd floor.

Grace Godshalk, mother of William R. Godshalk, age 35, WTC South Tower 89th floor.

Joan Molinaro, mother of Firefighter Carl Molinaro.

Will Sekzer, detective Sergeant (retired), NYPD, father of Jason Sekzer, age 31, WTC North Tower 105th floor.

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURR). Without objection, it is so ordered.

## WAR IN IRAQ

Mr. THUNE. Mr. President, I rise today to speak briefly about the progress on the war in Iraq and, importantly, the well-being and morale of our troops in the field.

Last week, the State of South Dakota lost two of its sons in Iraq, SSG Daniel Cuka, 27, from Yankton, SD, and SFC Richard Shield, 40, from Tabor, SD. Both served in the 147th Field Artillery of the South Dakota National Guard and were killed by improvised explosive devices while riding in their humvees.

They were assigned the mission of assisting in the training of Iraqi police. Three other members of their battery were also wounded. South Dakota is now in the process of grieving for and honoring these two brave men who answered the call of duty.

One week after this tragic loss, an historic event occurred today in Iraq that gives particular meaning and value to the lives and sacrifice of these two men. Today Iraq held a national election to fill parliamentary seats and it appears that there was a massive turnout of voters from each of the major ethnic and religious groups, including from the Sunni population that only a few months ago rejected any participation in the political process.

This election is only the latest in a series of milestones giving testimony to the great progress that has already been made in our effort to transform this country into a true democracy. Granted, it will be a long road to the kind of democracy we have in this country. But it was a long and bumpy road in our own journey. The fact that this Iraqi election occurred at all, is amazing considering where the people of Iraq were 5 years ago, without freedom to determine their future and under the heel of Saddam Hussein's tyranny.

Despite the naysayers in this country, optimism among Iraqis is becoming infectious. Of course, optimism and support for what we are doing has always been prevalent among our troops. Thanks to them and the sacrifices they are making, we are on the cusp of delivering something very special into the hands of the Iraqi people—the ability to shape and control their own lives, lives free from the tyranny of dictators, free from radical Islamic intimidation, and free from hopelessness.

Let us dispell the fiction that America is not making progress in Iraq, right here and right now. Under United States training and guidance, 97 Iraqi battalions are now conducting security operations throughout Iraq. In July of last year, there were only 5 Iraqi battalions equipped and trained to fight.

Currently, 33 battalions have assumed their own areas of operation. Last year at this time, the Iraqi security forces did not have control over any areas of operation. Iraqi border police are now manning 170 border compounds and 22 ports of entry. Over 75,000 Iraqi policemen are patrolling Iraqi cities. In the last election in January, 130,000 Iraqi security forces successfully protected polling sites all over the country and inspired a wave of pride throughout the country and a sharp increase in recruitment. We anticipate that in the election that occurred today, over 225,000 Iraqi security forces provided security to the polling places.

In the January election almost a year ago, 8.5 million Iraqis turned out to vote, defying terrorists threats. In the October referendum, 10 million voters turned out. We expect significantly greater numbers in this election, including from the Sunni population whose Mullahs are now encouraging their people to get out and vote after opposing their participation in previous elections. Progress is clearly being made. To say otherwise is simply inaccurate and demoralizing to our troops in Iraq who are risking their lives to achieve these great milestones.

I would like to read a portion of an email sent to me by the mother of a South Dakota soldier stationed in Iraq.

Dear John, I am a commissioner in Corson County, McIntosh, SD. I also, happen to be a mother of 2 children in the Army. My son is now in Iraq, stationed at Ar Ramadi—not a very nice place right now! The purpose of this email is to ask you to pass on to Congress the fact that all their back stabbing and finger pointing is very devastating to the families of the sons and daughters now in Iraq. If they think they are representing the families by doing what they are doing on the Hill and in the press they are sadly mistaken. I don't want my son to be where he is, but anyone with any kind of sense knows that we cannot just pick up and desert the Iraqi's at this point. . . . Please, Please get this message out that this is not what the parents, husbands, wives, and families need to hear from our leaders. We have enough worry every waking moment knowing our kids are in harms way. We don't need the politicians using our loved ones in order for them to further their political future.

The two fallen soldiers who are being honored today at a memorial service in South Dakota gave their lives for a cause greater than themselves. Those family members they left behind deserve to know their sacrifices were not in vain.

We will win this war and Iraq will be a free independent democracy. When our work is finished, Iraq will provide a vision and a clear path for other countries in the Middle East to follow toward freedom and democracy. As Americans, we cannot leave the Iraqi people with anything less.

I ask unamious consent that a written statement honoring and paying tribute to Sergeants Cuka and Schild, two American heroes, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Mr. President, South Dakota has paid a heavy price in the effort to make Iraq a functioning democracy and the world a safer place. To date, fifteen South Dakota soldiers have made the ultimate sacrifice in Afghanistan and Iraq, nine of whom died from hostile fire. About 85 percent of South Dakota's National Guard members have been mobilized. Earlier this month, two brave soldiers from my state paid the ultimate price, and three more were wounded. I rise today to give voice to the tremendous sympathy all South Dakota citizens have for the families and friends of each of the courageous soldiers our state has lost and this month, specifically, Army Sgt. 1st Class Richard Schild and Army Staff Sgt. Daniel M. Cuka. On December 4th these two soldiers of the South Dakota National Guard were killed by roadside bombs in Iraq as they went about the dangerous and critically important mission of training the Iraqi Police Force in one of Baghdad's police districts. They have made the ultimate sacrifice in service to our nation, and we as a nation will be forever in their debt.

The soldiers of Battery C of the 147th Field Artillery unit arrived in Baghdad only very recently, and have already been exposed to the horror of war, and the deaths of some of their friends. South Dakota has a very small population, Mr. President, and word of the deaths of our citizen soldiers fighting the war on terror has hit us very hard. I am proud of our state's outpouring of support during this time of great personal tragedy for the loved ones Sgt. Schild and Sgt. Cuka have left behind. I know the communities of Yankton and Tabor will miss them very much.

The lives of these two soldiers are emblematic of the many citizen soldiers currently serving in Iraq. Sgt. Cuka graduated from Yankton High School in 1996 and married his wife Melissa in 2000. They had two young children, Abby, who is 5 years old, and Alex, who is 2. Sgt. Cuka led an active life, and dedicated his life to serving and protecting the public. Apart from serving nearly ten years in the National Guard, he served with Yankton Area Search and Rescue, and his unit has retired his call number, the highest honor it can bestow. He worked for Wilson Trailers in Yankton, and still found time to attend classes at Mount Marty College.

Sgt. Schild was the office manager of Bon Homme Yankton Electric Cooperative. He and his wife Kay also have two young children. He was serving in Iraq along with his brother, Brooks. After graduating from Mount Marty College, he joined the National Guard. It is clear that Sgt. Schild was highly dedicated to doing his duty, and had a strong sense of community. Even though events in the Middle East made it seem likely he would be called to active duty, Sgt. Schild still re-enlisted. Even while he was in Iraq, Sgt. Schild was still concerned about his community being without power due to a severe winter storm late last month. In fact, the National Guard helped to mitigate the effects of that storm. It is humbling to be able to represent a community that has people like Sgt. Schild and Sgt. Cuka.

The human toll during wartime always gives us pause to reflect on what we are fighting for in the war on terror. Throughout America's history, we have faced determined enemies on the battlefield, and we have been victorious. In this war, we face a determined enemy that lurks in the shadows, far from anything that can be characterized as a battlefield. Sgt. Schild and Sgt. Cuka fell to an enemy that could not face them on the battlefield.

The challenges faced by our soldiers in Iraq are far more complicated and delicate than the challenges of a traditional battlefield. While our soldiers make every possible effort to avoid civilian casualties, they face an enemy that hides among civilians, and an enemy that rejoices in maximizing civilian casualties. Sgt. Schild and Sgt. Cuka died while helping the vast majority of peaceful Iraqi citizens develop the means to protect themselves, build a democracy, and enforce the law. They were part of an effort to make the world a safer and freer place for us and for future generations of Americans.

When I think on the deaths of Sgt. Schild and Sgt. Cuka, and indeed all of the deaths of our soldiers in the war on terror, I am reminded of a passage of Scripture that says ''Greater love hath no man than this, that a man lay down his life for his friends.'' To the families of Sgt. Schild and Sgt. Cuka, please know that all South Dakotans have lifted you up in our hearts, and that you are in our thoughts and prayers. If there is anything we can do for you, we will do it. I hope it may provide some small measure of comfort to you to know that Sgt. Schild and Sgt. Cuka have laid down their lives for their friends, and we are forever grateful.

Mr. THUNE. What they gave to the State of South Dakota, to this great country and to the people of Iraq should never be forgotten.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## IRAQI VOTE FOR FREEDOM

Mr. FRIST. Mr. President, today marks a proud and momentous day in Iraq's history. Today, on December 15,

2005, 15 million registered voters will go to the polls to choose their first permanently elected government in modern Iraqi history. Along with them, Iraqis from all around the world will cast their votes for freedom, for Iraq's future—including Iraqi Kurds in my home town of Nashville, Tennessee.

As it so happens, Nashville is home to the largest Kurdish population in the United States of approximately 8,000 Iraqi expats. This past January, over 3,000 of our Kurdish neighbors voted in the historic January 30 elections which put Iraq on the road to independent, democratic self-rule. Tennessee election organizers predict that the turnout for today's vote will be double that number.

Iraqis from all around the region are converging on Nashville to cast their votes in solidarity with their brothers and sisters of their native land.

Susan Dakak, whose family moved from Baghdad to Tennessee 27 years ago, tells the Chattanooga Times Free Press, ''This is a dream come true. I never thought in my life that Iraq would get to where it is politically.''

Susan and her husband, Janan, plan to travel from Knoxville to Nashville, and they plan to bring their 9-year-old son with them to witness the personal and historic moment of casting their ballots as free citizens. And as Susan understands, her vote is not just for her birth country, but for her adopted country, as well.

Susan and Janan's votes, along with the millions of Iraqis voting today, are critical to helping defeat the terrorists and vanquishing their violent aspirations.

As Susan explains:

> This will be the beginning of the end of all of the violence. The new Iraqi government will know that it will be their responsibility to clear the terrorists out of the country.

In the short run, today's broad participation will further isolate the terrorists and constructively engage Iraqis across ethnic and sectarian lines. And in the long run, a peaceful, united, stable and secure democracy in the heart of the Middle East will expose the brittle and intolerable tyranny of the terrorist enemy. And it is precisely this outcome that our terrorist enemies fear.

Early in the conflict, a letter from Al Zarqawi was intercepted by coalition forces. In it, he wrote that a free and prosperous Iraq would reject his vision of a medieval, fundamentalist state. He recognized that if Iraqis became accustomed to self-determination and self-rule, they would refuse to submit to a tyrant and they would reject his extreme interpretation of Islam.

Furthermore, Iraq would become a model for the entire Middle East region, driving out extremism and heralding in moderation and peace. Al Zarqawi understands the power of freedom. That is why he is bent on its destruction. But as this remarkable year of steady progress has proven, he cannot and will not succeed. The desire of freedom is too strong and its logic is too irreducible.

Democracy is on the march and today 15 million Iraqis are heading to the polls. Once again, they are showing the world their extraordinary courage and determination to join the modern, free world.

America pledges to stand with the Iraqi people in that worthy effort as they strive to secure the blessings of liberty.

As Tahir Hussain, president of the Nashville Kurdish Forum, told a Tennessee paper on this week:

> We say that everybody should have a voice in Iraq, and everybody should be equal. And today is the day.

## SENATOR EUGENE McCARTHY: A GREAT AMERICAN HAS PASSED AWAY

Mr. BYRD. Mr. President, in my book, ''Child of the Appalachian Coal Fields,'' I discussed the Senate class of 1958. That class, which included 15 Democrats and 3 Republicans, constituted the largest turnover over in Senate history, and from that class of Senators came a number of Senate leaders and Presidential candidates. Most important, I pointed out, while elected during the Eisenhower administration, the class of 1958 ''tackled some of the greatest foreign and domestic problems ever to face the Nation, and they played critical roles in enacting the Great Society programs and ending the war in Vietnam.''

One of the most remarkable members of that remarkable class was Senator Eugene McCarthy of Minnesota, who passed away this weekend. He played critical roles both in enacting the Great Society programs and ending the war in Vietnam.

It was my privilege and my pleasure to serve with Eugene McCarthy in the U.S. House of Representatives and here in the Senate as members of the class of 1958.

While serving together, I came to appreciate that Senator McCarthy was a truly gifted and talented person with an extraordinary background. He was, without question, one of the more unusual Members to sit in this chamber. He was a poet, professor, philosopher, and author, and had been a military intelligence official during World War II and a semiprofessional baseball player.

In the Senate, as throughout his life, Senator McCarthy did not hesitate to go his own way. He did not hesitate to stomp out of a Senate hearing, and he was willing to espouse unpopular views. But he always did so with an open heart, an open mind, and deep sincerity and dedication. Therefore, even when I disagreed with him, which was quite often in those early years, my respect for him continued to increase.

And I developed a deep appreciation for his abilities, his wit, his warm personality, and his strong determination to make ours a better country. One of his first assignments in the Senate was chairing the Select Committee on Unemployment, which helped focus national attention on the problems of joblessness and poverty throughout the country. By holding hearings in Beckley, Welch, Fayetteville, and Wheeling, WV, as well as other economically distressed regions of the country, the Select Committee helped undermine the false claims of the so-called Republican prosperity of the 1950s, and, as a result, helped provide the ground work for the Great Society legislation that came a few years later.

As I said earlier, it was members of the class of 1958 who also helped to end the war in Vietnam. Although all of us had voted for the Tonkin Gulf Resolution, many of us came to regret it. Senator McCarthy, to his great credit, was one of the first to speak out against the war. He did so by announcing his break with the Johnson administration, and running against the President for the Democratic presidential nomination. ''The Administration,'' he said, ''seems to have set no limit to the price which it is willing to pay for a military victory.''

No one expected much from McCarthy's challenge. He was a little-known Senator taking on President Johnson, who at the time, seemed all powerful.

But, as most of us know, in the 1968 New Hampshire Democratic primary, Senator McCarthy stunned the Nation and shocked the political world. His near victory helped to drive President Johnson out of the Presidential race. That contest showed how unpopular the war was. It focused attention on, despite the administration's claims to the contrary, just how disastrous its policies were in Southeast Asia. It brought home to the American people an issue that was dividing the country and costing billions of dollars and thousands of American lives. Furthermore, Senator McCarthy's campaign helped embolden a generation of young Democratic Party activists.

When Senator McCarthy announced that he would be leaving the Senate in 1970, I was one Senator who approached him and tried to change his mind. When I was unsuccessful, I came to the Senate Floor to pay tribute to him. Senator McCarthy, I said, ''has made his mark upon our party, he has made his mark upon our country, and he has made an indelible mark upon the hearts of all in the Senate who are privileged to call him friend.'' I said, ''he proves the truth of that verse of Scripture that states, 'He that hath friends must show himself friendly.' ''

I have never wavered in those opinions that I expressed 35 years ago. In fact, our friendship became stronger, as did my admiration of him.

Mr. President, our country has lost a good and talented man, and a great American. I will miss my friend. Our country needs more men like him.

> God give us men!
> A time like this demands strong minds,
> great hearts, true faith, and ready hands.

Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honor; men who will not lie.

Men who can stand before a demagogue
And brave his treacherous flatteries without winking.

Tall men, sun-crowned;
Who live above the fog,
In public duty and in private thinking.
For while the rabble with its thumbworn creeds,
It's large professions and its little deeds,
mingles in selfish strife,
Lo! Freedom weeps!
Wrong rules the land and waiting justice sleeps.
God give us men!

Men who serve not for selfish booty;
But real men, courageous, who flinch not at duty.
Men of dependable character;
Men of sterling worth;
Then wrongs will be redressed, and right will rule the earth.
God Give us men!

## WEAK-KNEED BUDGET TRICKS

Mr. BYRD. Mr. President, before we adjourn, the Congress will be asked to vote on an across-the-board cut for every agency and program in the Federal Government. The Congressional majorities have put this Nation on an irresponsible fiscal path, one that promises years of record-breaking red ink, inflationary pressures, and multiplying Federal debts. Instead of making tough choices on spending priorities, or perhaps limiting the massive tax breaks going to Nation's richest citizens, or finding ways to lessen the burden of the war in Iraq on the American citizens, the Republican Congressional leadership is expected to take the expedient route of an across-the-board funding cut.

This may not seem like a big deal. What's 1 or 2 percent? But to the families across this country, that 1 or 2 percent can mean a world of difference, especially when it is coupled with the freeze in services that has already been applied to Federal initiatives.

Take, for an example, community health centers which provide basic health care for some of our most isolated citizens. This arbitrary Republican plan would mean that 55 clinics would be shuttered, and 73,000 Americans would see their health care held hostage by budget games. A 2 percent cut in the Food and Drug Administration budget would force unacceptable delays in the amount of time that it takes to approve new lifesaving drug and medical devices.

At a time when the Congress is considering tax cuts for the wealthy, after a 2 percent cut, food packages for 65,922 elderly participants would vanish. A 2 percent cut in the WIC program would reduce the number of meals for 175,234 economically struggling women, infants, and children. More than 35,000 families would lose access to safe and affordable housing. Under this Congressional leadership, the rich get richer, while tens of thousands of poor and the elderly have to struggle for food and shelter.

The House has passed four tax cut bills, totaling $95 billion, and the Senate has passed tax cuts which add up to $58 billion. The vast majority of these tax cuts are aimed at improving the economic portfolios of the wealthiest Americans at the expense of those Americans who are barely scraping by. At the same time that this Congress is pushing forward with unwise tax cuts, these across-the-board cuts would weaken further the Nation's crumbling infrastructure and rob the economy of new jobs. In fact, a $720 million cut in highway construction, as put forward under the Republican blueprint, would slash more than 34,200 construction jobs from our economy. How many headlines about companies cutting payrolls by the tens of thousands will it take before this Congress stands up and puts the American people first? American families deserve to know that the safety net is not filled with holes. But instead of offering assurances, this Republican plan only serves to jeopardize the future of many Americans.

Children in school districts with a high median income would also suffer. These school districts, which receive title I funding, would have to scramble to fill a $257 million reduction. That kind of cut would hamstring the education of more than 200,000 students around the country. At the same time, special education funding would drop by $214 million, and the number of children in Head Start would be cut by 19,000. Cutting the funds for classroom education may achieve short-term fiscal goals for the Republican majority, but it creates long-term problems for the Nation's future.

Don't care about the classrooms? Think that school districts can absorb this cut with higher property taxes? Then what about our veterans? Each day, new veterans come home from the wars in Iraq and Afghanistan. They join our proud men and women who have served in World War One and World War Two, in Korea, in Vietnam, in the first Gulf War, and in so many places around the world. These men and women have made us proud. Many of these 21st century veterans have specialized health care needs. The battlefields of today are inflicting wounds unlike those experienced by the soldiers, sailors, airmen, and Marines of past wars. Veterans' health care is a responsibility that we must never shirk.

But what do these veterans get in return for their service? More budget cuts from this Congressional majority. The GOP plan means cuts in treatment for approximately 236,000 patients. It means that 1.4 million outpatient visits would disappear. Waiting lists would likely rise by about 176,000 veterans. In addition, the VA will not be able to expand specialty and mental health services at existing sites as planned.

But the short-sighted effects of this Republican cut to America's working families, classrooms, and veterans are only one aspect of backwards priorities of this Republican funding plan. Just this week, the President reiterated his effort to protect the American people from future terrorist attacks. But how much safer will the American people be if the Republican blueprint for budget cuts is signed into law? How much safer will the Nation be with 800 fewer FBI agents?

Similar cuts would face the Drug Enforcement Agency. Under this Republican scheme, the DEA would be forced to cut its planned force by 200 agents. The President and his team have stated that drug profits contribute to terrorism. Does anyone think that it is a good idea to cut more than 200 agents from the DEA?

Border Security would be cut by $96.5 million. As a result, 200 of the promised new border agents would go unhired. Detention and removal efforts for illegal aliens would be sliced by $20 million. All of us know that the U.S.-Mexico border already is terribly porous. But, instead of investing in new agents and tightening security on our borders, this Republican effort would undermine our effort to secure our borders.

What about our airport security? That is not immune from these Republican budget games. The Transportation Security Administration, which is responsible for the screening of passengers at our airports, would also be targeted for stiff reductions. As a result of this misguided GOP blueprint, more than 1,000 TSA screeners would lose their jobs. This is on top of the 2,000 person reduction in screeners already approved by this Congress. At the same time, funding for explosive detection equipment for baggage and passengers would be decreased by $12 million. And safety in the skies would be placed at risk.

We all watched the Coast Guard perform marvelously after Hurricane Katrina devastated Mississippi and Louisiana. But rather than reinforcing the Coast Guard's ability in future disasters, the 2 percent rollback would reduce cutter patrol hours by at least 10,000 hours and aircraft hours by at least 2,000 hours. And military recruiting would be reduced by 60 percent—or 1,158 Coast Guard personnel.

I urge my colleagues to think again about this fiscal foolishness. Think about what it means for our children and for the safety of our families. Think about what it means for our veterans and for our security.

The American people elect Members of Congress to lead, to make tough choices, and to place the best interests of the Nation at the forefront of our work. This across-the-board cut is not leadership, and it is not in the best interests of the Nation.

## DEFENSE AUTHORIZATION ACT

Ms. SNOWE. Mr. President, as chair of the Senate Committee on Small

Business and Entrepreneurship, I rise in support of amendment No. 2529 which was unanimously adopted into S. 1042, the National Defense Authorization Act for fiscal year 2006. This amendment will restore much needed transparency in the small business contract goaling program administered by the Small Business Administration, promote international competitiveness of our Nation's small businesses, and ensure fair access of small businesses to Federal prime contracts and subcontracts for performance overseas.

Currently, many small contractors play a critical role in maintaining a strong domestic defense industrial base and supporting the Global War on Terror. Yet many of these small firms face serious obstacles obtaining prime contracts and subcontracts to perform internationally the work they are already performing so ably domestically. Simply put, this amendment would clarify that the Small Business Act applies to Federal overseas contracts.

In the 2001 report, ''Small Business: More Transparency Needed in Prime Contract Goaling Progam,'' the Government Accountability Office criticized the Small Business Administration, SBA, the Department of Defense, DOD, and other agencies for excluding contracts from the calculations of small business contracting achievements toward the statutory goals established in the Small Business Act based on tenuous rationales. On its face, the Small Business Act applies to all Federal procurements, including all overseas contracts. However, recently there has been some resistance to implementing the Small Business Act as written. Some agencies, like the Department of Defense, go as far as to exempt all overseas-related contracts from the act. Others, such as the Department of State, exempt contracts for performance abroad if they are also awarded abroad but not if they awarded domestically. As a result, prime contracting and subcontracting requirements of the Small Business Act are rendered unenforceable with regard to many military and reconstruction projects, and fair access for small businesses is seriously diminished.

Based on fiscal year 2000 dollars, the GAO found that approximately $8.4 billion in overseas defense contracts were excluded from counting toward the Federal Government's small business performance. Under the Small Business Act, $1.93 billion of these contracts should have been awarded to small businesses. The SBA's and the DOD's rationale for excluding overseas contracts was that small firms have little chance of competing for these contracts in the first place.

The excuse given by the SBA and other agencies to the GAO in 2001 did not hold then, and it surely does not hold now. With an expanded Federal presence in recent years, the dollar volume of overseas contracts has been steadily increasing, and small firms have been playing a substantial part in supporting Federal operations abroad. Indeed, every major contract for the reconstruction for the reconstruction of Iraq funded by the $18.4 billion in 2003 emergency supplemental appropriations has a minimum 10 percent requirement for small business subcontracting and a 23-percent subcontracting goal. Our experience with Iraq reconstruction proves that American small businesses are capable to perform overseas even in the most dire circumstances.

Congress clearly meant what it said in the Small Business Act that procurement goals must be calculated against ''total purchases'' of the Federal Government. My amendment reaffirms congressional policy that the Small Business Act applies to all contracts and subcontracts regardless of geographic place of award or performance. This amendment directs Federal agency heads with jurisdiction over acquisitions to ensure that all contracts and subcontracts, regardless of geography, are covered by the Small Business Act. Under my amendment, agencies will be able to give due note and recognition to the specific requirements and procedures of any other Federal statute or treaty, such as the provisions governing foreign military sales, which may exempt any Federal prime contract or subcontract from the application of the Small Business Act in whole or in part.

I urge my colleagues to help keep America's defense industrial base and America's global competitiveness strong by supporting fair access to prime contracts and subcontracts by our small businesses.

Mr. President, as chair of the Senate Committee on Small Business and Entrepreneurship, I rise today in support of my amendment No. 2530 to S. 1042, the National Defense Authorization Act for fiscal year 2006, to promote fair access to multiple-award contracts. I am pleased that this amendment was adopted unanimously, and I urge my colleagues to support it in conference. Since the enactment of the Federal Acquisition Streamlining Act, FASA, in 1994, Federal agencies are increasingly relying on contracts and acquisition services offered by other agencies, specifically, the General Services Administration's Multiple Award Schedule/Federal Supply Schedule contracts, MAS/FSS, Government-wide acquisition contracts, GWACs, and multiagency contracts, MACs, to purchase goods and services. These contracting mechanisms were authorized by Congress in the belief that they would encourage the Government to buy commercially available products and services and would open the Federal contracting market to businesses, especially small businesses, which have previously focused only on the private, commercial markets. Essentially, these indefinite-delivery, indefinite-quantity contracts are framework agreements on prices and other terms for any future sales to the Government. In the procurement community, these contracts are popularly known as ''hunting licenses'' because they permit preapproved contract holders to secure Government work with very limited competition as a result of direct marketing to Federal agencies. Federal contracting officials can place task orders against these contracts with their preferred, preapproved vendors. This amendment is a modest response to numerous complaints from representatives of small businesses and small business trade associations that the actual process for receiving task orders under multiple award contracts, such as the Federal Supply Schedules and multiagency contracts, tends to be biased in favor of large businesses and experienced Government contractors.

Small business representatives testified before my committee that they invest time, effort, and resources to negotiate multiple award and multiagency contracts with the GSA or with another executive agent managing a Government-wide acquisition contract or a multiagency contract. Consultants have been known to charge small firms as much as $25,000 for guiding them through dense, time-consuming paperwork required to receive Government preapproval for one such contract. However, there are serious concerns that small firms do not reap commensurate benefits in the form of task orders. For instance, in recent proceedings before the White House Acquisition Advisory Panel, a representative of the General Services Administration, GSA, indicated that total Multiple Award Schedule/Federal Supply Schedule sales reached $31.1 billion in fiscal year 2004. GSA further indicated that small businesses hold 79.6 percent of total MAS/FSS contracts, but account only for 37.1 percent of sales dollars. At first glance, this level of small business participation is commendable. It exceeds the statutory Government-wide goal of awarding 23 percent of Federal contract dollars to small businesses. However, the significant disparity between these numbers confirms the complaints of small businesses about the barriers they have been facing in Federal indefinite-delivery, indefinite-quantity contracts. I look forward to working with the GSA, the Small Business Administration, and other agencies towards a greater parity between small business participation in the Schedule program itself and their share of contract dollars awarded through this program.

In the acquisition world, there is a perception that contracting officers routinely persist in limiting upcoming task order opportunities to a maximum of three companies on any particular GSA Schedule instead of the three-company minimum as required by law. This situation is a recurring subject of bid protest decisions. In addition, many multiple-award contract holders do not receive a fair notice of upcoming task orders.

Earlier this year, an article in the Veterans Business Journal asked

''What Happened to Public Law 108–183?'' This law, codified in the Small Business Act, created the contracting preference for small businesses owned by service-disabled veterans. The article pointed out that many service-disabled veterans feel frustrated at the multiple-award contract regulations which undermine the weight of the congressionally established preference and preclude disabled veterans from obtaining set-aside multiple-award acquisitions.

The Senate Committee on Small Business and Entrepreneurship has attempted to mitigate many of these problems. Back in 1994, the Federal Acquisition Streamlining Act included a change to the Small Business Act that created an exclusive reservation for small businesses consisting of all contracts valued at more than $2,500 but not more than $100,000. Federal agencies attempted to exempt themselves from this provision by regulation. In response, I inserted corrective language in S. 1375, the 50th Anniversary Small Business Administration Reauthorization Act. This act, passed unanimously by the Senate during the 108th Congress, included a provision to ensure that task orders on multiple award schedules and multiagency contracts valued at more than $2,500 but not more than $100,000 are reserved for small businesses.

This amendment builds on my prior efforts by establishing a congressional policy that each agency's orders placed under multiple awards contracts must meet statutory small business goals. To facilitate this policy, the amendment authorizes Federal agencies using defense contracting authorities to conduct small business set-aside competitions in the context of multiple-award contracts. My amendment also directs the SBA administrator to provide to my committee a comprehensive report on participation of small businesses in multiple-award contracting.

The measures adopted by the Senate through this amendment are only some of many steps and initiatives which my committee has been pursuing to increase the access of multiple-award contracts to small businesses. I hope that my colleagues will join me in supporting these efforts.

Mr. President; as chair of Senate Committee on Small Business and Entrepreneurship, I rise today to address a bipartisan amendment to S. 1042, the National Defense Authorization Act for fiscal year 2006 from the Senate Committee on Small Business and Entrepreneurship concerning much needed improvements to the Small Business Innovation Research, SBIR, Program and the Small Business Technology Transfer, STTR, Program. Amendment No. 2531 is based on my original amendments S.A. 1536 and S.A. 1537 and builds on language reported by the Senate Armed Services Committee and on legislative initiatives proposed by the Small Business Committee's ranking member, Senator KERRY. I would like to commend Senator KERRY, as well as Senators WARNER and LEVIN, the leaders of the Senate Armed Services Committee, for their bipartisan cooperation on the important subject of accelerating innovation and procurement of innovative technologies by the Federal Government. I also want to thank Dr. Charles Wessner and others at the National Academy of Sciences who have worked on a congressionally authorized study of the SBIR program, the Small Business Technology Council, the Association for Manufacturing Technology, and numerous representatives of Federal agencies, small businesses, and representatives of large prime contractors for the insights into the work of the SBIR and the STTR programs which they have provided to my committee over the years.

Today, the Federal Government spends approximately $2.3 billion on phase I and phase II awards for the SBIR and the STTR programs, with $2.2 billion spent through the SBIR awards to small businesses. The Department of Defense is the major participant in this program, accounting for approximately $1.1 billion in SBIR spending and approximately $50 million in STTR spending. These funds provide a substantial stimulus to the American innovation system, and it is the task of this Congress to ensure that these funds are wisely spent. A key part of this effort is strengthening the existing science and research requirements for the small business research and development programs. This amendment directs the Department of Defense to base its SBIR and STTR research and development priorities on the Department's most current Joint Warfighting Science and Technology Plan, the Defense Technology Area Plan and the Basic Research Plan and to solicit input from program management officials.

In addition to the phase I and phase II awards, the Department of Defense awarded over $456 million in phase III contracts in fiscal year 2004. But the need for innovative technologies in our defense procurement is far greater. The SBIR and the STTR authorities enable contracting officers to quickly buy high-tech products and services for our warfighters. Unfortunately, the commercialization rate from research and development to product acquisition has been hampered by poor commercialization planning and increasing SBIR program administration costs. Since 1998, Congress and the Department of Defense have sought to increase commercialization but without much progress. To address this problem, my amendment authorizes a Commercialization Pilot Program at the Department of Defense and component military departments. Under this program, the Secretary of Defense and the military Secretaries would be required to identify SBIR programs with potential for accelerated transition into the acquisition process. The amendment authorizes the use of one percent of SBIR phase I and phase II funds for administrative expenses of this pilot. Congress will be kept abreast of this pilot through detailed evaluative reports.

As cochair of the Senate Task Force on Manufacturing, I have been concerned about the deteriorating manufacturing base of our Nation and especially the impact of this trend on the defense industrial base. To stem this decline, President George W. Bush signed Executive Order 13329, Encouraging Innovation in Manufacturing, in February 2004. This order directs Federal agencies which participate in the Small Business Innovation Research Program and the Small Business Technology Transfer Program to give ''high priority'' to manufacturing-related research and development projects to the extent permitted by law. The amendment incorporates this Executive order into law and directs the Small Business Administration and all other relevant agencies to fully implement its tenets.

Finally, the amendment will expand the ability of Federal agencies and prime contractors to use phase II and phase III awards under SBIR and STTR for testing and evaluation of innovative technologies developed by small businesses for use in technical or weapons systems. Insertion of SBIR or STTR technologies into large, integrated systems is often not possible without significant testing efforts. By clarifying that either phase II or phase III may be used for these purposes, the amendment will provide additional incentives to agency program managers and to large systems integrators to commercialize the fruits of the SBIR and the STTR research.

Our Nation's small businesses are also our Nation's innovators. They secure approximately 13 times more patents than large businesses. I urge this Congress to support in conference my measure for keeping America secure in war and in competitive internationally.

## ANTI-SEMITIC STATEMNTS BY THE PRESIDENT OF IRAN

Mr. SMITH. Mr. President, I rise today to register my outrage against a series of vehemently anti-Semitic comments made by Iranian President Mahmoud Ahmadinejad. These remarks, all of them vile and baseless, should be condemned by the Senate. Let me describe some of these remarks for the RECORD.

At a conference in Tehran on October 26, President Ahmadinejad said, ''Israel must be wiped off the map . . . The Islamic world will not let its historic enemy live in its heartland.''

Then, on December 8, he continued his assault, saying ''Some European countries insist on saying that Hitler killed millions of innocent Jews in furnaces . . . Although we don't accept this claim . . . If the Europeans are honest they should give some of their provinces in Europe—like in Germany,

Austria or other countries—to the Zionists and the Zionists can establish their state in Europe.''

And, just yesterday, President Ahmadinejad claimed that ''They have fabricated a legend under the name 'Massacre of the Jews', and they hold it higher than God himself, religion itself and the prophets themselves''

Mr. President, I do not even know where to begin. Insidious rhetoric such as this is designed to do nothing other than stir hatred and incite hostility.

I have walked the grounds at Auschwitz. I have seen the crematoria. To claim that one of the greatest tragedies in the history of humanity is merely a fabrication to advance a political agenda is simply beyond the pale. But what is worse is that these comments are not isolated. They are a part of persistent, state-sponsored anti-Semitism that is now commonplace in the administration of President Ahmadinejad.

On the eve of the elections in Iraq, one of the greatest democratic milestones in the history of the modern Middle East, I hope that we can work to move past this gross intolerance on the part of the Iranian President.

## FREE GUN LOCKS FROM PROJECT CHILDSAFE

Mr. LEVIN. Mr. President, tragedies involving children and guns continue to repeat themselves with alarming frequency around the country. According to local police, at least five Detroit children have been accidentally shot and killed this year alone. Just last week a three year old boy in Detroit nearly lost his life when he accidentally shot himself in the chest with his father's gun.

Following that shooting, Detroit police spokesman James Tate said, ''It appears this could have been prevented if a gun lock was on and the gun was secured. It's unfortunate that we end up responding to these types of scenes when there are free gun locks readily available around the city.''

One source of free gun locks is Project ChildSafe, the Nation's largest firearm safety education program. This program has provided more than 35 million ''firearm safety kits'' to gun owners around the country, including more than 517,500 in Michigan this year. Each firearm safety kit includes a free gun lock and materials to educate firearms owners about safe gun storage practices.

Free gun locks from Project ChildSafe are available year round through many local police departments. According to Project ChildSafe, if a local law enforcement agency does not have safety kits available for residents who request them, that agency may contact their governor's office to receive a supply. In addition, Project ChildSafe representatives attend a number of major public events including State fairs, sportsmen's festivals, and community safety days to distribute firearm safety kits. More information on safe gun storage practices and how to acquire a free gun lock can be found on the Project ChildSafe website at www.projectchildsafe.org.

The Project ChildSafe website also includes information concerning a number of safe gun storage practices to reduce the risk of unintentional shooting. In addition to using a gun lock, Project ChildSafe suggests locking up ammunition in a location separate from the firearm. Statistics show this additional precaution can have a dramatic impact on the risk of unintentional shooting. A study published earlier this year in the Journal of the American Medical Association found that the risk of unintentional shooting or suicide by minors using a gun is reduced by as much as 61 percent when ammunition in the home is locked up. Simply storing ammunition separately from the gun reduces such occurrences by more than 50 percent.

Common sense alone tells us that safe firearms storage practices, including the use of gun locks, reduces the risk of accidental shootings. I hope that firearms owners in Michigan and around the country join those who have already chosen to take advantage of the free gun locks and educational materials provided by Project ChildSafe so that fewer children are killed and seriously injured in accidental shootings.

## ELECTIONS IN IRAQ

Mr. KENNEDY. Mr. President, all Americans are inspired by the way the Iraqi people once again demonstrated their courage, dedication, and resilience by going to the polls to place their future—and the future of their country—squarely on the side of democracy.

Every American salutes our men and women in uniform who are serving so ably under enormously difficult circumstances, and whose dedication and sacrifice have made today's elections possible. More han 2,100 of America's finest soldiers have made the ultimate sacrifice in Iraq and we owe them and their loved ones an immense debt of gratitude. We all hope that successful elections will give the Iraqi people new confidence that a brighter future lies ahead.

Successful elections can and should be the turning point we've been waiting so long for, when our troops can begin to come home. As our Ambassador to Iraq, Zalmay Khalizad, said today, because the training of the Iraqi security forces is proceeding, ''some draw down can begin in the aftermath of the elections.''

An open-ended commitment of America's military forces does not serve America's interest and it does not serve Iraq's interest either. If America want a new Iraqi government to succeed, we need to let Iraqis take responsibility for their own future.

## MONTREAL CLIMATE CHANGE NEGOTIATIONS

Mr. JEFFORDS. Mr. President, one of the most important issues facing mankind is the problem of human-induced climate change. The broad consensus within the scientific community is that global warming has begun, is largely the result of human activity, and is accelerating.

Global warming will result in more extreme weather, increased flooding and drought, disruption of agricultural and water systems, threats to human health and loss of sensitive species and ecosystems. We must take action now to minimize these effects, for the sake of our children, our grandchildren, and future generations.

Over the last 2 weeks, 189 countries met in Montreal to discuss the important issue of global climate change. These countries met in a spirit of cooperation and in hopes of agreeing on the next steps for reducing harmful emissions of greenhouse gases. These countries, including the United States, have all already agreed, under the United Nations Framework Convention on Climate Change, to take steps to ''prevent dangerous anthropogenic interference with the climate system.'' These past 2 weeks were a test of their resolve.

Unfortunately the United States, led by the Bush administration delegation, attempted to slow, stall, and block the progress of these talks. This is unconscionable, given that the United States is the largest single emitter of greenhouse gases. Fortunately the U.S. negotiators' efforts were not completely successful, and an agreement was reached to have additional talks commencing next year. Although that is a small step and not nearly enough, it is vastly preferable to the outcome this administration wanted, which amounts to no action at all.

In advance of the Montreal meetings, I joined with 23 other Senators in sending a letter to President Bush, reminding the administration of its legal obligation to participate in the Montreal talks. Unfortunately, but perhaps not surprisingly, the administration disregarded this obligation.

A decision to block further discussions on missions reduction commitments cannot be viewed as consistent with the obligations of the United States under the treaty.

While the U.S. has refused to ratify the Kyoto Protocol despite the fact that 157 nations have become parties, actions to block those countries from moving forward with additional commitments under that Protocol is also inconsistent with the U.S. Framework Treaty obligations.

In our letter to the President, we noted that just this year the Senate, by a vote of 53–44, approved a resolution calling for mandatory limits on greenhouse gases within the United States. We wrote this letter and distributed it to interested parties at the negotiations to ensure that other countries

understand that not everyone in the United States agrees with the Bush plan for prolonged inaction.

To this end, members of my staff traveled to Montreal and met with representatives and negotiators from other countries. They also met with public interest groups, business groups, and others interested in taking positive action on climate change. They witnessed firsthand how the Bush administration worked very hard to dissuade other countries from agreeing to even discuss further commitments. This is not the position that our Nation should be taking. We should be leading the way on climate change, not burying our head in the sand.

From the outset, even before they left Washington, the administration's delegation insisted that any discussion of future commitments was ''a nonstarter'' and that any discussion about future commitments prior to 2012, which marks the end of the first set of Kyoto commitments, was premature. They continued at the conference to make this point to all parties. And when the rest of the world decided to engage in actual negotiations about discussions of further commitments under both the Framework Convention and the Kyoto Protocol, the U.S. stated bluntly that such discussions were unacceptable and pointedly walked away from the negotiating table.

The good news is that the rest of the world stayed at that table and talked throughout the night and into the next morning, reaching agreement on a set of decisions for further discussions. And when those decisions were brought into the light of day, and it became apparent that the United States would have to state its opposition publicly, before all 189 countries, the U.S. was forced to agree to return to the negotiating table and to allow talks to continue next year.

This means that 157 countries have agreed to discuss additional commitments under the Kyoto Protocol, even without the U.S. as a party, and that 189 countries, including the U.S., have agreed to look at the issue of further steps under the Framework Convention. Despite arguments to the contrary, cooperative international agreements to reduce greenhouse gas emissions remain a reality, and slow, but significant, progress is taking place to strengthen those commitments.

The overwhelming majority of Americans support taking some form of action on climate change. A recent poll by the Program on International Policy Attitudes, sponsored by the Center for International and Security Studies at the University of Maryland, found that 86 percent of Americans think that President Bush should act to limit greenhouse gases in the U.S. if the G8 countries are willing to act to reduce such gases. All the G8 countries except the U.S. are signatories to the Kyoto treaty and therefore have already committed to such action.

In addition, the study found that 73 percent of Americans believe that the U.S. should participate in the Kyoto treaty. Finally, the study found that 83 percent of Americans favor ''legislation requiring large companies to reduce greenhouse gas emissions to 2000 levels by 2010 and to 1990 levels by 2020.'' Thus, in one way or another, more than 80 percent of Americans favor taking real action on climate change. The current administration is completely out of step with the American public on this issue.

States, regions and even localities are taking on climate change related commitments. Nine Northeastern and Mid-Atlantic States are working together through the Regional Greenhouse Gas Initiative, RGGI, to develop a cap-and-trade system for carbon dioxide, $CO_2$, emissions from power plants. On June 1, 2005, California Governor Arnold Schwarzenegger signed an executive order setting greenhouse gas emissions targets for the State. The order directs State officials to develop plans that would reduce California's greenhouse gas emissions to 2000 emissions levels by 2010 and 1990 levels by 2020. The U.S. Conference of Mayors adopted an agreement, sponsored by Seattle Mayor Greg Nickels, to reduce greenhouse gas emissions to levels that mirror the Kyoto Protocol limits. California has also adopted a greenhouse gas emission standard for automobiles, and a number of States, including Vermont, have followed suit and adopted the same standards. These actions confirm that there is widespread political desire and motivation to take action within the United States to reduce greenhouse gas emissions.

I have sponsored legislation to reduce greenhouse gas emissions from powerplants, which are a large source of carbon dioxide, a principal greenhouse gas. My bill, S. 150, the Clean Power Act, would reduce greenhouse gas emissions to 1990 levels by 2010. This would be a very important first step by the United States towards combating global warming that would show the rest of the world that we are serious about doing our part. Congress needs to act to provide a mandate and undisputed authority to this and future administration negotiators.

I am both discouraged and heartened by the outcome of the talks in Montreal. Those of us who care about stopping climate change did everything we could to help aid these talks, and despite the Bush administration resistance, the international dialogue on climate change will continue.

But a dialogue is not nearly enough, and the consequences of additional delay are dire. The U.S. has been and remains the largest emitter of greenhouse gases. It has a responsibility to its own people and to the people of the world to be a leader on this issue. Thus far, it has been anything but a leader and these talks highlighted that fact.

I look forward to the day when I can once again be proud of the United States role in these talks, when we can enter these negotiations having done our part. I believe that is what we agreed to in 1992, when the Senate ratified the climate treaty and it is high time we live up to our obligation.

## ANWR

Mr. FEINGOLD. Mr. President, over the past year, and on more occasions than I'd like to remember, I have talked about the abuse of process that proponents of drilling in the Arctic Refuge have resorted to in their attempts to pass an unpopular and misguided measure. Sadly, the Senate faces the very same issue today. Let me unequivocally state that talk of attaching an extraneous and obviously controversial provision regarding the Arctic National Wildlife Refuge to the Department of Defense appropriations conference report—a provision that was not included in either the House or Senate version of the bill—is flat out irresponsible and should be rejected.

This last-ditch effort to attach the Arctic Refuge drilling provision to the Department of Defense appropriations bill—or any other bill that is a ''must pass'' before we adjourn for the year—really reflects poorly on this body. And, what does it mean for greater mischief down the line? That whenever we can't move an unpopular proposal through the regular legislative process, there's no need to worry: you just attach it to an important funding bill? Is this the precedent that we, members of both parties, want to set? I sincerely hope not.

Let me be very clear: I would prefer to be talking about setting a new path for our country's energy policy—a path that reduces our use of fossil fuels while favoring renewable sources of energy. Unfortunately, some of my colleagues are dead set on looking to the past, instead of to the future, for our sources of energy and are even willing to go so far as to use the bill that funds our men and women in uniform as a vehicle for their controversial measure. I am deeply disappointed by this latest move.

I strongly urge any of my colleagues who are currently trying to add language to the Defense appropriations bill, or any other bill we need to consider in the coming days, that would open up the Arctic Refuge to oil and gas development, to reconsider those efforts. Continuing down that path, the path of circumventing established legislative processes to move measures that can't pass on their own merits, is an irresponsible abuse of the rules under which we operate that should be rejected out of hand.

## DR. CYNTHIA MAUNG

Mr. OBAMA. Mr. President, I rise today to call attention to the heroic efforts of Dr. Cynthia Maung and her Mae Tao clinic to provide hope on the border of Thailand and Burma. Dr. Maung, herself a Burmese refugee, has dedicated her life to helping those fleeing political and economic turmoil in

Burma. Few Burmese refugees are granted official refugee status in Thailand, making it almost impossible to obtain healthcare, employment or education.

On the outskirts of the town of Mae Sot, Dr. Maung started a makeshift facility to treat her malaria stricken fellow refugees as they began crossing by the thousands into Thailand, following the Burmese junta's brutal crackdown on the democracy movement in 1988. Mae Tao is now a thriving clinic treating around 70,000 people a year. From providing maternity care and family planning to treating infectious diseases and fitting landmine victims with prosthetics, the Mae Tao clinic represents hope, safety and a brighter future for some of the most vulnerable people in the world. This is a mission we should do everything we can to support.

Dr. Maung's tireless efforts have not stopped with the Burmese refugee population in Thailand, as she trains medical teams to deliver health services to remote villages in Burma. Unable to return to her homeland, Dr. Maung continues to be a fearless advocate for democracy and justice for the people of Burma—on both sides of the border.

We can and must do more to support this courageous woman, and her work to ensure that the refugee population in Thailand is granted basic rights, including healthcare and education, for all.

## ADDITIONAL STATEMENTS

### A NEWSPAPER FAMILY FOR 30 YEARS

• Mr. CRAPO. Mr. President, keeping a community connected and informed is one of the most important functions of a local paper. In Cottonwood, ID, this job has been attended to with care and expertise by Pat Wherry and her late husband Bob for the past 30 years. In 1975, Pat and Bob took the helm of the Cottonwood Chronicle and Bob, until his death, and Pat have been serving the community of Cottonwood through their hard work and diligence ever since. Their two sons are involved in the businesses as well, each currently holding positions as editors, one at the Chronicle and the other at the Lewis County Herald. Bob passed away in 1996, but Pat has stayed with the paper, working hours that as many involved in small papers know far exceed 40 hours per week.

The Cottonwood Chronicle is one of the oldest papers in Idaho, first wearing the banner of the ''Cottonwood Reporter'' in 1892. It has been the Cottonwood Chronicle since around 1910. At one time, the Wherry family also owned both the Valley News in Meridian and the Lewis County Herald in Nez Perce, but later sold the Valley News. They have devoted their time, resources and energy to keeping the people in these communities educated and involved. Editors of small papers especially serve many functions—they are the source of news and schedules of events. They are the keepers of community opinion and concerns. Pat especially is a strong and proud advocate for Cottonwood and I always appreciate her information she shares about the exciting things happening in this growing community. I congratulate Pat and her sons Greg and Steve and wish them well as they continue in their good work.•

### APPRECIATION FOR THE WORK OF LYNN ROSENTHAL

• Mr. CRAPO, Mr. President, today I recognize outgoing executive director of the National Network to End Domestic Violence, Lynn Rosenthal. Lynn began at NNEDV in 2000, when I had the wonderful opportunity to become acquainted with her. Since that time, she has worked tirelessly on behalf of victims of domestic violence nationwide. In the course of the past 5 years, she has educated me and other Members of Congress about the high incidence and terrible consequences of domestic violence in the United States and has been instrumental in my becoming ever-increasingly involved in advocating for victims of this terrible crime.

Lynn began her work in her home State of Florida where her leadership and character earned her the Florida Governor's Peace at Home Award. After working in domestic violence advocacy on a regional level, she went on to become the director of the Florida Coalition Against Domestic Violence before serving as the executive director of NNEDV.

Lynn has devoted her life to advocating for safe and nurturing communities and promoting equality. With dignity, poise, and energetic conviction, as executive director of NNEDV, Lynn has been an invaluable voice of education on domestic violence issues for Members of Congress. She speaks for those who cannot speak for themselves, those imprisoned in their homes, victims of cruelty with no way out and no hope. Her work on the Violence Against Women Act has kept it a powerful policy tool to address the injustices that so many women, children, and men face in their own homes. I am honored to have had the opportunity to work with such an incredible woman, and I wish her the very best as she goes to work on economic justice issues back in Florida.•

### CONGRATULATING GRAND VALLEY STATE UNIVERSITY ON DIVISION II NATIONAL CHAMPIONSHIP

• Mr. LEVIN. Mr. President, it gives me great pride to congratulate the Grand Valley State University football team on winning the Division II National Championship. This is the Lakers' third championship in the past 4 years, and it crowns a perfect 13-to-0 season. I particularly salute the Lakers' coach, Chuck Martin, who is in his second season with the team.

The Lakers' championship victory came in a game that was thrilling to the end. After finishing the first half down 14-to-7, the Lakers fought back against Northwest Missouri State. A stunning 82-yard scoring drive in the fourth quarter gave the Lakers their first lead of the game with just over 4 minutes left to play. Northwest Missouri mounted an impressive drive of its own, but the Lakers' defense stopped the Bearcats at the 4-yard line as time expired. In this stirring finish, the Lakers showed the skill and poise of true national champions.

Grand Valley is now one of only three schools, including North Dakota State and North Alabama, that have won three or more Division II National Championships in football. And the seniors on the Laker team have tied the NCAA record for the most wins in a 4-year period.

Winning is becoming a tradition at Grand Valley. The volleyball team recently won the Division II championship. The water polo team won a national club title in November. And Mandi Long-Zemba recently won the Division II individual cross-country title as the cross-country team placed second overall.

Congratulations to all of the magnificent athletes at Grand Valley State University on a tremendous year, and best of luck for continued success. Go Lakers.•

### TRIBUTE TO CARMEN McCORMICK

• Mrs. LINCOLN. Mr. President, I rise today to honor the life of Carmen McCormick. She was a brave young woman, beloved by her family and friends, who dedicated her life to the nation she loved through honorable service in the U.S. Navy.

Gunner's Mate First Class McCormick enlisted in the Navy in April of 1999 and completed her basic training at the Recruit Training Command in Great Lakes, IL. Upon completion of basic training, she attended Gunner's Mate ''A'' school, and later continued her technical training at the Naval Training Center in San Diego. Ultimately, her duty led her to the Mayport Naval Station in Jacksonville, FL.

To those who served beside her, McCormick was a tremendous asset as a talented technician and recognized expert in all aspects of ordnance handling, but she was also a trusted leader and a friend whom they came to know and love.

Tragically, she was involved in a serious automobile accident on the night of November 11, 2005. Her shipmates joined her at the hospital shortly after the accident and later joined her family in a constant vigil by her bedside, and throughout the hospital, until the moment she passed away on November 13. She would have been 26 years old next month.

Although Carmen may no longer be with us, I pray that her friends and family have found some sense of solace knowing that she was not alone at the end of her life's journey but was surrounded by loved ones who sought to comfort her with their presence and their prayers. I would like to share the family's appreciation for the U.S. Navy officials who helped everyone through the difficult issues that arose from Carmen's end-of-life care. She had devoted herself to service and looked forward to a promising career in the Navy, and in her final moments they did everything they could to ensure she was treated with the honor and respect she deserved.

Of particular assistance and comfort to the family were Carmen's commanding officer, LCDR Tim Sullivan, as well as Senior Chief Joseph Adamo, LT Tim Johnson, CAPT Charles King, and ADM Annette Brown. Their compassion and understanding made a tragic situation a little more bearable.

My thoughts and prayers go out to the friends and family of Carmen McCormick, particularly her parents, Michael Flanigan and Leslie Santa Maria. Although her time with us was far too short, her spirit and her love will remain in our hearts forever.●

## CONTRIBUTIONS OF THE SAN LUIS VALLEY

● Mr. SALAZAR. Mr. President, I today recognize the extraordinary contributions of the San Luis Valley, in my home State of Colorado, to our national heritage and to the history of the West.

As a native son of the San Luis Valley, I know how hard the peoples of the region have fought to protect their traditions, their language, their art and architecture, and the stories of their ancestors. They have fought to protect treasured ranchlands, sand dunes, waterways, and mountain peaks. And they have fought to protect a rural way of life that cherishes family, faith, and hard work.

To support the stewardship efforts of the valley's peoples, and to ensure that the national treasures of the region are preserved for generations to come, I have introduced legislation to create the Sangre de Cristo National Heritage Area in the San Luis Valley.

This legislation will direct the National Park Service to assist citizens, organizations, and local governments in Alamosa, Costilla, and Conejos Counties in developing a management plan to guide the continued stewardship of the region's cultural and natural resources. Though this bill provides local communities assistance from the Federal Government, I am proud that the National Heritage Area Program rewards a consensual, locally driven approach to management rather than a top-down, federally dominated approach.

This bill provides economic assistance to a region that has paid an economic price for preserving its rural way of life. The towns of San Luis and Antonito, among the oldest settlements in Colorado, have successfully preserved their moradas, placitas, historic churches, religious celebrations, and historic festivals, yet the counties they are in, Conejos and Costilla, are two of the four poorest in America. This bill helps these communities leverage their cultural capital to spur economic development by providing up to $10 million to rebuild historic structures, develop interpretive exhibits, and attract tourism.

The cultural and historic value of the Sangre de Cristo National Heritage Area is immeasurable. Since people first settled in the San Luis Valley over 11,000 years ago, the region has been home to Ute, Navajo, Tiwa, Tewa, Kiowa, Hispano, and Anglo peoples, among others. The cultures, lifestyles, and cosmologies of the valley's settlers have converged, conflicted, and coalesced through the centuries, and have left an unmistakable imprint on the peoples who inhabit the Valley today. The region was dubbed ''The Land of the Blue Sky People'' in honor of the Utes, the oldest continuous residents of what is now Colorado, and is the home of Mount Blanca or Sisnaajini, the sacred mountain that, according to folklore, marks the eastern boundary of the Navajo world. Seventeenth century Spanish, still spoken by about 35 percent of the population of the Sangre de Cristo region, testifies to the strong influence of Hispano settlers, while the narrow gauge rails of the Rio Grande Railroad recall America's era of westward expansion.

In addition to its remarkable historical landmarks and cultural treasures, the San Luis Valley's natural wonders attract visitors from around the world. The valley is home to 3 National Wildlife Refuges, 15 State Wildlife Refuges, a National Forest, 2 National Forest Wilderness Areas, and the Great Sand Dunes National Park and Preserve. These public lands, and thousands of acres of private lands in between, are home to a rich array of plants and animals, from the pika of the alpine tundra to the pronghorn of the prairie and the sandhill cranes among the dunes.

This legislation will help protect these crown jewels of the American landscape by supporting a local, consensus-based approach to land management. Because the best management policies come through cooperation, not coercion, this bill maintains strong protections for private property owners. The Federal funds in this bill cannot be used to purchase private property and the management plan cannot restrict the rights of property owners on their own lands.

For generations the peoples of the San Luis Valley have worked hard to be good stewards of their land and water. They have worked hard to preserve their culture and a rural way of life. And they have worked hard to create this National Heritage Area.

They are looking for our help now to protect a place so central to Colorado peoples, so emblematic of the Western landscape, and so much at the core of the American experience.

Let us honor the contributions of the San Luis Valley to our Nation's heritage by designating the Sangre de Cristo National Heritage Area.●

## U.S. MILITARY PERSONNEL SERVING IN IRAQ

● Mr. SANTORUM. Mr. President, today is a historic day for the people of Iraq as they go to the polls to freely elect a permanent 275-member Iraqi National Assembly. It is important to remember that these elections in Iraq would not have been possible without the bravery and sacrifice of the U.S. Armed Forces who have served and are currently serving in Iraq helping to provide the Iraqi people with the freedom and democracy that they deserve.

Our service members who are serving in Iraq are promoting democracy, restoring and repairing public services, working to prevent terror attack, and destroying the insurgency in a country that hasn't known freedom in decades.

As we focus on the meaning of Thursday's election in Iraq, it is important to realize the extraordinary bravery exhibited by our service members.

One unit in particular, the 4th Civil Affairs Group, CAG, U.S. Marine Corps Reserve, based in Washington, DC was deployed to Iraq during the January 30, 2005 elections of a temporary Iraqi National Assembly. These marines, many of whom are from my State of Pennsylvania, helped to promote democracy, restore and repair public services to the Iraqi people, and prevent terror attacks by insurgents. This particular unit played an active role in the election day operations in January by setting up polling locations and participating in security patrols to protect voters and voting sites and was an integral part in the United States' battle for Fallujah. Also during its deployment, the 4th CAG worked to install new electricity transformers in the Iraqi city of Ramadi, the capital city of the al Anbar Province, also known as one of the most dangerous cities in Iraq. And I would be remiss if I failed to mention that the deputy commander of this unit of brave marines was William Reynolds, now proudly serving as Senator Specter's chief of staff.

One marine in particular from that unit, CPL William Cahir, has written about his experiences in Iraq. Corporal Cahir, originally from State College PA, was a journalist before September 11, 2001. After seeing the horrific terrorist attacks that occurred in our country on that day, Bill Cahir felt compelled to serve our country and joined the Marine Corps. As part of the 4th CAG of the Marine Corps Reserve, Corporal Cahir was deployed to Iraq.

During his deployment to Iraq, Corporal Cahir, along with other members of the 4th CAG, helped to establish a

Civil Military Operations Center in Ramadi. On election day in January in Iraq, Corporal Cahir and the 4th CAG were responsible for protecting a polling site in Ramadi.

Having returned from his deployment to Iraq, Corporal Cahir has since returned to his civilian job. As a journalist, Bill Cahir covers a multitude of stories but has since focused many of those stories on his own personal experiences in Iraq and the experiences of other service members.

In one article he wrote for The Express-Times, a newspaper from Easton, PA, Mr. Cahir told the story of two service members—COL James T. Anthony, a marine reservist from Nazareth, PA, and LTC Stanley B. Smith, Jr., an Army officer with the Army's 98th Division, Institutional Training. Both service members were on their way to Camp Taji in Baghdad to begin their deployments to Iraq.

In his article, Bill Cahir documented the sentiments of these two service members during their deployments. Colonel Anthony had recounted his observations of the training of Iraqi soldiers, ''U.S. Marines, soldiers and sailors, along with their commanders, 'did a fantastic job really pushing the ball forward when it comes to training Iraqi security forces, not just in terms of numbers but in terms of efficiency and effectiveness.'''

Lieutenant Colonel Smith also recounted his experiences in Iraq when he said, ''I am able to feel a sense of pride in accomplishment here in seeing real results in the form of construction that has been completed as planned and Iraqi units operating with installations that contribute to mission readiness.''

Mr. President, these stories from our soldiers are just a few more examples of the success in Iraq that our troops are contributing to. Each and every one of our service members has contributed to the promotion of democracy, the security, and the rebuilding of Iraq.

I applaud the marines of the 4th Civil Affairs Group and all of the service members who are serving or who have served our Nation in Iraq. The bravery that they have displayed and the progress they have made in Iraq is remarkable, and it needs to be told.●

## AIMEE'S LAW

● Mr. SANTORUM. Mr. President, H.R. 3402, the Department of Justice Appropriations Authorization Act, includes ''technical changes'' to legislation known as ''Aimee's Law.'' I am dismayed that the Department of Justice has waited until now to take the adequate steps to implement this legislation. I sponsored this legislation in the Senate, which was signed into law by President Clinton in October 2000. The law was to be implemented in 2002. I believe that 3 years is more than adequate time to implement this critical protection for my constituents.

Aimee's Law is named after Aimee Willard, a college senior from suburban Philadelphia who was brutally raped and murdered by a convicted murderer who was released early in Nevada and crossed State lines to kill again in Pennsylvania. Aimee's mother, Gail, became a tireless advocate to prevent such unnecessary tragedies from happening to other families, culminating in the passage of Aimee's Law in the U.S. Senate by an 81-to-17 margin and its final inclusion in H.R. 3244, the Victims of Trafficking and Violence Protection Act conference report, which also included the Violence Against Women Act Reauthorization, Pub. L. 106–386. Aimee's Law is narrowly tailored to address the heinous crimes of murder, rape, and child molestation.

The law is designed to protect the residents of one State from the negligence of another State. The law assists States which recognize that the primary responsibility of State and local governments is to maintain public safety. Sexual predators have the highest rate of recidivism of any category of violent crime. The law simply provides that States where a subsequent similar violent crime occurs because of an early release will be reimbursed for the prosecution and incarceration costs through a reduction of future Federal funds from the allocation of the State where the original violent crime and conviction occurred.

I wish to state for the record that I will not object to the ''technical changes'' of Aimee's Law in H.R. 3402 as the Department of Justice assures me that the law will be implemented within six months. While I think that it is unacceptable that it has taken this long to take the appropriate steps to implement this law, I am hopeful that Aimee's Law will finally and effectively be implemented in the very near future so other families do not suffer the same fate as the Williards.●

## TRIBUTE TO DICK FORD

● Mr. TALENT. Mr. Present, today I rise to honor the accomplishments of Dick Ford, one of the most respected broadcast journalists in the St. Louis area. After more than 50 years of media service around the country, Mr. Ford will be retiring today, December 15, 2005. He will be greatly missed by viewers in the St. Louis area and in the field of journalism as a whole.

After receiving a bachelor of science degree in political science from the University of Pittsburgh and serving on active duty aboard an aircraft carrier in the Mediterranean, Dick began his professional career in 1951 and went on to work in a number of States as a reporter, news director, and anchor.

After having established himself as a prominent journalist, Mr. Ford came to the St. Louis area where he began working at KSDK–TV. In July 1992, he joined KTVI Fox 2, from which he will retire.

In his distinguished career, Mr. Ford has been honored with the prestigious Emmy Award, among other recognitions of his journalistic talent and integrity.

The many hallmarks of his career include a training mission in an F–4 Phantom jet, live reports from Rome when Sister Philippine Duchesne was canonized, reports on a nuclear submarine and from the flight deck of an aircraft carrier and travels to Saudi Arabia to report on Desert Storm.

In addition to his passion for journalism, Dick Ford is a committed father and husband. He is also passionate about the community of St. Louis. Mr. Ford currently works with the USO and the St. Patrick's Day Parade Committee, among other St. Louis area organizations.

In his work, both as a journalist and a community leader, Dick has won the respect of his colleagues and viewers alike. I have appreciated very much Dick's dedication and professionalism. He sought more than just the story—he wanted to get the story right. In his interviews with me, he never hesitated to ask the tough questions, but he was always fair about it.

Dick, congratulations on your many contributions to the great State of Missouri and your tremendously successful career.●

## TRIBUTE TO TERRY R. LITTLE

● Mr. WARNER. Mr. President, I come to the floor today to recognize the service of an outstanding leader and public servant. After more than 38 years of combined military and civil service, Mr. Terry R. Little will soon retire from the Department of Defense, DOD, and move into private life.

Mr. Little is one of the most seasoned weapons acquisition program managers in the DOD. He has over 24 years of program management leadership in seven major weapon acquisition programs including two highly classified missile programs, the AIM–9X Short Range Air-to-Air Missile, the Joint Direct Attack Munition, the Small Diameter Bomb, the Joint Air-to-Surface Stand-off Missile, and the Kinetic Energy Interceptor Program. Each of these weapon systems has delivered, or promises to provide, unparalleled advancements in capability at affordable costs for the defense of our Nation. His creative ingenuity, tenacious organizational drive, and superior personal leadership directly enabled these advancements.

Mr. Little is currently the Executive Director of the Missile Defense Agency, MDA. In this capacity, he is responsible for acquisition, personnel, and administrative policy. His intellectual commitment for excellence and genuine concern for people have aided immeasurably to the day-to-day operation of the Agency. His professional achievements are numerous, impressive, and reflect his dedication and commitment for achieving the highest standards of professionalism and integrity in the service of the United States.

Terry Little has devoted his adult life to improving the DOD acquisition process. He has inspired teamwork and efficiency in many venues, and he has trained the next generation of acquisition managers to continue his legacy. For these and his many other contributions, Americans owe Mr. Little a debt of gratitude for a lifetime of selfless service and for his profound contributions to our Nation and our security. Those of us in the Senate will miss his leadership and contributions. We wish him and his family all the best in the years ahead.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on the Judiciary.

(The nominations received today are printed at the end of the Senate proceedings.)

## REPORT RELATIVE TO THE EXPORT OF ACCELEROMETERS TO THE PEOPLE'S REPUBLIC OF CHINA'S MINISTRY OF RAILWAYS—PM 33

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

*To the Congress of the United States:*

In accordance with the provisions of section 1512 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261), I hereby certify that the export of 36 accelerometers to the People's Republic of China's Ministry of Railways, for use in a railroad track geometry measuring system, is not detrimental to the U.S. space launch industry, and that the material and equipment, including any indirect technical benefit that could be derived from such export, will not measurably improve the missile or space launch capabilities of the People's Republic of China.

GEORGE W. BUSH.

THE WHITE HOUSE, *December 14, 2005.*

## MESSAGES FROM THE HOUSE

At 9:02 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagree to the amendment of the Senate to the bill (H.R. 2863) making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House: Mr. YOUNG of Florida, Mr. HOBSON, Mr. BONILLA, Mr. FRELINGHUYSEN, Mr. TIAHRT, Mr. WICKER, Mr. KINGSTON, Ms. GRANGER, Mr. WALSH, Mr. ADERHOLT, Mr. LEWIS of California, Mr. MURTHA, Mr. DICKS, Mr. SABO, Mr. VISCLOSKY, Mr. MORAN of Virginia, Ms. KAPTUR, Mr. EDWARDS, and Mr. OBEY.

At 11:46 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 972. An act to authorize appropriations for fiscal years 2006 and 2007 for the Trafficking Victims Protection Act of 2000, and for other purposes.

H.R. 2892. An act to amend section 255 of the National Housing Act to remove the limitation on the number of reverse mortgages that may be insured under the FHA mortgage insurance program for such mortgages.

H.R. 3508. An act to authorize improvements in the operation of the government of the District of Columbia, and for other purposes.

H.R. 4436. An act to provide certain authorities for the Department of State, and for other purposes.

H.R. 4473. An act to reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes.

H.R. 4508. An act to commend the outstanding efforts in response to Hurricane Katrina by members and employees of the Coast Guard, to provide temporary relief to certain persons affected by such hurricane with respect to certain laws administered by the Coast Guard, and for other purposes.

H.J. Res. 38. Joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

The message also announced that the House has passed the following bill, without amendment:

S. 335. An act to reauthorize the Congressional Award Act.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 238. Concurrent resolution honoring the victims of the Cambodian genocide that took place from April 1975 to January 1979.

H. Con. Res. 252. Concurrent resolution expressing the sense of Congress that the Government of the United States should support democracy, the rule of law, and human rights in the Republic of Nicaragua and work cooperatively with regional and international organizations to bolster Nicaraguan efforts to establish the requisite conditions for free, fair, transparent, and inclusive presidential and legislative elections in 2006.

## ENROLLED BILLS SIGNED

At 4:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 335. An act to reauthorize the Congressional Award Act.

H.R. 327. An act to allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

## MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 2892. An act to amend section 255 of the National Housing Act to remove the limitation on the number of reverse mortgages that may be insured under the FHA mortgage insurance program for such mortgages.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, December 15, 2005, she had presented to the President of the United States the following enrolled bill:

S. 1047. An act to require the Secretary of the Treasury to mint coins in commemoration of each of the Nation's past Presidents and their spouses, respectively, to improve circulation of the $1 coin, to create a new bullion coin, and for other purposes.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–4833. A communication from the Principal Deputy Associate Administrator, Federal Energy Regulatory Commission, transmitting pursuant to law, the report of a rule entitled ''Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005'' received on December 2, 2005; to the Committee on Energy and Natural Resources.

EC–4834. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005'' received on December 12, 2005; to the Committee on Energy and Natural Resources.

EC–4835. A communication from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting, a draft of proposed legislation to amend Act of August 21, 1935 to extend the authorization for the National Park System Advisory Board and for other purposes; to the Committee on Energy and Natural Resources.

EC–4836. A communication from the Chairman, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report entitled ''Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005''; to the Committee on Energy and Natural Resources.

EC–4837. A communication from the Chief, Regulations Management, Office of Regulation Policy and Management, Department of

Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Medical: Advance Health Care Planning'' (RIN2900–AJ28) received on December 8, 2005; to the Committee on Veterans' Affairs.

EC–4838. A communication from the Director of Regulations Management, Veterans Benefits Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Dependency and Idemnity Compensation: Surviving Spouse's Rate; Payments Based on Veteran's Entitlement to Compensation for Service-Connected Disability Rated Totally Disabling for Specified Periods Prior to Death'' (RIN2900–AKL86) received on December 8, 2005; to the Committee on Veterans' Affairs.

EC–4839. A communication from the Regulatory Specialist, Office of the Comptroller of the Currency, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Fair Credit Reporting Medical Information Regulations (Part 41)'' (RIN1557–AC85) received on December 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4840. A communication from the Secretary of the Treasury, transmitting, pursuant to the National Emergencies Act, the periodic report on the national emergency with respect to Burma that was declared in Executive Order 13047 of May 20, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–4841. A communication from the Secretary of the Treasury, transmitting, pursuant to the National Emergencies Act, a report on the national emergency with respect to the Development Fund for Iraq that was declared in Executive Order 13303 of May 22, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–4842. A communication from the Counsel for Legislation and Regulations, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Release in the Public Use Database of Certain Mortgage Data and Annual Housing Activities Report Information of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation'' (RIN2501–AD09) received on December 5, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4843. A communication from the Secretary, Office of the Chief Accountant, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Commission Guidance Regarding Accounting for Sales of Vaccines and Bioterror Countermeasures to the Federal Government for Placement into the Pediatric Vaccine Stockpile or the Strategic National Stockpile'' (RIN3235–AJ49) received on December 6, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4844. A communication from the Counsel for Legislation and Regulations, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Manufactured Home Construction and Safety Standards'' (RIN2502–AI12) received on December 6, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4845. A communication from the Director, Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''One-Year Post-Employment Restriction for Senior Examiners'' (RIN3064–AC92) received on December 6, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4846. A communication from the Director, Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting, pursuant to law, the report of a rule entitled ''Fair Credit Reporting Medical Information Regulations'' (RIN3064–AC81) received on December 6, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–4847. A communication from the Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury, transmitting, pursuant to law, the Fiscal Year 2004 Report on Acquisitions From Entities That Manufacture Articles, Materials, or Supplies Outside of the United States; to the Committee on Banking, Housing, and Urban Affairs.

EC–4848. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Flag Smut; Importation of Wheat and Related Products'' (Doc. No. 02–058–3) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4849. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Unsealing of Means of Conveyance and Transloading of Products'' (Doc. No. 03–080–8) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4850. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Whole Cuts of Boneless Beef From Japan'' (Doc. No. 05–004–2) received on December 5, 2005 to the Committee on Agriculture, Nutrition, and Forestry.

EC–4851. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Fruits and Vegetables'' (Doc. No. 03–048–2) received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4852. A communication from the Administrator, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Marketing and Sale of Fluid Milk in Schools'' received on December 5, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4853. A communication from the Under Secretary, Food, Nutrition, and Consumer Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Food Stamp Program, Reauthorization: Electronic Benefit Transfer and Retail Food Stores Provisions of the Food Stamp Reauthorization Act of 2002''; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4854. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Acetic Acid; Pesticide Tolerance'' (FRL7753–4) received on December 12, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4855. A communication from the Administrator, Housing and Community Facilities Programs, Department of Agriculture and Rural Development, transmitting, pursuant to law, the report of a rule entitled ''Direct Single Family Housing Loans and Grants'' (RIN0575–AC54) received on December 12, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4856. A communication from the Regulatory Analyst, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers'' (RIN0580–AA87) received on December 12, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4857. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Notice: Section 901(l) Exception for Back to Back Computer Software Licensing Arrangements'' (Notice 2005–90) received on December 5, 2005; to the Committee on Finance.

EC–4858. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Employee Relocation Costs'' (Rev. Rul. 2005–74) received on December 5, 2005; to the Committee on Finance.

EC–4859. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Timing of Adoption of Plan Amendments as a Result of Section 415'' (Notice 2005–87) received on December 5, 2005; to the Committee on Finance.

EC–4860. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Operational Date in Rev. Proc. 2005–23'' (Rev. Proc. 2005–76) received on December 5, 2005; to the Committee on Finance.

EC–4861. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Annual Pension Plan, etc., Cost-of-Living Adjustments for 2006'' (Notice 2005–75) received on December 5, 2005; to the Committee on Finance.

EC–4862. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Health Savings Account Eligibility During a Cafeteria Plan Grace Period'' (Notice 2005–86) received on December 5, 2005; to the Committee on Finance.

EC–4863. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Withholding Foreign Partnership and Withholding Foreign Trust Agreements'' (Rev. Proc. 2005–77) received on December 5, 2005; to the Committee on Finance.

EC–4864. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2006 Annual Covered Compensation Table'' (Rev. Rul. 2005–72) received on December 5, 2005; to the Committee on Finance.

EC–4865. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Information Reporting Relating to Taxable Stock Transactions'' ((RIN1545–BF18)(TD9230)) received on December 6, 2005; to the Committee on Finance.

EC–4866. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the

report of a rule entitled ''2006 Standard Mileage Rates'' (Rev. Proc. 2005–78) received on December 6, 2005; to the Committee on Finance.

EC–4867. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Timing of Adoption of Plan Amendments on Retroactive Annuity Starting Date'' (Notice 2005–95) received on December 6, 2005; to the Committee on Finance.

EC–4868. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Sections 101 and 103 of Hurricane Katrina Emergency Relief Statute—Distributions, Loans, Recontributions'' (Notice 2005–92) received on December 6, 2005; to the Committee on Finance.

EC–4869. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance on Passive Foreign Investment Company (PFIC) Purging Elections'' ((RIN1545–BD33)(TD9232)) received on December 12, 2005; to the Committee on Finance.

EC–4870. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance on Passive Foreign Investment Company (PFIC) Purging Elections'' ((RIN1545–BC49)(TD9231)) received on December 12, 2005; to the Committee on Finance.

EC–4871. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Request for Public Comments on Possible Changes to Rev. Proc. 2002–9'' (Notice 2005–97) received on December 12, 2005; to the Committee on Finance.

EC–4872. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Guidance on Valuation of Stock-Based Compensation for Purposes of Qualified Cost Sharing Arrangements'' (Notice 2005–99) received on December 12, 2005; to the Committee on Finance.

EC–4873. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Employer and Payer Reporting and Wage Withholding Requirements with Respect to Deferrals of Compensation under Section 409A for Calendar Year 2005; No Assertion of Penalties Against Service Providers in Certain Circumstances'' (Notice 2005–94) received on December 12, 2005; to the Committee on Finance.

EC–4874. A communication from the Assistant Inspector General Communications and Congressional Liaison, Department of Defense, transmitting, pursuant to law, an audit report on the Defense Authorization Act for Fiscal Year 2005; to the Committee on Armed Services.

EC–4875. A communication from the Under Secretary of Defense, Acquisition, Technology, and Logistics, transmitting, pursuant to law, a report concerning the Space Based Infrared System; to the Committee on Armed Services.

EC–4876. A communication from the Under Secretary of Defense, Personnel and Readiness, transmitting, pursuant to law, a General Officer Frocking Request; to the Committee on Armed Services.

EC–4877. A communication from the Executive Director, U.S.-China Commission, transmitting, pursuant to law, a report on the national security implications of the U.S.-China relationship; to the Committee on Armed Services.

EC–4878. A communication from the Under Secretary of State for Political Affairs, transmitting, pursuant to law, a report relating to post-liberation Iraq; to the Committee on Foreign Relations.

EC–4879. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–4880. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $1000,000,000 or more to Singapore; to the Committee on Foreign Relations.

EC–4881. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Austria, Canada, France, Switzerland and the United Kingdom; to the Committee on Foreign Relations.

EC–4882. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad to the United Kingdom and Sweden; to the Committee on Foreign Relations.

EC–4883. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more to the Republic of Korea; to the Committee on Foreign Relations.

EC–4884. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more to United Kingdom; to the Committee on Foreign Relations.

EC–4885. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the Report on the Fiscal Year 2005 Benjamin A. Gilman International Scholarship Program; to the Committee on Foreign Relations.

EC–4886. A communication from the Executive Secretary and Chief of Staff, United States Agency for International Development, transmitting, pursuant to law, the designation of acting officer for the position of Assistant Administrator, Bureau for Europe and Eurasia; to the Committee on Foreign Relations.

EC–4887. A communication from the Assistant Secretary of the Army (Civil Works), Department of Defense, transmitting, pursuant to law, a report relative to the Louisiana Coastal Area, Louisiana, Ecosystem Restoration Program; to the Committee on Environment and Public Works.

EC–4888. A communication from the Assistant Secretary of the Army (Civil Works), Department of Defense, transmitting, pursuant to law, a report recommending authorization of the Napa River Salt Marsh Restoration Project, California for the purposes of ecosystem restoration and recreation; to the Committee on Environment and Public Works.

EC–4889. A communication from the Assistant Secretary of the Army (Civil Works), Department of Defense, transmitting, pursuant to law a report relative to the flood damage reduction project for the Turkey Creek Basin, Kansas and Missouri; to the Committee on Environment and Public Works.

EC–4890. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''2-ethoxyethanol, 2-ethoxyethanol acetate, 2-methoxyethanol, and 2-methoxyethanol acetate; Significant New Use Rule'' (FRL7740–7) received on December 5, 2005; to the Committee on Environment and Public Works.

EC–4891. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Jersey Architectural Coatings Rule'' (FRL7999–8) received on December 5, 2005; to the Committee on Environment and Public Works.

EC–4892. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plan; Indiana'' (FRL7999–3) received on December 5, 2005; to the Committee on Environment and Public Works.

EC–4893. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California; Carbon Monoxide Maintenance Plan Update for Ten Planning Areas; Motor Vehicle Emissions Budgets; Technical Correction'' (FRL8002–4) received on December 5, 2005; to the Committee on Environment and Public Works.

EC–4894. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; CO; PM10 Designation of Areas for Air Quality Planning Purposes, Lamar; State Implementation Plan Correction'' (FRL8004–9) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4895. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Construction or Modification'' (FRL8005–9) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4896. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled

''Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Technical Amendments to Evaporative Emissions Regulations, Dynamometer Regulations, and Vehicle Labeling'' (FRL8004–7) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4897. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Modification of Federal On-board Diagnostic Regulations for: Light-Duty Vehicles, Light-Duty Trucks, Medium Duty Passenger Vehicles, Complete Heavy Duty Vehicles and Engines Intended for Use in Heavy Duty Vehicles Weighing 14,000 Pounds GVWR or Less'' (FRL8005–4) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4898. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma Department of Environmental Quality'' (FRL8006–7) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4899. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Albuquerque-Bernalillo County Air Quality Control Board'' (FRL8006–2) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4900. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements'' (FRL8006–5) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4901. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Standards and Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units'' (FRL8005–5) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4902. A communication from the Assistant Secretary for Fish, Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for California Tiger Salamander, Sonoma District Population Segment; Final Rule'' (RIN1018–AU23) received on December 6, 2005; to the Committee on Environment and Public Works.

EC–4903. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Texas; Memoranda of Understanding between Texas Department of Transportation and the Texas Commission on Environmental Quality'' (FRL8007–5) received on December 12, 2005; to the Committee on Environment and Public Works.

EC–4904. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Exemption of Certain Area Sources from Title V Operating Permit Programs'' (FRL8008–5) received on December 12, 2005; to the Committee on Environment and Public Works.

EC–4905. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category'' (FRL8007–8) received on December 12, 2005; to the Committee on Environment and Public Works.

EC–4906. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide for the 2005 Supplemental Request'' (FRL8007–9) received on December 12, 2005; to the Committee on Environment and Public Works.

EC–4907. A communication from the Deputy Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Inclusion of Alligator Snapping Turtle (Marcroclemys [=Macrochelys] temminckii) and All Species of Map Turtle (Graptemys spp.) in Appendix III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora'' (RIN1018–AF69) received on December 12, 2005; to the Committee on Environment and Public Works.

EC–4908. A communication from the Assistant Attorney General, Department of Justice, transmitting, pursuant to law, a status report on the Bureau of Prisons' compliance with the Revitalization Act's privatization requirements; to the Committee on the Judiciary.

EC–4909. A communication from the Assistant Attorney General, Department of Justice, transmitting, a draft of proposed legislation on improving restitution for victims of crimes; to the Committee on the Judiciary.

EC–4910. A communication from the National President, American Gold Star Mothers, transmitting, pursuant to law, the independent auditors report for 2004 and 2005; to the Committee on the Judiciary.

EC–4911. A communication from the Office of General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers: Removal of Addresses From Rules'' (RIN1220–AB36) received on December 5, 2005; to the Committee on the Judiciary.

EC–4912. A communication from the Rules Administrator, Office of General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Good Conduct Time: Aliens With Confirmed Orders of Deportation, Exclusion, or Removal'' (RIN1220–AB12) received on December 5, 2005; to the Committee on the Judiciary.

EC–4913. A communication from the Office of General Counsel, Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Civil Contempt of Court Commitments: Revision To Accommodate Commitments Under the D.C. Code'' (RIN1220–AB13) received on December 5, 2005; to the Committee on the Judiciary.

EC–4914. A communication from the Deputy Assistant Attorney General, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Procedures to Promote Compliance with Crime Victims' Rights Obligations'' (RIN1105–AB11) received on December 6, 2005; to the Committee on the Judiciary.

EC–4915. A communication from the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Santa Rita Hills Viticultural Area Name Abbreviation to Sta. Rita Hills'' (RIN1513–AA50) received on December 2, 2005; to the Committee on the Judiciary.

EC–4916. A communication from the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Texoma Viticultural Area'' (RIN1513–AA77) received on December 12, 2005; to the Committee on the Judiciary.

EC–4917. A communication from the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Ramonal Valley Viticultural Area'' (RIN1513–AA94) received on December 12, 2005; to the Committee on the Judiciary.

EC–4918. A communication from the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, transmitting, pursuant to law, the report of a rule entitled ''Establishment of the Wahluke Slope Viticultural Area'' (RIN1513–AB01) received on December 12, 2005; to the Committee on the Judiciary.

EC–4919. A communication from the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Terrorist Screening Records System'' received on December 12, 2005; to the Committee on the Judiciary.

EC–4920. A communication from the Acting Director, Mine Safety and Health Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Fees for Testing, Evaluation and Approval of Mining Products'' (RIN1219–AB38) received on December 5, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–4921. A communication from the Deputy Executive Director, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' received on December 6, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–4922. A communication from the Deputy Assistant Secretary for Federal Contract Compliance, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans'' (RIN1215–AB24) received on December 6, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–4923. A communication from the Administrator, Employment and Training Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled ''Labor Condition Applications and

Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models and Labor Attestation Requirements for Employers Using Nonimmigrants on H-1B1 Visas in Specialty Occupations; Filing Procedures; Final Rule'' (RIN1205–AB39) received on December 12, 2005; to the Committee on Health, Education, Labor, and Pensions.

EC–4924. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the implementation of the Age Discrimination Act for Fiscal Year 2004; to the Committee on Health, Education, Labor, and Pensions.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. COCHRAN, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals From the Concurrent Resolution for Fiscal Year 2006.'' (Rept. No. 109–207).

By Mr. MCCAIN, from the Committee on Indian Affairs, without amendment:

S. 1312. A bill to amend a provision relating to employees of the United States assigned to, or employed by, an Indian tribe, and for other purposes (Rept. No. 109–208).

By Ms. COLLINS, from the Committee on Homeland Security and Governmental Affairs:

Report to accompany S. 572, A bill to amend the Homeland Security Act of 2002 to give additional biosecurity responsibilities to the Department of Homeland Security (Rept. No 109–209).

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation, *Coast Guard nomination of Capt. Michael R. Seward to be Rear Admiral (Lower Half).

By Ms. COLLINS for the Committee on Homeland Security and Governmental Affairs.

*Mary M. Rose, of North Carolina, to be a Member of the Merit Systems Protection Board for the term of seven years expiring March 1, 2011.

*George W. Foresman, of Virginia, to be Under Secretary for Preparedness, Department of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. COLEMAN:

S. 2105. A bill to amend the Internal Revenue Code of 1986 to modify the credit for nonbusiness energy property so that the amount of the credit is determined based on the amount of energy savings achieved by the taxpayer; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 2106. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS:

S. 2107. A bill to provide additional appropriations for the Low-Income Home Energy Assistance Act of 1981 for fiscal year 2006 and to amend the Internal Revenue Code of 1986 to provide a refundable tax credit for residential energy cost assistance, and for other purposes; to the Committee on Finance.

By Mr. CRAPO (for himself and Mr. CRAIG):

S. 2108. A bill to ensure general aviation aircraft access to Federal land and to the airspace over Federal land; to the Committee on Energy and Natural Resources.

By Mr. ENSIGN (for himself, Mr. LIEBERMAN, Mr. LUGAR, Mr. DEWINE, Mr. ALLEN, Mr. BINGAMAN, Mr. ALEXANDER, Mr. CHAMBLISS, Mr. BAYH, Mr. NELSON of Florida, Mr. KOHL, Mr. CORNYN, Mr. ISAKSON, Mr. SMITH, Mr. LEAHY, and Mr. NELSON of Nebraska):

S. 2109. A bill to provide national innovation initiative; to the Committee on Finance.

By Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. THOMAS, and Mr. ALLARD):

S. 2110. A bill to amend the Endangered Species Act of 1973 to enhance the role of States in the recovery of endangered species and threatened species, to implement a species conservation recovery system, to establish certain recovery programs, to provide Federal financial assistance and a system of incentives to promote the recovery of species, and for other purposes; to the Committee on Finance.

By Mr. BAYH:

S. 2111. A bill to amend the Internal Revenue Code of 1986 to provide a credit for small business employee training expenses, to increase the exclusion of capital gains from small business stocks to extend expensing for small businesses, and for other purposes; to the Committee on Finance.

By Mr. HARKIN:

S. 2112. A bill to provide for the establishment of programs and activities to increase influenza vaccination rates through the provision of free vaccines; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEMINT:

S. 2113. A bill to promote the widespread availability of communications services and the integrity of communication facilities, and to encourage investment in communication networks; to the Committee on Commerce, Science, and Transportation.

By Mr. TALENT:

S. 2114. A bill to establish the Confluence National Heritage Corridor in the States of Missouri and Illinois, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. STABENOW (for herself, Mr. SMITH, Mr. LAUTENBERG, Mrs. MURRAY, Mr. MCCAIN, Mr. COLEMAN, and Mr. DAYTON):

S. 2115. A bill to amend the Public Health Service Act to improve provisions relating to Parkinson's disease research; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LOTT:

S. 2116. A bill to transfer jurisdiction of certain real property to the Supreme Court; considered and passed.

By Mr. INHOFE:

S. 2117. A bill to clarify the circumstances under which a person born in the United States is subject to the jurisdiction of the United States, to provide for criminal penalties for forging Federal documents, to establish a National Border Neighborhood Watch Program, and for other purposes; to the Committee on the Judiciary.

By Mr. SUNUNU (for himself, Mrs. FEINSTEIN, Mr. CRAIG, Mr. OBAMA, Ms. MURKOWSKI, Mr. HAGEL, and Mrs. CLINTON):

S. 2118. A bill to amend the USA PATRIOT Act to extend the sunset of certain provisions of the Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to March 31, 2006 and to combat methamphetamine abuse; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself, Mr. REID, Mr. KOHL, Mr. FEINGOLD, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN):

S. Res. 334. A resolution relative to the death of William Proxmire, former United States Senator from the State of Wisconsin considered and agreed to.

By Mr. MCCAIN (for himself, Mr. BIDEN, and Mr. LIEBERMAN):

S. Con. Res. 70. A resolution urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions; to the Committee on Foreign Relations.

By Mr. AKAKA (for himself, Mr. INOUYE, and Mr. SALAZAR):

S. Con. Res. 71. A concurrent resolution expressing the sense of Congress that States

should require candidates for driver's licenses to demonstrate an ability to exercise greatly increased caution when driving in the proximity of a potentially visually impaired individual; to the Committee on Commerce, Science, and Transportation.

## ADDITIONAL COSPONSORS

S. 103

At the request of Mr. TALENT, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 103, a bill to respond to the illegal production, distribution, and use of methamphetamine in the United States, and for other purposes.

S. 267

At the request of Mr. CRAIG, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 382

At the request of Mr. ENSIGN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 424

At the request of Mr. BOND, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 627

At the request of Mr. HATCH, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 627, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 635

At the request of Mr. SANTORUM, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 635, a bill to amend title XVIII of the Social Security Act to improve the benefits under the medicare program for beneficiaries with kidney disease, and for other purposes.

S. 716

At the request of Mr. AKAKA, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 716, a bill to amend title 38, United States Code, to enhance services provided by vet centers, to clarify and improve the provision of bereavement counseling by the Department of Veterans Affairs, and for other purposes.

S. 737

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 737, a bill to amend the USA PATRIOT Act to place reasonable limitations on the use of surveillance and the issuance of search warrants, and for other purposes.

S. 842

At the request of Mr. KENNEDY, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 842, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

S. 914

At the request of Mr. ALLARD, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 914, a bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research.

S. 1014

At the request of Ms. SNOWE, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 1014, a bill to provide additional relief for small business owners ordered to active duty as members of reserve components of the Armed Forces, and for other purposes.

S. 1139

At the request of Mr. SANTORUM, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1272

At the request of Mr. NELSON of Nebraska, the names of the Senator from Rhode Island (Mr. CHAFEE), the Senator from Montana (Mr. BURNS), the Senator from North Dakota (Mr. CONRAD) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 1272, a bill to amend title 46, United States Code, and title II of the Social Security Act to provide benefits to certain individuals who served in the United States merchant marine (including the Army Transport Service and the Naval Transport Service) during World War II.

S. 1312

At the request of Mr. MCCAIN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1312, a bill to amend a provision relating to employees of the United States assigned to, or employed by, an Indian tribe, and for other purposes.

S. 1321

At the request of Mr. SANTORUM, the names of the Senator from Utah (Mr. HATCH) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 1321, a bill to amend the Internal Revenue Code of 1986 to repeal the excise tax on telephone and other communications.

S. 1349

At the request of Mr. SMITH, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 1349, a bill to promote deployment of competitive video services, eliminate redundant and unnecessary regulation, and further the development of next generation broadband networks.

S. 1479

At the request of Mrs. BOXER, her name was added as a cosponsor of S. 1479, a bill to provide for the expansion of Federal efforts concerning the prevention, education, treatment, and research activities related to Lyme and other tick-borne diseases, including the establishment of a Tick-Borne Diseases Advisory Committee.

S. 1608

At the request of Mr. SMITH, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from Montana (Mr. BURNS) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 1608, a bill to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

S. 1779

At the request of Mr. AKAKA, the names of the Senator from Rhode Island (Mr. CHAFEE), the Senator from Maryland (Mr. SARBANES), the Senator from Maine (Ms. SNOWE) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of S. 1779, a bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1791

At the request of Mr. SMITH, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1800

At the request of Ms. SNOWE, the names of the Senator from Oregon (Mr. WYDEN), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1800, a bill to amend the Internal Revenue Code of 1986 to extend the new markets tax credit.

S. 1881

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1881, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the

''Granite Lady'', and for other purposes.

S. 1916

At the request of Mr. HAGEL, the names of the Senator from Illinois (Mr. OBAMA) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 1916, a bill to strengthen national security and United States borders, and for other purposes.

S. 1917

At the request of Mr. HAGEL, the names of the Senator from Illinois (Mr. OBAMA) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 1917, a bill to require employers to verify the employment eligibility of their employees, and for other purposes.

S. 1934

At the request of Mr. SPECTER, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 1974

At the request of Mr. NELSON of Florida, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1974, a bill to provide States with the resources needed to rid our schools of performance-enhancing drug use.

S. 2038

At the request of Mr. BURNS, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 2038, a bill to amend the Agricultural Marketing Act of 1946 to restore the original deadline for mandatory country of origin.

S. 2079

At the request of Mr. SMITH, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2079, a bill to improve the ability of the Secretary of Agriculture and the Secretary of the Interior to promptly implement recovery treatments in response to catastrophic events affecting the natural resources of Forest Service land and Bureau of Land Management Land, respectively, to support the recovery of non-Federal land damaged by catastrophic events, to assist impacted communities, to revitalize Forest Service experimental forests, and for other purposes.

S. 2081

At the request of Mr. COCHRAN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2081, a bill to improve the safety of all-terrain vehicles in the United States, and for other purposes.

S. 2082

At the request of Mr. LEAHY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2082, a bill to amend the USA PATRIOT Act to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to March 31, 2006.

At the request of Mr. SUNUNU, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 2082, supra.

S. 2088

At the request of Mr. ALLARD, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 2088, a bill to assist low-income families, displaced from their residences in the States of Alabama, Louisiana, and Mississippi as a result of Hurricane Katrina, by establishing within the Department of Housing and Urban Development a homesteading initiative that offers displaced low-income families the opportunity to purchase a home owned by the Federal Government, and for other purposes.

S. 2096

At the request of Mr. COLEMAN, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. 2096, a bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign programs and centers for the treatment of victims of torture, and for other purposes.

S. CON. RES. 16

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. Con. Res. 16, a concurrent resolution conveying the sympathy of Congress to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

S. CON. RES. 54

At the request of Mr. SCHUMER, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. Con. Res. 54, a concurrent resolution expressing the sense of Congress regarding a commemorative postage stamp honoring Jasper Francis Cropsey, the famous Staten Island-born 19th Century Hudson River Painter.

S. CON. RES. 65

At the request of Mr. OBAMA, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Con. Res. 65, a concurrent resolution recognizing the benefits and importance of Federally-qualified health centers and their Medicaid prospective payment system.

S. RES. 320

At the request of Mr. ENSIGN, the names of the Senator from Rhode Island (Mr. CHAFEE), the Senator from Wisconsin (Mr. KOHL), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Michigan (Mr. LEVIN), the Senator from Rhode Island (Mr. REED), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. Res. 320, a resolution calling the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide.

AMENDMENT NO. 2646

At the request of Ms. MURKOWSKI, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of amendment No. 2646 intended to be proposed to S. 2020, an original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 2106. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Prado Basin Natural Treatment System Project, to authorize the Secretary to carry out a program to assist agencies in projects to construct regional brine lines in California, to authorize the Secretary to participate in the Lower Chino Dairy Area desalination demonstration and reclamation project, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Santa Ana River Water Supply Enhancement Act of 2005.

This legislation authorizes Federal assistance through Title XVI for projects developed by local communities to reduce their dependence on water from the Colorado River. It helps California develop safer and more reliable water supplies.

Congressman GARY MILLER along with Congressmen CALVERT, DREIER, ROYCE, COX and ROHRABACHER introduced similar legislation in the House. Their bill passed the House in October.

The projects in this bill will increase the region's water supply by 200,000 acre-feet annually and are prototypes for providing water supplies to new communities throughout the arid Western States.

The Orange County Water District's Groundwater Replenishment System is an innovative approach to reuse water resources within one of the most populated counties in the Nation. Seventy-two thousand acre feet of reclaimed water will be produced annually for indirect potable use. This is enough water to meet the needs of more than 300,000 people each year. This bill authorizes $51.8 million for the groundwater replenishment system, just 10 percent of the actual cost of the project.

Another project in the bill expands desalination facilities in the Chino Basin, providing a fourfold increase in the ability to desalinate groundwater

supplies. The Chino Basin groundwater desalters will be the primary drinking water supply for 40,000 new homes in Riverside and San Bernardino Counties.

This legislation also authorizes $40 million to construct regional brine sewer lines that will enable our communities to safely dispose of the brine generated from the ''desalted'' groundwater supplies.

In order to naturally treat the regions water and remove contamination from the Santa Anna River, I am also seeking Federal support for the construction of wetlands. This concept holds the promise of efficiently improving the quality of our groundwater supplies without costly control technologies.

The creation of a Center for Technological Advancement of Membrane Technology will foster research efforts to improve membrane design and testing. Research conducted at this facility will help develop technologies to increase the stability of our water supply.

I believe the ever-growing demand for water throughout Southern California can be satisfied through local supplies. Regional watershed plans, coordinating water use throughout multiple jurisdictions, are a critical tool to reach this goal. All of the projects in this legislation were developed on a regional basis and the Federal cost share of each project is less than 20 percent.

I am pleased to introduce this legislation as it holds the key to providing a roadmap for other communities' efforts to meet the challenges posed by a scarce potable water supply.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2106

*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 ''Santa Ana River Water Supply Enhancement Act of 2005''.

**SEC. 2. PRADO BASIN NATURAL TREATMENT SYSTEM PROJECT.**

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102–575, title XVI; 43 U.S.C. 390h et seq.) is amended by adding at the end the following:

**''SEC. 1636. PRADO BASIN NATURAL TREATMENT SYSTEM PROJECT.**

''(a) IN GENERAL.—The Secretary, in cooperation with the Orange County Water District, shall participate in the planning, design, and construction of natural treatment systems and wetlands for the flows of the Santa Ana River, California, and its tributaries into the Prado Basin.

''(b) COST SHARING.—The Federal share of the cost of the project described in subsection (a) shall not exceed 25 percent of the total cost of the project.

''(c) LIMITATION.—Funds provided by the Secretary shall not be used for the operation and maintenance of the project described in subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $20,000,000.

''(e) SUNSET OF AUTHORITY.—This section shall have no effect after the date that is 10 years after the date of the enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 2 of Public Law 102–575 is further amended by inserting after the item relating to section 1634 the following:

''Sec. 1636. Prado Basin Natural Treatment System Project''.

**SEC. 3. REGIONAL BRINE LINES.**

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102–575, title XVI; 43 U.S.C. 390h et seq.) is further amended by adding at the end the following:

**''SEC. 1637. REGIONAL BRINE LINES.**

''(a) SOUTHERN CALIFORNIA.—The Secretary, under Federal reclamation laws and in cooperation with units of local government, may assist agencies in projects to construct regional brine lines to export the salinity imported from the Colorado River to the Pacific Ocean as identified in—

''(1) the Salinity Management Study prepared by the Bureau of Reclamation and the Metropolitan Water District of Southern California; and

''(2) the Southern California Comprehensive Water Reclamation and Reuse Study prepared by the Bureau of Reclamation.

''(b) AGREEMENTS AND REGULATIONS.—The Secretary may enter into such agreements and promulgate such regulations as are necessary to carry out this section.

''(c) COST SHARING.—The Federal share of the cost of a project to construct regional brine lines described in subsection (a) shall not exceed—

''(1) 25 percent of the total cost of the project; or

''(2) $40,000,000.

''(d) LIMITATION.—Funds provided by the Secretary shall not be used for operation or maintenance of any project described in subsection (a).

''(e) SUNSET OF AUTHORITY.—This section shall have no effect after the date that is 10 years after the date of the enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 2 of Public Law 102–575 is further amended by inserting after the item relating to section 1635 the following:

''Sec. 1637. Regional brine lines''.

**SEC. 4. LOWER CHINO DAIRY AREA DESALINATION DEMONSTRATION AND RECLAMATION PROJECT.**

(a) IN GENERAL.—The Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102–575, title XVI; 43 U.S.C. 390h et seq.) is further amended by adding at the end the following:

**''SEC. 1638. LOWER CHINO DAIRY AREA DESALINATION DEMONSTRATION AND RECLAMATION PROJECT.**

''(a) IN GENERAL.—The Secretary, in cooperation with the Chino Basin Watermaster, the Inland Empire Utilities Agency, and the Santa Ana Watershed Project Authority and acting under the Federal reclamation laws, shall participate in the design, planning, and construction of the Lower Chino Dairy Area desalination demonstration and reclamation project.

''(b) COST SHARING.—The Federal share of the cost of the project described in subsection (a) shall not exceed—

''(1) 25 percent of the total cost of the project; or

''(2) $50,000,000.

''(c) LIMITATION.—Funds provided by the Secretary shall not be used for operation or maintenance of the project described in subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

''(e) SUNSET OF AUTHORITY.—This section shall have no effect after the date that is 10 years after the date of the enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of sections in section 2 of Public Law 102–575 is further amended by inserting after the item relating to section 1636 the following:

''Sec. 1638. Lower Chino dairy area desalination demonstration and reclamation project''.

**SEC. 5. CEILING INCREASE ON FEDERAL SHARE OF WATER RECLAMATION PROJECT.**

Section 1631(d) of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C.390h-13(d)) is amended—

(1) in paragraph (1) by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (3)''; and

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

''(3) The Federal share of the costs of the project authorized by section 1624 shall not exceed the following:

''(A) $22,000,000 for fiscal year 2007.
''(B) $24,200,000 for fiscal year 2008.
''(C) $26,620,000 for fiscal year 2009.
''(D) $29,282,000 for fiscal year 2010.
''(E) $32,210,200 for fiscal year 2011.
''(F) $35,431,220 for fiscal year 2012.
''(G) $38,974,342 for fiscal year 2013.
''(H) $42,871,776 for fiscal year 2014.
''(I) $47,158,953 for fiscal year 2015.
''(J) $51,874,849 for fiscal year 2016.''.

**SEC. 6. CENTER FOR TECHNOLOGICAL ADVANCEMENT OF MEMBRANE TECHNOLOGY AND EDUCATION.**

(a) IN GENERAL.—The Secretary of the Interior shall establish at the Orange County Water District located in Orange County, California, a center for the expressed purposes of providing—

(1) assistance in the development and advancement of membrane technologies; and

(2) educational support in the advancement of public understanding and acceptance of membrane produced water supplies.

(b) MANAGEMENT OF CENTER.—

(1) CONTRACTS.—In establishing the center, the Secretary shall enter into contracts with the Orange County Water District for purposes of managing such center.

(2) PLAN.—Not later than 90 days after the date of enactment of this section, the Secretary, in consultation with the Orange County Water District, shall jointly prepare a plan, updated annually, identifying the goals and objectives of the center.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out subsections (a) and (b), $2,000,000, for each of fiscal years 2006 through 2011. Such sums shall remain available until expended.

(d) REPORT.—Not later than one year after the date of enactment of this section and annually thereafter, the Secretary, in consultation with the Orange County Water District, shall provide a report to Congress on the status of the center and its accomplishments.

(e) SUNSET OF AUTHORITY.—This section shall have no effect after the date that is 10 years after the date of the enactment of this section.

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By Mr. BAUCUS:

S. 2107. A bill to provide additional appropriations for the Low-Income Home Energy Assistance Act of 1981 for fiscal year 2006 and to amend the Internal Revenue Code of 1986 to provide a refundable tax credit for residential energy cost assistance, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, today I am introducing legislation to help families bear the dramatic increase in cost for home heating bills this winter.

The bill, the Household Energy and Taxpayer Assistance Act of 2005, appropriates enough money to fully fund the Low Income Energy Assistance Program at its authorized level and provides for a tax credit up to $300 per family to offset home heating bills.

I cannot overstate the urgency of this legislation. This week, natural gas prices hit record highs. On the New York Mercantile Exchange, January futures rose to $15.78 per million BTUs. Prices have more than doubled since last year.

What does that mean for the consumer?

The Energy Information Administration predicts that the average household heating with natural gas his winter will pay $281 more for fuel this winter than they did last winter. That is a 38 percent increase. Households using home heating oil can expect to pay $255 more, and propane users could see a $167 increase.

Those heating with electricity will likely see a $46 increase in the cost to heat a home.

The bill that I am proposing includes two proposals that Congress should enact immediately to mitigate these price spikes for households.

First and foremost, my legislation fully funds the Federal Low Income Home Energy Assistance Program, or LIHEAP. Despite projections for astronomical energy costs, the conference agreement for the Labor, HHS, Education appropriations bill funds this essential home heating program at less than 50 percent of its authorized level.

And today the Senate will be considering that conference report. The current funding level for LIHEAP is unacceptable. As energy prices continue to skyrocket, we should not be shortchanging this vital program.

In recent years, a growing need for help with home heating bills has consistently outstripped available funding, which has remained flat.

That is why Congress responded by increasing the authorization for the program to $5.1 billion in the recently enacted energy bill. But Congress hasn't appropriated anywhere near as much for this program as it could.

Current appropriations legislation provides only about $2.2 billion in 2006.

My bill would appropriate an additional $2.9 billion for the LIHEAP program. Funding for heating assistance in my home State of Montana would be at least $35 million, about $20 million more than last year.

Montanans and other hard-working families should not have to choose between their home energy bills and affording other basic necessities.

Energy is a basic need, and without LIHEAP assistance, many Montanans wouldn't be able to heat their homes. That's why I'm working to help ease the burden of high heating costs.

In addition, this bill establishes a temporary tax credit to help all taxpayers to defray a portion of their heating bills this winter. That means families can add up their home energy bills, and when tax time comes around they can get 20 percent of that expense back, for heating fuel or utility costs. That credit will provide as much as $200 for an individual or $300 for a family.

The credit is also refundable. Low-income Americans who don't owe any Federal income taxes would still get that rebate against their heating bills.

Americans can't wait until spring for this assistance.

In its current edition, U.S. News & World Report introduces us to Mervalene Eastman, an unemployed woman on the Crow Indian Reservation. Month-to-month, $100 jumps in her heating bills last year put her behind in her bills. Medical problems forced her to leave her job as an emergency dispatcher, and then she lost natural gas service.

Things are so tough she sometimes needed to use her electric oven for heat, especially on cold nights. I am deeply troubled by the thought that more Americans will go without heat this winter. I am concerned families will face a choice between food on their table or heat during the night. They should not have to make that decision. We should pass this legislation and give millions of families an early present this holiday.

Now is the time to act, and I urge my colleagues to join me helping to provide this much needed relief.

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By Mr. ENSIGN (for himself, Mr. LIEBERMAN, Mr. LUGAR, Mr. DEWINE, Mr. ALLEN, Mr. BINGAMAN, Mr. ALEXANDER, Mr. CHAMBLISS, Mr. BAYH, Mr. NELSON of Florida, Mr. KOHL, Mr. CORNYN, Mr. ISAKSON, Mr. SMITH, Mr. LEAHY, and Mr. NELSON of Nebraska):

S. 2109. A bill to provide national innovation initiative; to the Committee on Finance.

Mr. ENSIGN. Mr. President, I rise today to discuss important new innovation legislation that will address concerns about our country and our ability to compete in the global marketplace. Today, Senator LIEBERMAN and I introduced the National Innovation bill with bipartisan support from Senator LUGAR, Senator DEWINE, Senator BINGAMAN, Senator ALLEN, Senator ALEXANDER, Senator CHAMBLISS, Senator BAYH, Senator BILL NELSON, Senator KOHL, Senator CORNYN, Senator ISAKSON, Senator BEN NELSON Senator LEAHY and Senator SMITH as original cosponsors. We encourage all of our colleagues to join us in this important effort.

Today the World is becoming dramatically more interconnected and competitive. In order to remain globally competitive, the United States must continue to lead the world's innovation. Innovation fosters the new ideas, technologies, and processes that lead to better jobs, higher wages, and a higher standard of living.

Unfortunately, in the disciplines that foster innovation in the 21st Century—science, technology, engineering, and mathematics—America is steadily losing its global edge:

The trouble signs are numerous:

Less than 6 percent of high school seniors plan to pursue engineering degrees, down from 36 percent from a decade ago.

In 2000, only 17 percent of undergraduate degrees earned in the United States were in the hard sciences.

In the same year 56 percent of China's undergraduate degrees were in the hard sciences.

Next year, China will likely produce six times the number of engineers that we will graduate in the United States.

We must address these long-term competitive challenges to America's economic vitality and national security now or risk losing our essential leadership position on innovation. The National Innovation Act will help America meet these interconnected challenges by addressing three primary areas of importance to maintaining and improving United States' innovation in the 21st Century: 1. increasing research investment 2. increasing science and technology talent, and 3. developing an innovation infrastructure.

I am a fiscal conservative, and current Federal budget constraints will require prioritization of spending. New programs must be funded through existing funds or through identifiable funding offsets whenever possible. I look forward to working with Senator LIEBERMAN and the other cosponsors in this effort.

Increased support of basic research through should be a national priority.

Our bill would increases the national commitment to basic research by nearly doubling research funding for the National Science Foundation (NSF) by FY 2011. The National Science Foundation plays a critical role in underwriting basic research at colleges, universities, and other institutions throughout our nation.

NSF supported basic research in chemistry, physics, nanotechnology, and semiconductor manufacturing has brought about some of the most significant innovations of the last 20 years. For example, the World Wide Web, magnetic resonance imaging and fiber optics technology all emerged through basic research projects that received NSF funding.

Because our nation's long-term future economic strength depends in large part on the support we give to basic research projects now, the National Innovation bill also establishes the Innovation Acceleration Grants Program, which encourages Federal agencies funding research in science, technology, engineering, and mathematics to allocate at least 3 percent of

their Research and Development (R&D) budgets to grants directed toward high-risk frontier research.

Three percent of overall R&D budgets from federal agencies may not seem like a lot, but this is an important starting point. Although our bill does not specifically require it, I encourage federal agencies engaged in R&D to dedicate an even greater percentage of their budgets to basic research.

Along with strategic investment in the innovation economy, the Federal Government also needs to examine various barriers that impede innovation in the United States.

Our bill instructs the National Academy of Sciences to study factors such as tort litigation that may impede American businesses from engaging in innovation risk-taking and provide recommendations on how best to address these issues. Litigation, taxation, and the substantial costs of regulatory compliance impact innovation and need to be addressed.

Innovation must be a major priority as the United States looks to retain and strengthen its economic leadership and national security in the 21st Century. The National Innovation Act will help ensure that the Federal Government does exactly that by increasing research investment, increasing science and technology talent, and developing an innovation infrastructure.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2109

*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 ''National Innovation Act of 2005''.

(b) TABLE OF CONTENTS.—

The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—INNOVATION PROMOTION

Sec. 101. President's Council on Innovation.
Sec. 102. Innovation acceleration grants.
Sec. 103. A national commitment to basic research.
Sec. 104. Regional economic development.
Sec. 105. Development of advanced manufacturing systems.
Sec. 106. Study on service science.

TITLE II—MODERNIZATION OF SCIENCE, EDUCATION, AND HEALTHCARE PROGRAMS

Subtitle A—Science and Education

Sec. 201. Graduate fellowships and graduate traineeships.
Sec. 202. Professional science master's degree programs.
Sec. 203. Increased support for science education through the National Science Foundation.
Sec. 204. Innovation-based experiential learning.

Subtitle B—21st Century Healthcare System

Sec. 211. Sense of Congress regarding 21st century healthcare system.

TITLE III—INCENTIVES FOR ENCOURAGING INNOVATION

Subtitle A—Research Credits

Sec. 301. Permanent extension of research credit.
Sec. 302. Increase in rates of alternative incremental credit.
Sec. 303. Alternative simplified credit for qualified research expenses.

Subtitle B—Health and Education

Sec. 311. Study and report on catastrophic healthcare.
Sec. 312. Lifelong learning accounts.

Subtitle C—Savings and Investments

Sec. 321. Regulations relating to private foundation support of innovations in economic development.
Sec. 322. Advisory group regarding valuation of intangibles.

TITLE IV—DEPARTMENT OF DEFENSE MATTERS

Subtitle A—Defense Research and Education

Sec. 401. Revitalization of frontier and multidisciplinary research.
Sec. 402. Enhancement of education.

Subtitle B—Defense Advanced Manufacturing

Sec. 411. Manufacturing research and development.
Sec. 412. Transition of transformational manufacturing processes and technologies to the defense manufacturing base.
Sec. 413. Manufacturing technology strategies.
Sec. 414. Planning for adoption of strategic innovation.
Sec. 415. Report.
Sec. 416. Authorization of appropriations.

TITLE V—JUDICIARY AND OTHER MATTERS

Sec. 501. Sense of Congress on retaining high-tech talent in the United States.
Sec. 502. Study on barriers to innovation.
Sec. 503. Sense of Congress on patent reform.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress makes the following findings:

(1) The United States is the most innovative Nation in the world. Since our Nation's founding, exploration, opportunity, and discovery have remained essential to fulfilling our Nation's strategic economic and political objectives.

(2) In the 21st century, a well-educated and trained workforce, investment in research and development, and a regulatory and physical infrastructure that supports innovators are essential to ensuring that the United States continues to lead the global economy on innovation.

(3) America's future economic and national security will largely depend on the creativity and commitment of our Nation to unleash its innovation capacity.

(4) The world has become dramatically more interconnected and competitive. Cutting edge research, world-class education, and highly skilled labor pools are no longer within the sole purview of the United States.

(5) The United States investment in basic research is currently insufficient to meet the challenges we face.

(6) Federal support for basic research in the physical sciences has consistently lagged behind that given to the life sciences in recent years.

(7) Traditional measurements of innovation capacity focused solely on inputs, such as research and development spending, number of patents and value of physical infrastructure. The traditional measurements are necessary but are not sufficient metrics for innovation in the 21st century's knowledge economy.

(8) Current Federal budget constraints require prioritization of spending and new programs must be funded through existing funds or through identifiable funding offsets whenever possible.

(9) A national, private sector-led, and government supported plan is required if the United States is to adequately respond to the challenges of increased global competition and take advantage of the opportunities this changing global dynamic presents.

(b) PURPOSES.—The purposes of this Act are to—

(1) make innovation a fundamental economic priority for the United States;

(2) create the most fertile policy environment for innovation to occur;

(3) develop greater numbers of American scientists, mathematicians, and engineers;

(4) enhance the quality of math and science education at all levels;

(5) increase the Federal Government's investment in basic research, especially in the physical sciences;

(6) direct greater funding toward multidisciplinary and frontier research where tomorrow's innovations are most likely to occur;

(7) secure a strong advanced manufacturing base in the United States to ensure that as innovations occur, America is poised to reap the benefits via the creation of new jobs and investment; and

(8) examine both the incentives for, and barriers to, innovation to better understand what additional policy changes are warranted.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) CONGRESSIONAL DEFENSE COMMITTEES.—The term ''congressional defense committees'' has the meaning given that term in section 101(a)(16) of title 10, United States Code.

(2) DEFENSE MANUFACTURING BASE.—The term ''defense manufacturing base'' includes any supplier of the Department of Defense, including a supplier of raw materials.

(3) EXECUTIVE AGENCY.—The term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

(4) EXTENDED PRODUCTION ENTERPRISE.—The term ''extended production enterprise'' means a system in which key entities in the manufacturing chain, including entities engaged in product design and development, manufacturing, sourcing, distribution, and user entities, are linked together through information technology and other means to promote efficiency and productivity.

(5) INNOVATION.—The term ''innovation'' means the intersection of invention and insight leading to the creation of social and economic value, including through efforts meeting fundamental technology challenges and involving multidisciplinary work and a high degree of novelty.

(6) MANUFACTURING EXTENSION PARTNERSHIP PROGRAM.—The term ''Manufacturing Extension Partnership Program'' means the Manufacturing Extension Partnership Program of the Department of Commerce.

(7) MANUFACTURING TECHNOLOGY PROGRAM.—The term ''Manufacturing Technology Program'' means the Manufacturing Technology Program under section 2521 of title 10, United States Code.

(8) PROFESSIONAL SCIENCE MASTERS PROGRAM.—The term ''professional science masters program'' means a graduate degree program in science and mathematics that extends science training to strategic planning and business management and focuses on

multidisciplinary specialties such as business and information technology (IT), biology and IT (bioinformatics), and computational chemistry.

(9) REGIONAL INNOVATION HOT SPOTS DEFINED.—The term ''regional innovation hot spots'' means regions that are defined by a high degree of innovation and the availability of talent, investment, and infrastructure necessary to create and sustain such innovation.

(10) SERVICE SCIENCE.—The term ''service science'' means curriculums, research programs, and training regimens, including service sciences, management, and engineering (SSME) programs, that exist or that are being developed to teach individuals to apply technology, organizational process management, and industry-specific knowledge to solve complex problems.

(11) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term ''Small Business Innovation Research Program'' has the meaning given that term in section 2500(11) of title 10, United States Code.

(12) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The term ''Small Business Technology Transfer Program'' has the meaning given that term in section 2500(12) of title 10, United States Code.

(13) SSME.—The term ''SSME'' means the discipline known as service sciences, management, and engineering that—

(A) applies scientific, engineering and management disciplines to tasks that one organization performs beneficially for others, generally as part of the services sector of the economy; and

(B) integrates computer science, operations research, industrial engineering, business strategy, management sciences, and social and legal sciences, in order to encourage innovation in how organizations create value for customers and shareholders that could not be achieved through such disciplines working in isolation.

## TITLE I—INNOVATION PROMOTION

### SEC. 101. PRESIDENT'S COUNCIL ON INNOVATION.

(a) IN GENERAL.—The President shall establish a President's Council on Innovation (in this section referred to as the ''Council'').

(b) DUTIES.—The Council's duties shall include—

(1) monitoring implementation of legislative proposals and initiatives for promoting innovation, including policies related to research funding, taxation, immigration, trade, and education that are proposed in this and other Acts;

(2) in consultation with the Director of the Office of Management and Budget, developing a process for using metrics to assess the impact of existing and proposed policies and rules that affect innovation capabilities in the United States;

(3) identifying opportunities and making recommendations for the heads of executive agencies to improve innovation, monitoring, and reporting on the implementation of such recommendations;

(4) developing metrics for measuring the progress of the Federal Government with respect to improving conditions for innovation, including through talent development, investment, and infrastructure improvements; and

(5) submitting an annual report to the President and Congress on such progress.

(c) MEMBERSHIP AND COORDINATION.—

(1) MEMBERSHIP.—The Council shall be composed of the Secretary or head of each of the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Education.

(D) The Department of Energy.

(E) The Department of Health and Human Services.

(F) The Department of Homeland Security.

(G) The Department of Labor.

(H) The Department of the Treasury.

(I) The National Aeronautics and Space Administration.

(J) The Securities and Exchange Commission.

(K) The National Science Foundation.

(L) The Office of the United States Trade Representative.

(M) The Office of Management and Budget.

(N) The Office of Science and Technology Policy.

(2) CHAIRPERSON.—The Secretary of Commerce shall serve as chairperson of the Council.

(3) COORDINATION.—The chairperson of the Council shall ensure appropriate coordination between the Council and the National Economic Council and the National Security Council.

(d) DEVELOPMENT OF INNOVATION AGENDA.—

(1) IN GENERAL.—The Council shall develop a comprehensive agenda for strengthening the innovation capabilities of the Federal Government and State governments, academia, and the private sector in the United States.

(2) CONSULTATION.—The comprehensive agenda required by paragraph (1) shall be developed in consultation with appropriate representatives of the private sector, scientific organizations, and academic organizations.

### SEC. 102. INNOVATION ACCELERATION GRANTS.

(a) GRANT PROGRAM.—The President shall establish a grant program, to be known as the ''Innovation Acceleration Grants Program'', to support and promote innovation in the United States. Priority in the awarding of grants shall be given to projects that meet fundamental technology challenges and that involve multidisciplinary work and a high degree of novelty.

(b) AWARDING OF GRANTS THROUGH DEPARTMENTS AND AGENCIES.—

(1) FUNDING GOALS.—The President shall ensure that it is the goal of each Executive agency that finances research in science, mathematics, engineering, and technology to allocate at least 3 percent of the agency's total annual research and development budget to funding grants under the Innovation Acceleration Grants Program.

(2) ADMINISTRATION.—

(A) IN GENERAL.—Each head of an Executive agency awarding grants under paragraph (1) shall submit a plan for implementing the grant program within such Executive agency to the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget. The implementation plan shall be submitted not later than 90 days after the date of enactment of this Act. The implementation plan may incorporate existing initiatives of the Executive agencies that promote research in innovation as described in subsection (a).

(B) REQUIRED METRICS.—The head of each Executive agency submitting an implementation plan pursuant to this section shall include metrics upon which grant funding decisions will be made and metrics for assessing the success of the grants awarded.

(C) GRANT DURATION AND RENEWALS.—

(i) IN GENERAL.—Any grants issued by an Executive agency under this section shall be for a period not to exceed 3 years.

(ii) EVALUATION.—Not later than 90 days prior to the expiration of a grant issued under this section, the Executive agency that approved the grant shall complete an evaluation of the effectiveness of the grant based on the metrics established pursuant to subparagraph (B). In its evaluation, the Executive agency shall consider the extent to which the program funded by the grant met the goals of quality improvement and job creation.

(iii) PUBLICATION OF REVIEW.—The Executive agency shall publish and make available to the public the review of each grant approved pursuant to this section.

(iv) FAILURE TO MEET METRICS.—Any grant that the Executive agency awarding the grant determines has failed to satisfy any of the metrics developed pursuant to subparagraph (B), shall not be eligible for a renewal.

(v) RENEWAL.—A grant issued under this section that satisfies all of the metrics developed pursuant to subparagraph (B), may be renewed once for a period not to exceed 3 years. Additional renewals may be considered only if the head of the Executive agency makes a specific finding that the program being funded involves a significant technology advance that requires a longer timeframe to complete critical research, and the research satisfies all the metrics developed pursuant to subparagraph (B).

### SEC. 103. A NATIONAL COMMITMENT TO BASIC RESEARCH.

(a) PLAN FOR INCREASED RESEARCH.—Not later than 180 days after the date of the enactment of this Act, the Director of the National Science Foundation shall submit to Congress a comprehensive, multiyear plan that describes how the funds authorized in subsection (b) shall be used. Such plan shall be developed with a focus on utilizing basic research in physical science and engineering to optimize the United States economy as a global competitor and leader in productive innovation.

(b) INCREASED FUNDING FOR NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for the purpose of doubling research funding the following amounts:

(1) $6,440,000,000 for fiscal year 2007.

(2) $7,280,000,000 for fiscal year 2008.

(3) $8,120,000,000 for fiscal year 2009.

(4) $8,960,000,000 for fiscal year 2010.

(5) $9,800,000,000 for fiscal year 2011.

(c) RECOMMENDATIONS FOR RESEARCH AND DEVELOPMENT FUNDING.—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall evaluate and, as appropriate, submit to Congress recommendations for an increase in funding for research and development in physical sciences and engineering in consultation with agencies and departments of the United States with significant research and development budgets.

### SEC. 104. REGIONAL ECONOMIC DEVELOPMENT.

(a) DEVELOPMENT OF FUNDING STRATEGY.—

(1) IN GENERAL.—The Assistant Secretary for Economic Development of the Department of Commerce shall review Federal programs that support local economic development and prepare and implement a strategy to focus funding on initiatives that improve the ability of communities to participate successfully in the modern economy through innovation. In preparing the strategy, priority should be given to projects that—

(A) emphasize private sector cooperation with State and local governments and nonprofit organizations focused on regional economic development as the means of achieving specific objectives related to the support and promotion of innovation; and

(B) are the most successful in meeting the metrics established under subsection (b).

(2) COORDINATION.—The Assistant Secretary shall coordinate the development and implementation of the strategy with the activities carried out by the Under Secretary for Technology under subsection (d).

(b) EVALUATION OF PROGRAMS.—The Assistant Secretary for Economic Development of

the Department of Commerce shall develop metrics to measure the success of Federal programs in supporting and promoting innovation at the local community level while minimizing bureaucracy and overhead expenses.

(c) PROMOTION OF ECONOMIC DEVELOPMENT OPPORTUNITIES.—The Assistant Secretary for Economic Development of the Department of Commerce should work with organizations focused on economic development to highlight opportunities for such organizations to serve local communities through grants focused on economic development and investment in companies pursuing innovation.

(d) REGIONAL INNOVATION HOT SPOTS.—

(1) PROMOTION OF REGIONAL INNOVATION HOT SPOTS.—The Under Secretary for Technology of the Department of Commerce shall coordinate activities focused on promoting innovation through the development of regional innovation hot spots.

(2) GUIDE TO DEVELOPING SUCCESSFUL REGIONAL INNOVATION HOT SPOTS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce, in consultation with representatives of regional innovation hot spots, shall publish a report, to be titled the ''Guide to Developing Successful Regional Innovation Hot Spots'', that examines successful regional innovation hot spots and includes recommendations for establishing and fostering regional innovation hot spots.

(B) CONTENT.—The report required under subparagraph (A) shall—

(i) include information on the evaluation of human capital;

(ii) include information on the role of sponsoring institutions, such as universities, nonprofit organizations, and laboratories, in establishing and fostering regional innovation hot spots;

(iii) include information on the role of State and local government leaders, leaders in the research and business communities, and community organizations in establishing and fostering regional innovation hot spots;

(iv) discuss the importance of collaboration by public and private sector leaders;

(v) identify sources of funding for these activities within Federal, State, and local governments and the private sector; and

(vi) include recommendations for developing strategic plans to stimulate innovation, including recommendations relating to knowledge transfer and commercialization, the support of regional entrepreneurship and increased innovation within existing regional firms, and the linking of primary institutions engaged in the innovation process.

(3) REGIONAL INNOVATION HOT SPOT METRICS.—

(A) DEVELOPMENT OF METRICS.—In conjunction with publishing the report required under paragraph (2), the Secretary of Commerce shall develop the following sets of metrics:

(i) Metrics to be considered for identifying potential regional innovation hot spots (in this subsection referred to as ''identifying metrics'').

(ii) Metrics to be considered for evaluating the impact and effectiveness of established regional innovation hot spots (in this subsection referred to as ''evaluation metrics'').

(B) USE OF METRICS.—The Under Secretary of Commerce for Technology shall use the identifying metrics to conduct biannual assessments of potential regional clusters and shall use the evaluation metrics to assess the impact and effectiveness of established regional innovation hot spots in improving the regional economy and regional job market. The Under Secretary shall also assess the cost effectiveness of operating within each regional hot spot. The Under Secretary shall report the biannual assessments to Congress.

**SEC. 105. DEVELOPMENT OF ADVANCED MANUFACTURING SYSTEMS.**

(a) RESEARCH AND DEVELOPMENT.—The Director of the National Institute of Standards and Technology shall support research and development in collaboration with entities and organizations from the industrial sector to supplement and support work in the private sector on advanced manufacturing systems designed to increase productivity and efficiency and to create competitive advantages for United States businesses. These research and development activities should focus on the following activities:

(1) Supporting industry efforts to develop innovative, state-of-the-art manufacturing processes, advanced technologies through interoperable standards, and related concepts, including—

(A) advanced distributed and desktop manufacturing linked to and made compatible with the extended production enterprise system described in paragraph (2);

(B) non-contact quality inspection processes linked to and made compatible with the extended production enterprise system;

(C) small lot manufacturing processes that are—

(i) as cost-effective as mass production processes; and

(ii) linked to and compatible with the extended production enterprise system; and

(D) the use of state-of-the-art materials and processes at the nanotechnological level.

(2) Supporting industry efforts to develop an extended production enterprise system that integrates key entities, including entities engaged in product design and development, manufacturing, sourcing, distribution, and user entities, including through the development of—

(A) interoperable software and standards designed to maximize the compatibility of the design, modeling, and manufacturing stages of the manufacturing process; and

(B) supply chain software.

(b) COORDINATION OF ACTIVITIES.—The Director of the National Institute of Standards and Technology shall coordinate activities under subsection (a) with activities under—

(1) the Small Business Innovation Research Program;

(2) the Small Business Technology Transfer Program; and

(3) the Manufacturing Technology Program of the Department of Defense.

(c) TESTING.—The Director of the National Institute of Standards and Technology shall support the work of entities and organizations from the industrial sector in developing prototypes and testing areas for testing and refining, in actual production conditions, the processes, technologies, and extended production enterprise system described in subsection (a)(2) in order to maximize productivity gains and cost efficiencies.

(d) DEVELOPMENT OF STANDARDS.—The Director of the National Institute of Standards and Technology, in coordination with entities and organizations from the industrial sector and the Manufacturing Technology Program, shall support standards to be used as manufacturing performance criteria to accelerate the adoption of improvements and innovative processes and protocols developed under subsection (a).

(e) PILOT TEST BEDS OF EXCELLENCE.—

(1) ESTABLISHMENT.—The Director of the National Institute of Standards and Technology shall, in collaboration with entities and organizations from the industrial sector, support not more than 3 pilot test beds of excellence in manufacturing fields important to advanced technologies developed under subsection (a), such as nanotechnology, to be used by the public and private sector. The test beds of excellence shall focus on production development, particularly the invention, prototyping, and engineering development stages of the manufacturing process.

(2) COMPETITION.—The Secretary of Commerce shall conduct a competition to select the pilot test beds of excellence based on criteria and metrics established by the Secretary prior to the competition.

(3) FUNDING.—The Secretary of Commerce may provide the pilot test beds of excellence selected pursuant to the competition set forth in paragraph (2) with an appropriate level of funding if and only if the following conditions are satisfied:

(A) No more than ⅓ of the funding of each test bed of excellence is provided by the Federal Government.

(B) At least ⅓ of the cost of each test bed of excellence is provided by participants from the private sector.

(C) At least ⅓ of the cost of each test bed of excellence is provided by State or local governments.

(4) REVIEW OF FUNDED TEST BEDS.—Within 3 years of the start of Federal funding for any test bed of excellence pursuant to this section, the Secretary of Commerce shall use the metrics established pursuant to paragraph (2) and any additional review metrics that the Secretary determines appropriate to assess the performance of the federally funded test beds of excellence. Any test bed of excellence that fails to satisfy any of the performance metrics will be ineligible for additional Federal funding.

(5) SUNSET PROVISION.—Federal funding of any test bed of excellence shall cease 5 years after the date of enactment of this Act.

(f) MANUFACTURING EXTENSION PARTNERSHIP FOCUS ON INNOVATION.—The Director of the National Institute of Standards and Technology shall ensure that the Manufacturing Extension Partnership program develops a focus on innovation, including through technology diffusion, supply and distribution chain integration, and the dissemination of the processes, technologies, and extended production enterprise systems developed under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for the purpose of carrying out activities under this section the following amounts:

(1) $20,000,000 for fiscal year 2007.

(2) $40,000,000 for fiscal year 2008.

(3) $60,000,000 for fiscal year 2009.

(4) $80,000,000 for fiscal year 2010.

(5) $100,000,000 for fiscal year 2011.

**SEC. 106. STUDY ON SERVICE SCIENCE.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that, in order to strengthen the competitiveness of United States enterprises and institutions and to prepare the people of the United States for high-wage, high-skill employment, the Federal Government should better understand and respond strategically to the emerging vocation and learning discipline known as service science.

(b) STUDY.—Not later than 270 days after the date of the enactment of this Act, the Director of the National Science Foundation shall conduct a study and report to Congress regarding how the Federal Government should support, through research, education, and training, the new discipline of service science.

(c) OUTSIDE RESOURCES.—In conducting the study under subsection (b), the Director of the National Science Foundation shall consult with leaders from 2- and 4-year institutions of higher education, as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), leaders from corporations, and other relevant parties.

## TITLE II—MODERNIZATION OF SCIENCE, EDUCATION, AND HEALTHCARE PROGRAMS

### Subtitle A—Science and Education

**SEC. 201. GRADUATE FELLOWSHIPS AND GRADUATE TRAINEESHIPS.**

(a) GRADUATE RESEARCH FELLOWSHIP PROGRAM.—

(1) IN GENERAL.—During the 5-year period beginning on the date of the enactment of this Act, the Director of the National Science Foundation shall expand the Graduate Research Fellowship Program of the Foundation so that an additional 1250 fellowships are awarded to United States citizens under such Program during such period.

(2) EXTENSION OF FELLOWSHIP PERIOD.—The Director of the National Science Foundation is authorized to award fellowships under the Graduate Research Fellowship Program for a period of 5 years, subject to funds being made available for such purpose.

(3) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated, there are authorized to be appropriated $34,000,000 for each of the fiscal years 2007 through 2011 to provide an additional 250 fellowships under the Graduate Research Fellowship Program during each such fiscal year.

(b) INTEGRATIVE GRADUATE EDUCATION AND RESEARCH TRAINEESHIP PROGRAM.—

(1) IN GENERAL.—During the 5-year period beginning on the date of the enactment of this Act, the Director of the National Science Foundation shall expand the Integrative Graduate Education and Research Traineeship program of the Foundation so that an additional 1,250 United States citizens are awarded grants under such program during such period.

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated, there are authorized to be appropriated $57,000,000 for each of the fiscal years 2007 through 2011 to provide grants to an additional 250 individuals under the Integrative Graduate Education and Research Traineeship program during each such fiscal year

**SEC. 202. PROFESSIONAL SCIENCE MASTER'S DEGREE PROGRAMS.**

(a) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—In this section, the term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(b) CLEARINGHOUSE.—

(1) DEVELOPMENT.—From amounts appropriated under subsection (d), the Director of the National Science Foundation shall establish a clearinghouse, in collaboration with 4-year institutions of higher learning, industries, and Federal agencies that employ science-trained personnel, to share program elements used in successful professional science master's degree programs.

(2) AVAILABILITY.—The Director of the National Science Foundation shall make the clearinghouse of program elements developed under paragraph (1) available to institutions of higher education that are developing professional science master's degree programs.

(c) PILOT PROGRAMS.—

(1) PROGRAM AUTHORIZED.—From amounts appropriated under subsection (d), the Director of the National Science Foundation shall award grants for pilot programs to 4-year institutions of higher education to facilitate the institutions' creation or improvement of professional science master's degree programs.

(2) APPLICATION.—A 4-year institution of higher education desiring a grant under this section shall submit an application at such time, in such manner, and accompanied by such information as the Director of the National Science Foundation may require. The application shall include—

(A) a description of the professional science master's degree program that the institution of higher education will implement;

(B) the amount of funding from non-Federal sources, including from private industries, that the institution of higher education shall use to support the professional master's degree program; and

(C) an assurance that the institution of higher education shall encourage students in the professional science master's degree program to apply for all forms of Federal assistance available to such students, including applicable graduate fellowships and student financial assistance under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(3) PREFERENCE FOR ALTERNATIVE FUNDING SOURCES.—The Director of the National Science Foundation shall give preference in making awards to 4-year institutions of higher education seeking Federal funding to support pilot professional science master's degree programs, to those applicants that secure more than ⅔ of the funding for such professional science master's degree programs from sources other than the Federal Government.

(4) NUMBER OF GRANTS; TIME PERIOD OF GRANTS.—

(A) NUMBER OF GRANTS.—Subject to the availability of appropriated funds, the Director of the National Science Foundation shall award grants under paragraph (1) to a maximum of 200 4-year institutions of higher education.

(B) TIME PERIOD OF GRANTS.—Grants awarded under this section shall be for one 3-year term. Grants may be renewed only once for a maximum of 2 additional years.

(5) EVALUATION AND REPORTS.—

(A) DEVELOPMENT OF PERFORMANCE BENCHMARKS.—Prior to the start of the grant program, the National Science Foundation, in collaboration with 4-year institutions of higher education, shall develop performance benchmarks to evaluate the pilot programs assisted by grants under this section.

(B) EVALUATION.—For each year of the grant period, the Director of the National Science Foundation, in consultation with 4-year institutions of higher education, industry, and Federal agencies that employ science-trained personnel, shall complete an evaluation of each pilot program assisted by grants under this section. Any pilot program that fails to satisfy the performance benchmarks developed under subparagraph (A) shall not be eligible for further funding.

(C) REPORT.—Not later than 180 days after the completion of an evaluation described in subparagraph (A), the Director of the National Science Foundation, in consultation with industries and Federal agencies that employ science-trained personnel, shall submit a report to Congress that includes—

(i) the results of the evaluation described in subparagraph (A); and

(ii) recommendations for administrative and legislative action that could optimize the effectiveness of the pilot programs, as the Director determines to be appropriate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2007 and such sums as may be necessary for each succeeding fiscal year.

**SEC. 203. INCREASED SUPPORT FOR SCIENCE EDUCATION THROUGH THE NATIONAL SCIENCE FOUNDATION.**

There are authorized to be appropriated to carry out the science, mathematics, engineering, and technology talent expansion program under section 8(7) of the National Science Foundation Authorization Act of 2002 (Public Law 107–368, 116 Stat. 3042) the following amounts:

(1) For fiscal year 2007, $35,000,000.

(2) For fiscal year 2008, $50,000,000.

(3) For fiscal year 2009, $100,000,000.

(4) For fiscal year 2010, $150,000,000.

**SEC. 204. INNOVATION-BASED EXPERIENTIAL LEARNING.**

(a) PILOT PROGRAM.—

(1) PROGRAM AUTHORIZED.—The Director of the National Science Foundation shall award grants to local educational agencies to enable the local educational agencies to implement innovation-based experiential learning in a total of 500 secondary schools and 500 elementary or middle schools in the United States.

(2) APPLICATION.—A local educational agency desiring a grant under this section shall submit an application at such time, in such manner, and accompanied by such information as the Director of the National Science Foundation may require.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2007 and $20,000,000 for each of the fiscal years 2008 and 2009.

### Subtitle B—21st Century Healthcare System

**SEC. 211. SENSE OF CONGRESS REGARDING 21ST CENTURY HEALTHCARE SYSTEM.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that, in order to improve the United States healthcare system for the 21st century, the Federal Government should encourage the widespread adoption of interoperable health information technology by—

(1) facilitating the creation of standards for interoperable electronic reporting of healthcare data; and

(2) after such standards have been created, each Federal agency or department that collects data for the purposes described in subsection (b) should collect such data in a manner that is consistent with such standards.

(b) PURPOSES DESCRIBED.—The purposes described in this subsection include quality reporting, surveillance, epidemiology, adverse event reporting, research, or for other purposes determined appropriate by the Secretary of Health and Human Services.

## TITLE III—INCENTIVES FOR ENCOURAGING INNOVATION

### Subtitle A—Research Credits

**SEC. 301. PERMANENT EXTENSION OF RESEARCH CREDIT.**

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 45C(b)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

**SEC. 302. INCREASE IN RATES OF ALTERNATIVE INCREMENTAL CREDIT.**

(a) IN GENERAL.—Subparagraph (A) of section 41(c)(4) of the Internal Revenue Code of 1986 (relating to election of alternative incremental credit) is amended—

(1) by striking ''2.65 percent'' and inserting ''3 percent'';

(2) by striking ''3.2 percent'' and inserting ''4 percent''; and

(3) by striking ''3.75 percent'' and inserting ''5 percent''.

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

**SEC. 303. ALTERNATIVE SIMPLIFIED CREDIT FOR QUALIFIED RESEARCH EXPENSES.**

(a) IN GENERAL.—Subsection (c) of section 41 of the Internal Revenue Code of 1986 (relating to base amount) is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

''(5) ELECTION OF ALTERNATIVE SIMPLIFIED CREDIT.—

''(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the taxable year as exceeds 50 percent of the average qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined.

''(B) SPECIAL RULE IN CASE OF NO QUALIFIED RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAXABLE YEARS.—

''(i) TAXPAYERS TO WHICH SUBPARAGRAPH APPLIES.—The credit under this paragraph shall be determined under this subparagraph if the taxpayer has no qualified research expenses in any 1 of the 3 taxable years preceding the taxable year for which the credit is being determined.

''(ii) CREDIT RATE.—The credit determined under this subparagraph shall be equal to 6 percent of the qualified research expenses for the taxable year.

''(C) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph may not be made for any taxable year to which an election under paragraph (4) applies.''.

(b) COORDINATION WITH ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(1) IN GENERAL.—Section 41(c)(4)(B) of the Internal Revenue Code of 1986 (relating to election) is amended by adding at the end the following: ''An election under this paragraph may not be made for any taxable year to which an election under paragraph (5) applies.''.

(2) TRANSITION RULE.—In the case of an election under section 41(c)(4) of the Internal Revenue Code of 1986 which applies to the taxable year which includes the date of the enactment of this Act, such election shall be treated as revoked with the consent of the Secretary of the Treasury if the taxpayer makes an election under section 41(c)(5) of such Code (as added by subsection (a)) for such year.

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

## Subtitle B—Health and Education

**SEC. 311. STUDY AND REPORT ON CATASTROPHIC HEALTHCARE.**

(a) STUDY.—The Secretary of Health and Human Services and the Secretary of Labor (in this subsection referred to as the ''Secretaries'') jointly shall conduct a study to explore methods for managing costs associated with catastrophic healthcare events and costs associated with chronic disease. The Secretaries shall work with healthcare providers, pharmaceutical manufacturers, large and small employers, health plans, and other interested private and public sector entities to develop a consensus regarding potential innovative approaches for reducing the financial risks presented by such health problems and improving such outcomes. The study shall consider, among other factors, the role that best practices, health information technology, evidence-based medicine, quality incentives, and comparative clinical effectiveness research can play in improving quality, value, and efficiency throughout the United States healthcare system.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretaries shall submit a report to Congress on the results of the study conducted under subsection (a), together with such recommendations for administrative and legislative action as the Secretaries determine to be appropriate.

**SEC. 312. LIFELONG LEARNING ACCOUNTS.**

(a) STUDY.—The Secretary of the Treasury, in collaboration with the Secretary of Labor and the Secretary of Education, shall conduct a study with recommendations for establishing lifelong learning accounts which would be exempt from taxation under the Internal Revenue Code of 1986 and from which funds could only be used for educational or training purposes. Such study shall consider whether individuals should be allowed to transfer to such an account, without incurring tax liability or penalties, funds which are—

(1) held in accounts established under a plan described in section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986; and

(2) held in a qualified tuition program under section 529 of such Code.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall submit to Congress a report on the study conducted under subsection (a).

## Subtitle C—Savings and Investments

**SEC. 321. REGULATIONS RELATING TO PRIVATE FOUNDATION SUPPORT OF INNOVATIONS IN ECONOMIC DEVELOPMENT.**

The Secretary of the Treasury or the Secretary's delegate shall as soon as practicable issue regulations under subchapter A of chapter 42 of the Internal Revenue Code of 1986 (relating to excise taxes on private foundations) which—

(1) clearly identify when distributions by private foundations for purposes of stimulating economic development will be treated as made for an exempt purpose described in section 170(c)(2)(B) of such Code; and

(2) clarify the circumstances under which private foundations may make program-related investments described in section 4944(c) of such Code in start-up ventures.

**SEC. 322. ADVISORY GROUP REGARDING VALUATION OF INTANGIBLES.**

(a) ESTABLISHMENT.—The Secretary of the Treasury shall establish an advisory group consisting of representatives of the public and private investment sector. The advisory group shall include representatives from the Department of Commerce, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the New York Stock Exchange, the National Association of Securities Dealers Automatic Quotation System, and significant industry sectors.

(b) DUTIES.—The advisory group established under subsection (a) shall—

(1) examine and make recommendations of best practices for valuation of intangibles in order to—

(A) provide investors with an improved method for assessing the impact intangibles have on the accuracy of a company's financial picture; and

(B) support industry trade associations in efforts to adopt guidelines for intangibles appropriate to particular industry sections; and

(2) submit to the Secretary of the Treasury a recommendation regarding whether a litigation safe harbor should be established for those companies that make good faith estimates regarding the value of intangibles under the best practice standards developed under paragraph (1).

(c) RESEARCH NETWORK.—The Secretary of Commerce shall establish a research network of industry and academic expertise to study metrics and solutions for intangible disclosure, and provide such research results to the advisory group.

(d) ACCOUNTING STANDARDS.—The Secretary of the Treasury and the advisory group shall encourage the Financial Accounting Standards Board to reinstate its project on disclosure of information about intangible assets not recognized in financial statements and to move expeditiously toward issuance of a statement of financial accounting standards concerning valuation and disclosure of key intangible assets.

(e) REPORT.—Not later than 2 years after the date of the enactment of this Act, the advisory group shall submit to the Secretary of the Treasury the results of the examination under subsection (b)(1) and the recommendation under subsection (b)(2).

# TITLE IV—DEPARTMENT OF DEFENSE MATTERS

## Subtitle A—Defense Research and Education

**SEC. 401. REVITALIZATION OF FRONTIER AND MULTIDISCIPLINARY RESEARCH.**

It shall be the goal of the Department of Defense to allocate at least 3 percent of the total Department of Defense budget to science and technology. Of this amount, it shall be the goal of the Department of Defense to allocate at least 20 percent to basic research.

**SEC. 402. ENHANCEMENT OF EDUCATION.**

(a) SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) SCHOLARSHIPS.—

(1) EXTENSION OF PROGRAM.—Section 1105(a)(2) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 2074; 10 U.S.C. 2192 note) is amended by striking ''for three years beginning on the date of the enactment of this Act'' and inserting ''through September 30, 2011''.

(2) EXPANSION OF PROGRAM.—The Secretary of Defense shall, utilizing amounts authorized to be appropriated by paragraph (3), increase the number of participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1105 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 in each of fiscal years 2007 through 2011—

(A) by an additional 160 participants pursuing doctoral degrees in each such fiscal year; and

(B) by an additional 60 participants pursuing masters degrees in each such fiscal year.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense for each of fiscal years 2007 through 2011 the amount of $41,300,000 for purposes of carrying out this subsection, of which—

(A) $36,000,000 shall be available in each such fiscal year for additional participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program who are pursuing doctoral degrees under paragraph (2)(A); and

(A) $5,300,000 shall be available in each such fiscal year for additional participants in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program who are pursuing masters degrees under paragraph (2)(B).

(b) NATIONAL DEFENSE SCIENCE AND ENGINEERING GRADUATE FELLOWSHIPS.—

(1) EXPANSION OF PROGRAM.—The Secretary of Defense shall, utilizing amounts authorized to be appropriated by paragraph (2), increase the number of participants in the National Defense Science and Engineering Graduate (NDSEG) fellowship program in each of fiscal years 2007 through 2011 by an additional 200 participants in each such fiscal year.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense for each of fiscal years 2007 through 2011 the amount of $45,000,000 for purposes of carrying out this subsection.

(c) INSTITUTION-BASED TRAINEESHIPS.—

(1) PROGRAM REQUIRED.—The Secretary of Defense shall, utilizing amounts authorized to be appropriated by paragraph (4), carry out a program to award, on a competitive basis, traineeships to undergraduate and graduate students at institutions of higher education in order to permit such students to pursue studies in areas of importance to the Department of Defense in mathematics, science, or engineering in settings or programs that provide such students exposure to multidisciplinary studies, innovation-oriented studies, and academic, private-sector, or government laboratories and research. It shall be the goal of the traineeship program for a trainee to work for the Department of Defense for 10 years after completing his or her degree.

(2) PARTICIPANTS.—In each of fiscal years 2007 through 2011, the number of participants in the program required by paragraph (1) shall be as follows:

(A) Not more than 30 participants pursuing doctoral degrees.

(B) Not more than 30 participants pursuing masters degrees.

(C) Not more than 20 participants pursuing undergraduate degrees.

(3) ANNUAL REPORTS.—Not later than November 30 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the carrying out of the program required by paragraph (1) during the preceding fiscal year. The report shall describe the participants, and the studies pursued by such participants, in the program during the fiscal year covered by the report, and shall include an assessment of the benefits of the program to the Department of Defense.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Defense for each of fiscal years 2007 through 2011 the amount of $11,100,000 for purposes of carrying out the program required by this subsection, of which—

(A) $7,000,000 shall be available in each such fiscal year for participants in the program who are pursuing doctoral degrees under paragraph (2)(A);

(B) $2,600,000 shall be available in each such fiscal year for participants in the program who are pursuing masters degrees under paragraph (2)(B); and

(C) $1,500,000 shall be available in each such fiscal year for participants in the program who are pursuing undergraduate degrees under paragraph (2)(C).

**Subtitle B—Defense Advanced Manufacturing**

**SEC. 411. MANUFACTURING RESEARCH AND DEVELOPMENT.**

(a) IDENTIFICATION OF ENHANCED PROCESSES AND TECHNOLOGIES.—The Under Secretary of Defense for Acquisition, Technology, and Logistics, acting through the Director of Defense Research and Engineering, shall identify advanced manufacturing processes and technologies whose utilization will achieve significant productivity and efficiency gains in the defense manufacturing base.

(b) RESEARCH AND DEVELOPMENT.—The Under Secretary shall undertake research and development on processes and technologies identified under subsection (a) that addresses, in particular—

(1) innovative manufacturing processes and advanced technologies; and

(2) the creation of extended production enterprises using information technology and new business models.

(c) DEFENSE PRIORITIES.—In undertaking research and development under subsection (b), the Under Secretary shall consider defense priorities established in the most current Joint Warfighting Science and Technology Plan.

**SEC. 412. TRANSITION OF TRANSFORMATIONAL MANUFACTURING PROCESSES AND TECHNOLOGIES TO THE DEFENSE MANUFACTURING BASE.**

(a) ACCELERATION OF TRANSITION FROM SCIENCE AND TECHNOLOGY.—

(1) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall undertake appropriate actions to accelerate the transition of transformational manufacturing technologies and processes (including processes and technologies identified under section 411) from the research stage to utilization by manufacturers in the defense manufacturing base.

(2) EXECUTION.—The actions undertaken under paragraph (1) shall include a memorandum of understanding among the Director of Defense Research and Engineering, other appropriate elements of the Department of Defense, and the Joint Defense Manufacturing Technology Panel to accelerate the transition of technologies and processes as described in that paragraph.

(b) PROTOTYPES AND TEST BEDS.—

(1) IN GENERAL.—The Under Secretary shall, utilizing the Manufacturing Technology Program, undertake the development of prototypes and test beds to promote the purposes of this section.

(2) COORDINATION OF ACTIVITIES.—The Under Secretary shall coordinate activities under this subsection with activities under the Small Business Innovation Research Program and the Small Business Technology Transfer Program.

(c) DEVELOPMENT OF IMPROVEMENT PROCESS.—The Under Secretary shall, in consultation with persons and organizations in the defense manufacturing base, develop and implement a program to continuously identify and utilize improvements and innovative processes in appropriate defense acquisition programs and by manufacturers in the defense manufacturing base.

(d) DIFFUSION OF ENHANCEMENTS INTO DEFENSE MANUFACTURING BASE.—The Under Secretary shall ensure the utilization in industry of enhancements in productivity and efficiency identified by reason of activities under this subtitle through the following:

(1) Research and development activities under the Manufacturing Technology Program, including the establishment of public-private partnerships.

(2) Outreach through the Manufacturing Extension Partnership Program under memoranda of agreement, cooperative programs, and other appropriate arrangements.

(3) Coordination with activities under such other current programs for the dissemination of manufacturing technology as the Under Secretary considers appropriate.

(4) Identification of incentives for contractors in the defense manufacturing base to incorporate and utilize manufacturing enhancements in manufacturing activities.

**SEC. 413. MANUFACTURING TECHNOLOGY STRATEGIES.**

(a) IN GENERAL.—The Under Secretary of Defense for Acquisition, Technology, and Logistics may—

(1) identify an area of technology where the development of industry-prepared roadmaps for new manufacturing and technology processes applicable to defense manufacturing requirements would be beneficial to the Department of Defense; and

(2) establish a task force, and act in cooperation with the private sector, to map the strategy for the development of manufacturing processes and technologies needed to support technology development in the area identified under paragraph (1).

(b) COMMENCEMENT OF ROADMAPPING.—The Under Secretary shall commence any roadmapping identified pursuant to subsection (a)(1) not later than January 2007.

**SEC. 414. PLANNING FOR ADOPTION OF STRATEGIC INNOVATION.**

(a) IN GENERAL.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall ensure that each contract of a value of $50,000,000 or more under a technology or logistics program of the Department of Defense includes requirements for planning by the contractor under such contract for the adoption of innovative technologies under such contract.

(b) PARTICULAR REQUIREMENTS.—The requirements included in a contract under subsection (a) shall include—

(1) requirements for plans for the identification, monitoring, and transition to the utilization under such contract of applicable emerging technologies from the private sector;

(2) requirements for plans for the identification, monitoring, and development under such contract of emerging research initiatives in academia; and

(3) a requirement to submit to the Under Secretary on an annual basis a report on the implementation of the planning carried out pursuant to the requirements included in such contract.

**SEC. 415. REPORT.**

(a) IN GENERAL.—Not later than December 31, 2008, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees a report on the actions undertaken by the Under Secretary under this subtitle during fiscal year 2007.

(b) ELEMENTS.—The report under subsection (a) shall include—

(1) a comprehensive description of the actions undertaken under this subtitle during fiscal year 2007;

(2) an assessment of effectiveness of such actions in enhancing research and development on manufacturing technologies and processes, and the implementation of such technologies and processes within the defense manufacturing base; and

(3) such recommendations as the Under Secretary considers appropriate for additional actions to be undertaken in order to increase the effectiveness of the actions undertaken under this subtitle in enhancing manufacturing activities within the defense manufacturing base.

**SEC. 416. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for the Department of Defense for purposes of carrying out this subtitle for fiscal years as follows:

(1) For fiscal year 2007, $20,000,000.

(2) For fiscal year 2008, $40,000,000.

(3) For fiscal year 2009, $60,000,000.

(4) For fiscal year 2010, $80,000,000.

(5) For fiscal year 2011, $100,000,000.

**TITLE V—JUDICIARY AND OTHER MATTERS**

**SEC. 501. SENSE OF CONGRESS ON RETAINING HIGH TECH TALENT IN THE UNITED STATES.**

It is the sense of Congress that comprehensive immigration reform should ensure that

the United States retains foreign-born high-tech talent educated in the United States and remains the leader in innovation and technological development in an emerging global marketplace. Such comprehensive reform should ensure—

(1) that the United States continues to retain foreign nationals who have received master's or higher degrees in the sciences, technology, engineering or mathematics from United States institutions of higher education under either—

(A) the H–1B visa program; or

(B) as employment-based immigrants;

(2) that the United States must take a forward looking approach with respect to any limitations on the H–1B visa program; and

(3) that immigration reform should also include systematic improvements to the Government's technology infrastructure in order to eliminate delays in processing immigration proceedings, including employment-based visa applications.

**SEC. 502. STUDY ON BARRIERS TO INNOVATION.**

(a) IN GENERAL.—The National Academy of Sciences shall conduct and complete a study to identify, and to review methods to mitigate, new forms of risk for businesses beyond conventional operational and financial risk that affect the ability to innovate, including studying and reviewing—

(1) incentive and compensation structures that could effectively encourage long-term value creation and innovation;

(2) methods of voluntary and supplemental disclosure by industry of intellectual capital, innovation performance, and indicators of future valuation;

(3) means by which government could work with industry to enhance the legal and regulatory framework to encourage the disclosures described in paragraph (2);

(4) practices that may be significant deterrents to United States businesses engaging in innovation risk-taking compared to foreign competitors, including tort litigation, the nature and extent of any resulting defensive management practices, and recommendations on practices to restore innovation risk-taking and to overcome defensive practices;

(5) means by which industry, trade associations, and universities could collaborate to support research on management practices and methodologies for assessing the value and risks of longer term innovation strategies; and

(6) means to encourage new, open, and collaborative dialogue between industry associations, regulatory authorities, management, shareholders, and other concerned interests to encourage appropriate approaches to innovation risk-taking.

(b) REPORT REQUIRED.—The National Academy of Sciences shall, not later than 1 year after the date of enactment of this Act, submit to Congress a report on the study conducted under subsection (a).

(c) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated to the National Academy of Sciences $1,000,000 for fiscal year 2007 for the purpose of carrying out the study required under this section.

**SEC. 503. SENSE OF CONGRESS ON PATENT REFORM.**

It is the sense of Congress that—

(1) to bolster the United States economy and strengthen innovators in the United States, the patent system should be reformed to enhance the quality of patents, to leverage patent databases as innovation tools, and to create best practices for global collaborative standard setting; and

(2) to achieve the objectives described in paragraph (1), the Federal Government should—

(A) fully fund the Patent and Trademark Office and enable the Office to direct its fees to fund process improvements;

(B) improve compliance with existing patenting requirements and create incentives for improved search and disclosure of prior art;

(C) create new standards for searchability of patent applications and new patents;

(D) establish a fair and balanced post-grant patent review procedure for future patents and patent applications;

(E) invest in retroactively creating searchable keywords for a subset of the most highly cited historical patents;

(F) secure reciprocal access to foreign patent databases; and

(G) set best practices and processes for standards bodies to align incentives for collaborative standard setting, and to encourage broad participation.

Mr. LIEBERMAN. Mr. President, today I rise with my colleague Senator ENSIGN to introduce the National Innovation Act, S. 2105. This Act is about building a new century of progress and prosperity for our Nation by spurring a new wave of American innovation—better known around the world as ''American ingenuity.''

Our Nation was founded by innovators. Washington, Jefferson, Franklin and many of our other Founding Fathers not only created a new republic, but in their spare time were inveterate experimenters and inventors, as well, who believed that innovation would be important to the growth and security of their new nation.

The generations that followed took up the call. Whitney, Bell, Edison, Fulton, Morse, Ford, Colt, the Wrights—I don't even have to say their first names and you know who they are and what they did.

Now we face a new century with new challenges—a global age where competition can come as easily from across an ocean as from across the street. We got a wake up call earlier this week about how tough the challenge is when it was announced that China had overtaken the United States as the world's largest exporter of high-tech products. According to statistics released by the Organization for Economic Cooperation and Development (OECD), China shipped $180 billion worth of such goods worldwide last year, exceeding U.S. exports valued at $149 billion. Even more significant, however, is the fact that the historical paradigm, one that has fueled much of our economic growth in the technology sector in this country, is quickly changing. China now imports far fewer components for tech goods, choosing instead to produce them itself. The OECD noted that between 2000 and 2004, the U.S. and EU shares of China's total imports in such components dropped from 27 to 12 percent. Instead of relying solely on its lower labor and production costs to assemble high-tech goods from components produced in places like the United States and Europe, China increasingly does it all itself now. Chinese scientists now develop many of the newest technologies. Their engineers now design the latest cutting-edge products, and their factories continue to assemble and spit out the goods, all the while steadily lowering costs. Many of the people involved are educated here or in Europe, though even that is changing, in part due to our restrictive immigration policies and technology transfer rules. If this continues unabated, the highest-end and best-paying jobs, key to the innovation-driven economy, could be found in Shanghai and not in American tech centers.

In May of 2004, I released a White Paper on the topic of outsourcing. When I issued that White Paper, I stated that the first thing we should do was to stop blaming others and face the hard facts ourselves. Since that time, there are even more hard facts we need to face, including the statistics I just mentioned, all of which point to the urgent need for action if the American economy is going to adapt to the fundamental changes and growing competition in the global economy. Forrester Research Inc., a Cambridge, MA research firm that has been studying this issue, has estimated that by 2015, 3.3 million high-tech and service industry jobs will move overseas. Deloitte Consulting has estimated that approximately 2 million jobs in the financial services sector, which signifies nearly 15 percent of the industry's total, could move overseas in the next five years. But even more importantly, we are not just losing jobs. I fear we are beginning to lose critical pieces of our innovation infrastructure, and with them, our competitive edge in the global marketplace. What we always believed was our nation's ultimate competitive advantage—our high-end R&D and technological prowess—is increasingly under siege. I said in 2004, the outsourcing of jobs is just the tip of an economic iceberg that America is sailing towards. If the most recent statistics tell us anything, it's that we are even closer to that iceberg than ever before.

Luckily, these developments have not gone unnoticed. Earlier this year, the Council on Competitiveness—drawing on the insights of many experts from industry and academia, and led by Sam Palmisano of IBM and Wayne Clough of Georgia Tech University—circulated a report with detailed recommendations on how to reinvigorate our innovation economy. The National Innovation Act, which Senator ENSIGN and I are introducing today, is based on the Council's recommendations. This is a strongly bipartisan bill, cosponsored by 16 of our colleagues in the Senate. Further, this bill is wholeheartedly supported by members of the business and academic communities in this country, many of whom are eager to see a reinvigoration of American ingenuity. A few exmples of these supportive statements include the following: George Scalise, President, Semiconductor Industry Association: ''U.S. leadership in technology has been the cornerstone of America's

strategies for driving economic growth and ensuring national security. U.S. leadership is being challenged as never before. The National Innovation Act of 2005 addresses a number of the most critical issues involving technology leadership, especially those related to federal support for basic research. . . . We are especially pleased to support a bipartisan approach to ensuring U.S. technology leadership. The issues at stake—national security and our standard of living in the 21st century—are far too important to become entangled in partisan politics.''

Nicholas M. Donofrio, Executive Vice President, IBM Corporation: ''IBM applauds the introduction of the National Innovation Act of 2005 . . . Innovation underpins American economic growth and national security. In today's era of global opportunity and change, the rewards flow to those who innovate and turn disruptive shifts to their advantage. America has a long, proud history of recognizing when change is required and rising to the challenge. We are at such an inflection point today. The National Innovation Act of 2005 will create synergies among America's academic, business and government communities to ensure the future growth of the United States. I urge all Senators to support this legislation.''

Deborah L. Wince-Smith, President, Council on Competitiveness: ''On behalf of the Council's 180 CEOs, university presidents and labor leaders, I applaud the Senators' efforts and desire to ensure the United States remains the most competitive economic power in the world. We must, as a nation, innovate to compete and to prosper. This legislation is a critical step forward towards that goal.''

Dave McCurdy, CEO, Electronic Industries Association: ''EIA is thrilled by today's introduction of the National Innovation Act of 2005 (NIA), which includes so many measures that can help the U.S. remain an economic leader in the global high-tech economy. It is an ambitious piece of legislation that spans the policy spectrum, but with the commitment and support of policymakers from both sides of the aisle, we hope to see these important provisions quickly begin to take effect and fuel the U.S. innovation engine.''

John J. Castellani, President, Business Roundtable: ''On behalf of Business Roundtable, an association of 160 chief executive officers of America's leading companies, I applaud Senator Ensign and Senator Lieberman for their leadership on this critical issue. Maintaining our competitive edge in today's world economy is a top priority of the business community, and the National Innovation Act of 2005 is an important step in the right direction.''

The list of organizations and companies that have already endorsed this bill includes many of the major players in the field, companies and organizations working to keep America at the cutting edge of technology development, including the following: American Chemical Society, American Mathematical Society, ASTRA (Alliance for Science & Technology Research in America), Athena Alliance, Bell South, Business Roundtable, Center for Accelerating Innovation, Computing Research Association, Council on Competitiveness, Council of Scientific Society Presidents, Electronic Industries Alliance, Federation of American Scientists, IBM, IEEEE–USA, Progressive Policy Institute, Semiconductor Industry Association, SEMI North America, and TechNet. In addition, many academic institutions and organizations support our bill because they recognize the importance of expanding education in science, math, and engineering. We have received strong indications of support from the academic community, including the Association of American Universities (AAU), the Council of Graduate Schools (CGS) and Georgia Institute of Technology.

While I won't describe every provision of this far-reaching bill today, a section-by-section summary accompanies this statement in the RECORD, I will say that the National Innovation Act addresses three broad categories—talent, investment, and infrastructure—all of which are key to America's regaining our competitive position among our trading partners.

Number one, Talent: Innovation requires the incubation of curious minds. That means we absolutely must educate and train our science and engineering talent base that is essential to our continued global economic leadership.

The number of jobs that require technical training is increasing at five times the rate of other occupations. To encourage more students to enter these technical professions, our legislation increases Federal support for graduate fellowships and trainee programs in science, math, and engineering by more than $800 million over 5 years. Specifically, the legislation expands the National Science Foundation's (NSF) Graduate Research Fellowship Program by 1,250 fellowships and extends the length of each fellowship from 3 to 5 years. These fellowships are portable fellowships which afford students the greatest flexibility in choosing graduate programs that fit their needs and interests. The legislation also expands the NSF Integrated Graduate Education and Research Traineeship (IGERT) program by 1,250 new traineeships. In the IGERT program, grants are awarded to universities to develop cross-disciplinary training programs for students in areas including science, math, engineering, and policy.

The legislation also expands upon existing Department of Defense efforts and creates new programs in order to encourage more students to enter the fields of science, math, and engineering. Specifically, provisions are included to expand the Defense Department Science, Mathematics, and Research for Transformation (SMART) scholarship program by $41.3 million per year over five years and to expand the National Defense Science and Engineering Graduate Fellowship program by $45 million per year over five years. A new competitive traineeship program, which will initially include 80 students, is created to provide interdisciplinary training in science and engineering to students who are encouraged to work for at least ten years in the Department of Defense after graduation.

This legislation also supports new and existing Professional Science Master's degree programs. These Master's programs typically try to provide cross-disciplinary training within the science, math, and engineering disciplines, and also to couple traditional technical disciplines with business, entrepreneurial, and business law training. Graduates of these programs will comprise a cadre of technical professionals with broad skills in both business and science that will give our industry an edge.

If we are to develop talent at the graduate levels, we must also emphasize science, math, and engineering at the K–12 and undergraduate levels. The results from the International Student Assessment of 2003 showed that U.S. 15-year-olds performed below the international average in math and science literacy. In order to bolster our highly-skilled science and engineering workforce, we must improve performance in our elementary, middle, and high schools.

Recognizing that new approaches must be realized, this legislation establishes a grant program of $10 million in 2007 and $20 million in 2008 and 2009 to help primary and secondary schools develop new experientially-based teaching techniques in math and science. It further addresses the issue of improving talent in scientific disciplines by expanding the existing Technology Talent program to the scope originally intended. The Technology Talent program provides competitive grants to undergraduate universities to develop new methods of increasing the number of students earning degrees in science, math, and engineering. It is essential that we increase the number of college graduates with the skills to contribute to the science and technology workforce, yet this program has never been fully funded.

Number two, Investment: Great ideas need research money if they are to move from imagination to market. But, federal R&D spending as a percentage of GDP has been in steady decline since the mid-1960s. It is less than half of what it was then. This bill bolsters the mission of the National Science Foundation (NSF) by more than doubling its research budget from $4.8 billion in 2004 to nearly $10 billion in 2011. Support for NSF is essential as it funds the full range of scientific disciplines and it encourages multidisciplinary approaches to problem solving. When it was created in 1950, Congress envisioned NSF as one of the primary catalysts for research ''to promote the progress of science; to advance the national health, prosperity, and welfare; [and] to secure the national defense.'' In order for NSF to continue to meet our tremendous needs in all these areas, which notably remain as vital today as they did back then, it needs more funding. At the same time, we must recognize that we, as a country,

face difficult choices in how we allocate our resources. Hard choices may have to be made, but we cannot avoid the reality that an investment such as the increase in NSF's research budget that our bill calls for today, is absolutely necessary if we are to generate the talent base we need to remain competitive. It is my belief that this investment will pay vast dividends in the long run for the American people and for the American economy. I also believe we will pay dearly if this investment is not made soon.

Congress is making steady progress toward finding reasonable ways to accommodate the needs of our five major research agencies. Our bill concentrates on two agencies: we double the authorization for NSF and we ask the Department of Defense (DOD) to spend 3 percent of its budget on science and technology, DOD's 6.1, 6.2, and 6.3, programs consistent with Defense Science Board recommendations. The research budget for life sciences at the National Institutes of Health (NIH) has been doubled in recent years and this legislation attempts to bring research in the physical sciences up to the same high level of funding. A major increase for NASA science research is now under consideration in conference and the Congress passed a significant increase in the authorization for Energy Department Science research as part of the energy bill this summer. So, our bill addresses the remaining top R&D agencies—NSF and DOD.

Our bill also creates an ''Innovation Acceleration Grants'' program to stimulate high-risk research by urging federal research agencies to allocate at least 3 percent of their current R&D budget to breakthrough research—the kind of research that gave us fiber optics, the Internet and countless other technologies relied on every day in this country and around the world. We anticipate this funding would be used for ''grand challenges,'' for what is sometimes referred to as ''connected'' or ''translational'' research, which moves from fundamental discoveries through the development and procurement stages. We also anticipate that agencies would step outside the peer review approach, which can be too cautious, and empower talented program managers to drive novel and promising ideas forward. While it doesn't mandate that these agencies spend at least 3 percent of their budgets on high-risk frontier research projects, this provision sets a realistic and reasonable strategic goal. It is our hope and expectation that agencies will view the 3 percent allocation as a starting point and will take the initiative to expand from there. The Innovation Acceleration Grants program is designed to be a streamlined mechanism to support those grants that are making progress and not support those that are floundering. The program has built-in and specially-designed metrics to ensure that granting agencies closely monitor the projects they support, renewing those with strong performance and phasing out those that don't show enough real promise for the types of cutting-edge advancements that are truly innovative. It is important that it is designed in this manner because a cautious approach to these issues cannot work. In order to face the challenge, we need to take risks and be patient. However, in an environment of increasingly tight fiscal pressures, we also must recognize that risk taking can, and often does, lead to dead ends. While many high-risk projects may fail, those that succeed can bring tremendous benefit. The urgency of the threats we face today warrants a balanced approach. We must continue to encourage the groundbreaking experimentation, tinkering and longer-term outlook that made this country great. But we also must continue to take stock of our progress and make sure we are heading toward the ultimate goal of reestablishing the foundational elements of our tremendous successes over the last 50 years, and more.

Switching gears briefly, I think it is also important to note that the government cannot do this alone. The private sector in this country needs to continue to lead the charge. Private sector investment in research in this country, after a sharp rise in the 90's, has been eroding in recent years in part because companies have moved some R&D operations outside the United States. About $17 billion a year in R&D now flows overseas to nations like China and India. And as that research money leaves our shores, the high-skilled 21st century jobs we need to compete sail away with them.

Our bill tries to help stem the tide by making the current Research and Experimentation (R&E) tax credit permanent and extending it to a greater number of enterprises; the same provision that appears in the Invest in America Act of 2005, sponsored by Senators HATCH and BAUCUS with 44 bipartisan cosponsors. These two Senators deserve the credit on this. We are simply trying to emphasize their efforts. Making the credit permanent allows our private entrepreneurial spirit to continue to drive the economic growth of this great nation and at the same time ensures that other countries like China do not lure away our talent and investment, and ultimately the innovation that comes from them. It gives our companies a powerful and reliable long-term incentive to include domestic R&D as a significant component of their strategic plans. Since the original enactment of the research credit in 1981, a public-private partnership has developed, through which the federal government has worked with businesses of all sizes to ensure that research expenditures continue to be made here in the United States. The reward has been the creation of many innovative technologies, well-paying jobs, and an increased growth rate in our economy. The importance of this effort cannot be understated.

At the same time that firms are investing more money in R&D, they must improve their ability to manage the technological innovations that result from this research. The emerging area of ''service science'' refers to both research and training regimens that are now starting to develop and to teach individuals how to apply technology to solving complex problems in the service and industrial sector. Eighty percent of our economy is service-based, yet we do very little R&D in this area. We now face intense service competition from countries like India, taking advantage of global IT systems. If we don't improve our services productivity, increasingly we won't be able to compete. This legislation asks the Director of the National Science Foundation to conduct a study for Congress on how the federal government should best support service science through research, education, and training.

Number three, Infrastructure: Once we have helped assure the education foundation to give people the basic skills they need to use their creativity, and the resources they need to support their experimentation, we must then reinvent and transform our manufacturing processes and technologies so that we can secure the gains from the fruits of all this labor. In this era of tough international competition, if we don't manufacture the goods we innovate here in the U.S., we will forfeit our global economic leadership and our children's prosperity to other nations who can. To help facilitate this important goal, our legislation takes several steps.

First, the bill authorizes creates federally-funded and complementary advanced manufacturing programs at the Departments of Commerce and Defense. The development and implementation of state-of-the-art advanced manufacturing systems does not happen overnight, nor can it be done alone. The goal of this new program is to, again, establish a public-private R&D partnership which enables risk taking and creativity to generate new processes and technologies. These new processes and technologies will give us the productivity breakthroughs we need to maintain our manufacturing competitiveness. I continue to believe in the spirit of American ingenuity—if given the chance and the tools to succeed, we will. This legislation also creates the Test Beds of Excellence program, which is designed test and refine these new processes and technologies in a real manufacturing setting once they have been developed. Then, we ask the Manufacturing Extension Program to help disseminate this new innovative knowledge throughout to manufacturing base, including to the many small and mid-sized companies that will be key to our growth. The Test Beds program is a competitive one and, as in the case of the Innovation Acceleration Grants program and other important features of this legislation, it

is designed to self-scrutinize and adapt to the constantly changing needs of our manufacturing sector.

In addition to the effort at the Department of Commerce, our bill asks the Department of Defense to work with the private sector to identify and accelerate the transition of advanced manufacturing technologies and processes that will enable us to maintain our technological edge on the battlefield. The Department of Defense relies on innovation, and the bill seeks to expand the Department's traditional manufacturing sector work in this area. An additional motivating factor within the Department of Defense is the inherent security risk associated with using certain overseas suppliers. American manufacturing must remain competitive in order to meet the needs of our military in a timely fashion.

These steps will go a long way toward revitalizing our manufacturing system into a system that is seamlessly integrated with our other efforts to boost American innovation through education and research.

Our bill goes further, recognizing that innovation fundamentally occurs not at the national level, but at the local and regional levels. Certainly there are many lessons to be learned from the rise of Silicon Valley and other similar regions that have sprung up all over this country as centers for high-tech growth. Our competitors, China, India, Israel and many others, have already begun to emulate the success we have achieved in this way. These clusters have developed in areas of the country where educational and research institutions, together with creative elements of the private sector, have partnered to create an environment conducive to innovation. Our bill encourages the development of more regional clusters (''hot spots'') of technology innovation throughout the United States. These hot spots spur growth in local economies and also contribute to progress on a national scale. We don't try to impose these from above, from the national level. These must start at the local level to work. But, the federal government can help local communities identify successful models and the right metrics. The Secretary of Commerce will publish a ''Guide to Developing Successful Regional Innovation Hot Spots'' in order to share successful strategies in the formation and development of regional clusters.

Finally, it is imperative that the executive branch take a strong role in leading and coordinating the broad initiative outlined in this legislation. To help guide progress in all three of the important areas I have outlined, this bill creates a President's Council on Innovation. The goal of the President's Council is to develop a comprehensive national innovation agenda and coordinate all federal efforts related to this agenda. In consultation with the Office of Management and Budget, this Council would develop and use metrics to assess the impact of existing and proposed laws that affect innovation in the United States. In addition, the Council would help to coordinate the various federal efforts that must be spread among many agencies that support innovation, and it would submit an annual report to the President and to the Congress on how the Federal Government can best support innovation. This effort cries out for much better coordination and collaboration than exist now. Why the White House? These issues must be addressed at the highest levels and in a decisive and organized way to achieve success.

The National Innovation Act is organized into five titles, intentionally reflecting the Senate committees of jurisdiction in the subject areas of each title. Title I, ''Innovation Promotion'' falls within the purview of the Commerce Committee. Title II, dealing with science, education and healthcare programs, covers subjects within the jurisdiction of the Health Education Labor and Pensions Committee. Title III, providing tax incentives to promote innovation, comes within the Finance Committee jurisdiction. Title IV covers Department of Defense programs and would fall within the Armed Services Committee jurisdiction. Title V, which touches on immigration, patent reform, and possible barriers to innovation, would be within the Judiciary Committee purview. The issues of immigration, health care information technology, and patent reform are reflected in this bill as Sense of Congress provisions, because we recognize that the committees of jurisdiction are already working on and moving in these areas and we don't want to get in their way. However, the bill cites these moving issues to mark the importance of considering how legislation on these issues may affect our economy's ability to remain competitive. The provision for an objective National Academy study on barriers to innovation would allow Congress to understand how legal and numerous other structural aspects of the U.S. economy may affect our ability to be innovative.

From the 18th century Franklin stove to the 20th century personal computer, the United States has long been the leader in the technology and innovation that created jobs, wealth, and an ever-increasing standard of living for our people. We call it American ingenuity. It's time to take that native ingenuity and build a new century of progress for America.

I ask unanimous consent that a section-by-section analysis of the National Innovation Act, a short summary of the legislation, and statements of support for this legislation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL INNOVATION ACT OF 2005 SECTION-BY-SECTION ANALYSIS

TITLE I—INNOVATION PROMOTION

*Sec. 101. President's Council on Innovation*

The President shall create a Council on Innovation comprised of heads of various executive agencies including Commerce, Defense, Education, Energy, and others. The Council, which will be chaired by the Secretary of Commerce, will have oversight over legislative proposals and executive branch initiatives for promoting innovation. Specifically, the Council will develop a process for using metrics to evaluate existing and proposed innovation policies and make recommendations to heads of executive agencies on improvements to innovation policies. In addition, the Council shall develop a comprehensive agenda for strengthening innovation among the Federal Government, states, academia, and the private sector. The Council will submit an annual report to the President and the Congress on its activities.

*Sec. 102. Innovation Acceleration Grants*

The President will establish the ''Innovation Acceleration Grants Program'' to promote and accelerate innovation in the United States. Each executive agency that currently funds research and development (R&D) in science, mathematics, engineering, and technology shall have a goal to commit at least 3% of its existing annual R&D budget to this program. Each such executive agency will also submit detailed plans for the implementation and evaluation of the program within the agency. The plans shall include metrics upon which grant funding decisions will be made and upon which the success of the grants awarded will be assessed. Grants shall be issued for a maximum period of three years (with possibility of renewal for another three years) and shall be awarded to projects that propose a novel approach to address fundamental technological challenges. The agency head may grant further renewals to programs requiring an extended timeframe to complete critical research to the extent they satisfy metrics developed to ensure their ongoing usefulness. Granting agencies are responsible for evaluation of all projects sponsored and for publishing such reviews.

*Sec. 103. A national commitment to basic research*

Authorizations are provided to nearly double NSF research funding from Fiscal Year 2007 through Fiscal Year 2011. Within 180 days of enactment, the Director of the National Science Foundation shall submit to Congress a detailed plan for the use of these funds. The plan shall focus on means by which basic research in science and engineering will optimize the United States economy for global competition and leadership in productive innovation. In addition, within one year of enactment, the director of the Office of Science and Technology Policy shall evaluate funding needs for R&D in physical sciences and engineering in consultation with the relevant agencies and departments. As appropriate, recommendations for increases in such funding should be submitted to Congress.

*Sec. 104. Regional economic development*

The Assistant Secretary for Economic Development of the Department of Commerce shall review federal programs that support local economic development and devise a strategy to foster innovation within communities. The Assistant Secretary is directed to develop metrics to evaluate existing programs and, consistent with the strategy to foster innovation in local communities, focus funding on projects that satisfy the metrics developed and that best emphasize

cooperation between the public and private sector to promote innovation.

In addition, within 1 year of enactment, the Secretary of Commerce shall publish a ''Guide to Developing Successful Regional Innovation Hot Spots.'' The Guide shall be compiled by the Secretary of Commerce in consultation with representatives of successful regional innovation hot spots to identify features of such hot spots and recommend mechanisms for forming new successful regional collaborations. The Department of Commerce will also be responsible for developing metrics to evaluate the efficacy of the regional innovation hot spots and for providing Congress with a biannual assessment of such programs. The Undersecretary for Technology of the Department of Commerce shall coordinate this review of hot spots.

*Sec. 105. Development of advanced manufacturing systems*

The Director of the National Institute of Standards and Technology (NIST) shall support R&D efforts in the industrial sector to develop innovative, state-of-the-art manufacturing practices. Targeted activities include improving advanced distributed and desktop manufacturing capabilities, developing small lot manufacturing processes that are compatible with extended production systems, and applying nanotechnology to manufacturing. The Director of NIST shall coordinate these activities with activities under the Small Business Innovation Research Program, the Small Business Technology Transfer Program, and DoD's Manufacturing Technology Program.

The NIST Director will support the development of prototypes for new technologies, the testing of these prototypes, and the adoption of standards to accelerate the applicability of these new technologies. NIST will hold a competition to select up to 3 Pilot Test Beds of Excellence to execute these tasks. The Federal Government will provide no more than 1/3 of the funding for each Test Bed. Private sector participants and corresponding state or local governments must each provide at least 1/3 of the funding for each Test Bed. All Test Beds are subject to review and none will receive federal funds for longer than five years.

The NIST Director shall ensure that the Manufacturing Extension Partnership (MEP) develops a focus on innovation.

The bill would authorize a total of $300 million between FY 2007 and FY 2011 to execute the programs in section 105.

*Sec. 106. Study on service science*

''Service science'' refers to training regimens that are being developed to teach individuals how to apply technology to solving complex problems in the industrial sector. It is the sense of the Congress that the Federal Government should develop a better understanding of service science as a learning discipline in order to strengthen the competitiveness of U.S. institutions and enterprises. The Director of the National Science Foundation (NSF) shall conduct a study for Congress on how the Federal Government should best support service science through research, education and training. During the course of this study, the Director will consult with leaders from institutions of higher education and from the private sector.

TITLE II—MODERNIZATION OF SCIENCE, EDUCATION, AND HEALTHCARE PROGRAMS

Subtitle A—Science and Education

*Sec. 201. Graduate fellowships and graduate traineeships*

This section authorizes funding for fellowship and traineeship programs that encourage students to pursue graduate studies in the sciences, technology, engineering and mathematics. The Director of NSF will expand the agency's Graduate Research Fellowship Program by 250 fellowships per year and extend the length of each fellowship to five years. The bill authorizes $34 million/year for FY 2007–FY 2011 to support these additional fellowships. In addition, funding in the amount of $57 million/year is authorized for a similar expansion of the Integrated Graduate Education and Research Traineeship program by 250 new traineeships per year over five years.

*Sec. 202. Professional Science Master's Degree programs*

This section encourages universities to develop Professional Science Master's Degree Programs as a means of increasing the number of highly skilled graduates entering the science and technology workforce. The Director of NSF shall establish a clearinghouse in collaboration with institutions of higher learning, industries, and Federal agencies in order to document successful program elements used in existing Professional Science Master's Degree Programs. The clearinghouse will provide an essential database of information for emerging programs.

In addition, the Director of NSF will grant awards to 4-year institutions of higher education for the creation or improvement of Professional Science Master's Degree Programs. Funds may be awarded to a maximum of 200 institutions for a three year term (with possibility of renewal for 2 additional years), and preference will be given to applicants that are able to secure more than 2/3 of their funding from sources outside the Federal Government. NSF will develop performance benchmarks and will report to Congress within 180 days of this process with an evaluation of all funded programs. The bill authorizes $20 million for FY 2007 and such sums as may be necessary to carry out the programs established in Section 202 for each succeeding fiscal year.

*Sec. 203. Increased support for science education through the National Science Foundation*

This section supports an increased commitment to science education through the Science, Mathematics, Engineering, and Technology Talent expansion program authorized under section 8(7) of the National Science Foundation Authorization Act of 2002. The Tech Talent expansion program encourages American universities to increase the number of graduates with degrees in mathematics and science. The bill authorizes $335 million from Fiscal Year 2007 to Fiscal Year 2010 for continued support of this program.

*Sec. 204. Innovation-based experiential learning*

The Director of NSF shall award grants to local educational agencies to implement innovation-based experiential learning in 500 secondary schools and 500 elementary or middle schools. Funds are authorized at levels of $10 million for Fiscal Year 2007 and at $20 million/year for Fiscal Year 2008 and Fiscal Year 2009.

Subtitle B—21st Century Healthcare System

*Sec. 211. Sense of the Congress regarding 21st Century Healthcare System*

It is the sense of the Congress that the Federal Government should encourage the adoption of interoperable health information technology by facilitating the creation of standards for activities such as quality reporting, surveillance, epidemiology, or adverse event reporting. Federal agencies or departments performing such activities are urged to collect data in a manner consistent with devised standards.

TITLE III—INCENTIVES FOR ENCOURAGING INNOVATION

Subtitle A—Research Credits

*Sec. 301. Permanent extension of research credit*

This provision makes the research credit set forth in Section 41(a) of the Internal Revenue Code permanent. The credit, originally enacted in 1981, has been extended 11 times and is scheduled to expire on December 31, 2005. The permanent tax credit should allow companies to engage more easily in long-term research projects.

*Sec. 302. Increase in rates of alternative incremental credit*

This section modifies the means for calculation of the elective alternative incremental research credit to increase the rates applicable to such an election. The bill restores the rates to range between 3% and 5%.

*Sec. 303. Alternative simplified credit for qualified research expenses*

This section creates a new elective alternative simplified credit for qualified research expenses to increase the number of companies that can benefit from the incentive. Taxpayers will be able to elect a new alternative simplified credit equal to 12% of qualified research expenses for the taxable year in excess of 50% of the average qualified research expenses for the 3 prior taxable years.

Firms may only select one of the two alternative credits described in sections 302 and 303.

The language in this subtitle is identical to the provisions of S. 627 introduced by Senators Hatch and Baucus.

Subtitle B—Health and Education

*Sec. 311. Study and report on catastrophic healthcare*

This provision requires the Secretary of Health and Human Services and the Secretary of Labor to jointly conduct a study and submit a report to Congress regarding costs associated with catastrophic healthcare events and chronic disease. The goal of the study is to develop innovative public and private sector approaches for dealing with such events and the report should discuss approaches and recommendations for administrative and legislative action to minimize the financial risks associated with these events.

*Sec. 312. Lifelong learning accounts*

This provision requires the Secretary of the Treasury, in collaboration with the Secretaries of Labor and Education, to conduct a study and submit a report to Congress regarding the potential establishment of lifelong learning accounts to be used for education or training purposes, and which would be exempt from personal income taxation. The study should include analysis and recommendations regarding whether individuals should be allowed to transfer funds in certain existing retirement or education-related accounts into a lifelong learning account without incurring tax liability or other penalties.

Subtitle C—Savings and Investments

*Sec. 321. Regulations relating to private foundation support of innovations in economic development*

This provision requires the Secretary of the Treasury to issue regulations that clearly identify when distributions by private foundations for purposes of economic development will be treated as charitable contributions pursuant to the Internal Revenue Code. This provision also requires the Secretary of the Treasury to issue regulations to clarify the circumstances under which foundations may make investments in start-up ventures without triggering the five percent excise tax applicable to investments

which jeopardize the carrying out of any of the Foundation's exempt purposes.

*Sec. 322. Advisory group regarding valuation of intangibles*

This provision requires the Secretary of the Treasury to establish an advisory group to examine issues related to proper valuation of intangible assets, including R&D, business processes and software, brand enhancement, and employee training. The advisory group consists of representatives from the Department of Commerce, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the New York Stock Exchange, the National Association of Securities Dealers Automatic Quotation System and other significant industry sectors. Based on its research, as well as communications with industry and academic experts, the advisory group is required to submit a report to the Secretary of the Treasury within 24 months of enactment, including discussion of best practices for valuation of intangibles and metrics or other solutions for disclosure of intangibles.

TITLE IV—DEPARTMENT OF DEFENSE MATTERS

Subtitle A—Defense Research and Education

*Sec. 401. Revitalization of frontier and multidisciplinary research*

U.S. Government investment in frontier and multidisciplinary research is key to the further application and development of innovative technologies. This section establishes as a goal that the Department of Defense allocate at least 3% of its total budget toward science and technology research. This provision also urges the allocation of at least 20 percent of this amount toward basic research in such fields.

*Sec. 402. Enhancement of education*

This section extends the Department of Defense's Science, Mathematics, and Research for Transformation (SMART) Scholarships program through September 30, 2011, and authorizes $41.3 million/year over 5 years for the SMART program to support additional participants pursuing doctoral degrees and master's degrees in relevant fields. This section also authorizes $45 million/year over 5 years to be appropriated to the Department of Defense through 2011 to support the expansion of the National Defense Science and Engineering Graduate Fellowship program to additional participants.

This section also authorizes the creation of a new Department of Defense competitive traineeship program for students in the areas of mathematics, science, and engineering with specific focus on innovation-oriented studies, multidisciplinary studies and laboratory research. This section authorizes $11.1 million/year over 5 years to sponsor up to 30 doctoral candidates, 30 master's candidates, and 20 undergraduates under this program. Program graduates will be encouraged to work for at least 10 years for the Department of Defense. The Secretary of Defense shall submit an annual report to the House and Senate Armed Services Committees describing the work done by all sponsored students and the benefit of this work to the Department of Defense.

Subtitle B—Defense Advanced Manufacturing

*Sec. 411. Manufacturing research and development*

This section requires the Under Secretary of Defense for Acquisition, Technology, and Logistics to identify innovative manufacturing processes and advanced technologies that could enhance the efficiency and productivity of the defense manufacturing base. Once identified, the Under Secretary is further required to commission research and development of such innovative processes and technologies, and is encouraged to make use of information technology and new business models in the development of extended production enterprises. The Under Secretary shall consider defense priorities established in the most recent Joint Warfighting Science and Technology Plan when undertaking the aforementioned research and development.

*Sec. 412. Transition of transformational manufacturing processes and technologies to the defense manufacturing base*

This section requires the Under Secretary of Defense for Acquisition, Technology, and Logistics to take certain actions, including the execution of a memorandum of understanding among appropriate elements in the Department of Defense, to accelerate the transition by manufacturers in the defense manufacturing base to transformational manufacturing processes and technologies, including processes and technologies identified or created pursuant to Section 411. The Under Secretary is also required to utilize the existing Manufacturing Technology Program to develop prototypes and test beds for such processes and technologies, and to implement a program for the defense manufacturing base to continuously identify and utilize improvements in such processes and technologies. In order to ensure increases in productivity and efficiency, the Under Secretary will promote research and development under the Manufacturing Technology Program and outreach through the Manufacturing Extension Partnership Program.

*Sec. 413. Manufacturing technology strategies*

The Under Secretary of Defense for Acquisition, Technology, and Logistics is authorized to identify and investigate innovative areas of technology that could be beneficial to the Department of Defense in carrying out its defense manufacturing requirements. Once identified, the Under Secretary may establish a task force with the private sector to map a strategy for the development of such technologies and related manufacturing processes. The roadmapping process shall begin no later than January, 2007.

*Sec. 414. Planning for adoption of strategic innovation*

This section requires the Secretary of Defense to ensure that contracts valued at $50,000,000 or more under a technology or logistics program at the Department of Defense include requirements for planning by the contractor under such contract for the adoption of innovative technologies under that contract. Specifically, contracts must include requirements directed toward identifying and implementing innovative technologies developed in the private sector or academia. Further, such contractors must also report annually on the implementation of such technologies.

*Sec. 415. Report*

This section requires the Under Secretary to submit a report to Congress describing all activities taken pursuant to this Subtitle during Fiscal Year 2007. The report should include an assessment of the effectiveness of each action taken in enhancing the research and development of innovative technologies and processes in the defense manufacturing area, as well as any recommendations for additional actions to be taken consistent with the requirements of this Subtitle.

*Sec. 416. Authorization of appropriations*

This section authorizes $300,000,000 of funding between Fiscal Year 2007 and Fiscal Year 2011 to the Department of Defense for the purposes of carrying out this subtitle.

TITLE V—JUDICIARY AND OTHER MATTERS

*Sec. 501. Sense of the Congress on retaining American-educated high tech talent in the United States*

This section states that it is the sense of Congress that U.S. immigration laws should be reformed to accommodate the need to retain in the United States those foreign nationals graduating from U.S. universities with master's or higher degrees in the sciences, technology, engineering or mathematics.

*Sec. 502. Study on barriers to innovation*

This section requires the National Academy of Sciences to conduct a study to identify forms of risk that create potential barriers to private sector innovation. The study is intended to support research on the long-term value of innovation to the business community and to identify means to mitigate legal or practical risks presently associated with such innovation activities. This section authorizes $1,000,000 for the purposes of carrying out this study and requires the National Academy to submit a report to Congress on its findings within one year of enactment.

*Sec. 503. Sense of the Congress on patent reform*

It is the sense of the Congress that the United States patent law system should be reformed to enhance the quality of patents, to leverage patent databases as innovation tools, and to create best practices for global collaborative standard-setting. This section further states that the Federal Government should fully fund the Patent and Trademark Office, improve compliance with existing patenting requirements, establish a fair post-grant patent review procedure, and secure reciprocal access to foreign patent databases.

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SUMMARY OF THE ''NATIONAL INNOVATION ACT OF 2005''

This legislation responds to the recommendations contained in the National Innovation Initiative Report published by the Council on Competitiveness. In responding to the report, this legislation focuses on three primary areas of importance to maintaining and improving United States' innovation in the 21st Century: (1) research investment, (2) increasing science and technology talent, and (3) developing an innovation infrastructure. This bill: Establishes the President's Council on Innovation to develop a comprehensive agenda to promote innovation in the public and private sectors. In consultation with the Office of Management and Budget, this Council would develop and use metrics to assess the impact of existing and proposed laws that affect innovation in the United States. In addition, the Council would help to coordinate the various federal efforts that support innovation, and use metrics to assess the performance of the federal innovation programs located in different administrative agencies, and submit an annual report to the President and to the Congress on how the Federal Government can best support innovation.

RESEARCH INVESTMENT

Establishes the Innovation Acceleration Grants Program which encourages federal agencies funding research in science and technology to allocate 3% of their Research and Development (R&D) budgets to grants directed toward high-risk frontier research. Although this provision sets 3% of R&D budgets as a strategic goal for allocation to high-risk frontier research projects, it does not mandate that the agencies spend at least 3% of their budgets in this manner. All grants provided to this program will be assessed with metrics and no grants will be renewed unless the agency distributing the

grant determines that all metrics have been satisfied.

Increases the national commitment to basic research by nearly doubling research funding for the National Science Foundation (NSF) by FY 2011.

Makes permanent the Research and Experimentation (R&E) tax credit with modifications expanding eligibility for incentives to a greater number of firms.

SCIENCE AND TECHNOLOGY TALENT

Expands existing educational programs in the physical sciences and engineering by increasing funding for NSF graduate research fellowship programs as well as Department of Defense science and engineering scholarship programs. These fellowships provide an incentive for more American students to pursue post-graduate degrees in the sciences, technology, engineering, or mathematics.

Authorizes the Department of Defense to create a competitive traineeship program for undergraduate and graduate students in defense science and engineering that focuses on multidisciplinary learning and innovation-oriented studies.

Authorizes funding for new and existing Professional Science Master's Degree Programs to increase the number of qualified scientists and engineers entering the workforce.

INNOVATION INFRASTRUCTURE

Authorizes the Department of Commerce to promote the development and implementation of state-of-the-art advanced manufacturing systems and to support up to three Pilot Test Beds of Excellence for such systems. The Secretary of Commerce will conduct a competition to select the Pilot Test Beds based on objective criteria and metrics.

Encourages the development of regional clusters (''hot spots'') of technology innovation throughout the United States.

Empowers the Department of Defense to identify and accelerate the transition of advanced manufacturing technologies and processes that will improve productivity of the defense manufacturing base.

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MAJOR ORGANIZATIONS SUPPORT THE NIA

''U.S. leadership in technology has been the cornerstone of America's strategies for driving economic growth and ensuring national security. U.S. leadership is being challenged as never before. The National Innovation Act of 2005 addresses a number of the most critical issues involving technology leadership, especially those related to federal support for basic research. . . . We are especially pleased to support a bipartisan approach to ensuring U.S. technology leadership. The issues at stake—national security and our standard of living in the 21st century—are far too important to become entangled in partisan politics.''—George Scalise, President, Semiconductor Industry Association.

''Nothing can do more for the U.S. economy and to help ensure America's global competitiveness than an enhanced focus on innovation and research by the public and private sectors. Senators Ensign and Lieberman are to be commended for bringing bi-partisan leadership to this most critical legislation designed to assure the United States' continued leadership in innovation in the 21st Century.''—F. Duane Ackerman, Chairman and Chief Executive Officer—BellSouth Corporation and Chairman of the Council on Competitiveness.

''On behalf of the Council's 180 CEOs, university presidents and labor leaders, I applaud the Senators' efforts and desire to ensure the United States remains the most competitive economic power in the world. We must, as a nation, innovate to compete and to prosper. This legislation is a critical step forward towards that goal.''—Deborah L. Wince-Smith, President, Council on Competitiveness.

''America's constant advance on 'endless frontier' of scientific discovery and engineering innovation has paid enormous dividends for generations. But there is no room for complacency in a world where ideas spread around the globe at the speed of light. The National Innovation Act of 2005 ensures that America will continue to focus on the future by supporting essential investments in high risk research and education—investments that will pay dividends far into the future.''—Henry Kelly, President of the Federation of American Scientists.

''In response to new competitive threats in the 1980s, Congress enacted important legislation to help American companies successfully meet that challenge. Twenty years later, as America once again faces competitiveness challenges, the National Innovation Act of 2005 proposes critically important policies and programs to foster innovation and help American companies and workers prosper in the new global economy of the 21st century.''—Dr. Robert Atkinson, Vice President, Progressive Policy Institute, Washington, DC.

''IBM applauds the introduction of the National Innovation Act of 2005 . . . Innovation underpins American economic growth and national security. In today's era of global opportunity and change, the rewards flow to those who innovate and turn disruptive shifts to their advantage. America has a long, proud history of recognizing when change is required and rising to the challenge. We are at such an inflection point today. The National Innovation Act of 2005 will create synergies among America's academic, business and government communities to ensure the future growth of the United States. I urge all Senators to support this legislation.''—Nicholas M. Donofrio, Executive Vice President, IBM Corporation.

''The new bipartisan Innovation Bill represents an important, multifaceted strategic and systemic approach to one of the most important problem sets facing the long term American future.''—Martin Apple, President, Council of Scientific Society Presidents.

''EIA is thrilled by today's introduction of the National Innovation Act of 2005 (NIA), which includes so many measures that can help the U.S. remain an economic leader in the global high-tech economy. It is an ambitious piece of legislation that spans the policy spectrum, but with the commitment and support of policymakers from both sides of the aisle, we hope to see these important provisions quickly begin to take effect and fuel the U.S. innovation engine.''—Dave McCurdy, CEO, Electronic Industries Association.

''We are writing to express our support for the National Innovation Act of 2005. Athena Alliance is research institute focused on understanding the emerging Information, Innovation and Intangibles (I-Cubed) Economy . . . The United States faces a critical challenge in coping with this new I-Cubed Economy. Athena Alliance believes that the National Innovation Act of 2005 is a step forward in addressing this challenge.''—Richard Cohon, Chairman; Kenan Jarboe, President; Athena Alliance.

''The U.S. government is an important partner in fostering innovation, but together we must do more. The country is facing great competitive challenges and now is the time to demonstrate real leadership. The National Innovation Act lays out a solid plan and I urge the Congress to support it.''—Victoria Hadfield, President of SEMI North America.

''I truly believe that our nation's future economic and technological leadership are at risk if we do not act soon to strengthen American competitiveness. Senators Ensign and Lieberman are leading the way by proposing comprehensive legislation that will substantially increase our commitment to basic research, take decisive steps to grow the S&T talent pool, and provide meaningful incentives to encourage innovation.''—Dr. Ann Nalley, President of the American Chemical Society.

''IEEE–USA applauds Senators John Ensign and Joseph Lieberman and their staff for their tireless efforts in crafting legislation designed to enhance and preserve U.S. competitiveness and innovation. This bill represents a huge step forward in promoting policies that will sustain U.S. technological leadership and encourage the development of the skilled, creative and competitive workforce critical for U.S prosperity . . . We urge Congress to deal with this legislation expeditiously.''—Gerard A. Alphonse, President, IEEE–USA.

''ASTRA, The Alliance for Science & Technology Research in America, strongly supports the National Innovation Initiative and the National Innovation Act of 2005. ASTRA's Board of Directors has identified enactment of the National Innovation Act of 2005 as its top legislative priority for 2006. In many ways, The Act represents the culmination of nearly five years of concerted effort by ASTRA and its members to raise this issue to a national level of discussion and we are very gratified by this initiative.''—Robert S. Boege, Exectuive Director, ASTRA.

''There is no more important public policy priority than creating an environment in which innovation will flourish and fuel continued U.S. economic growth and global leadership. The National Innovation Act embodies this goal and rightly calls for our nation to focus our attention on the critical areas of research and development, economic incentives and investments in education in order to maintain our edge. TechNet applauds Senators Ensign and Lieberman on this important measure that will help America remain the global technology and scientific leader.''—Lezlee Westine, President and CEO of TechNet.

''The National Innovation Act of 2005 . . . is a significant bi-partisan response to the challenges the U.S. faces in the hypercompetitive, networked global economy . . . The legislation is properly aimed at reversing adverse trends in research and human capital by augmenting funding for multidisciplinary research, accelerating innovation in manufacturing and the service sectors and investing more resources in the next generation scientists, engineers, workers and entrepreneurs.''—Egils Milbergs, President, Center for Accelerating Innovation.

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TECHNET,
*December 14, 2005.*

Hon. JOHN ENSIGN,
*U.S. Senate,*
*Washington, DC.*
Hon. JOSEPH LIEBERMAN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATORS ENSIGN AND LIEBERMAN: As TechNet members and chief executives of the Nation's leading technology companies, we are writing to express our strong support for the National Innovation Act (NIA) of 2005. We commend your leadership in developing the NIA and look forward to working with you to support enactment of this important legislation.

Our Nation has reached a critical juncture unprecedented in our history. While our Nation continues to be the world's leader in many technological and scientific discoveries and breakthroughs, other nations are

working to create their own innovation infrastructure. These efforts range from tax incentives to attract new research and development to increased investments in math and science education. In short, with so many countries recognizing R&D's economic development potential, the U.S. can no longer take its current leading position for granted, nor accept the status quo as sufficient to stay competitive.

Not surprisingly, these were the same observations and conclusions reached by those leaders in business and academia who came together to produce Innovate America, the National Innovation Initiative Report, which was released this year by the Council on Competitiveness. This report produced a series of recommendations that collectively represent landmarks on a roadmap leading toward a nation better equipped and educated to both innovate and compete in a global economy.

We are pleased to see a substantial number of these recommendations embodied in the NIA. Your legislation clearly recognizes that changes are needed in a wide range of areas: reforms in tax policy; federal investments in elementary and secondary education; scholarship and grant availability for university graduate and undergraduate students; federal research priorities; intellectual property protection; and critical areas in our innovation infrastructure, including health care and our armed forces.

The depth and diversity of the issues covered in the NIA demonstrate the complexity and the enormity of the fundamental challenge that confronts us: the economic security and competitiveness of our Nation.

We stand ready to work with you to move this important legislation forward and thank you for your shared commitment to the Nation's future innovative capacity and capability.

Sincerely,

Jim Barksdale, Partner, Barksdale Management Corporation, Co-Founder, TechNet; John Chambers, President & CEO, Cisco Systems, Inc., Co-Founder, TechNet; John Doerr, Partner, Kleiner Perkins Caufield & Byers, Co-Founder, TechNet; James Breyer, Managing Partner, Accel Partners; Ronald Conway, Founder & General Partner, Angel Investors, LP; Carol Bartz, Chairman, President & CEO, Autodesk, Inc.; Jesse Devitte, Managing Director, Borealis Ventures; Henry Samueli, Chairman & CTO, Broadcom Corporation; Gary Lauer, Chairman & CEO, eHealthInsurance; Craig R. Barrett, Chairman, Intel Corporation; Brian Keane, President & CEO, Keane, Inc.; Ralph Folz, CEO, Molecular, Inc.; Safra Catz, President & CFO, Oracle Corporation; Phillip Dunkelberger, President & CEO, PGP Corporation; Norman S. Wolfe, President & CEO, Quantum Leaders, Inc.; Lezlee Westine, President & CEO, TechNet; Nancy Heinen, Sr. Vice President & General Counsel, Apple; Tod Loofbourrow, President & CEO, Authoria; Dwight W, Decker, Chairman & CEO, Conexant Systems, Inc.; Donald B. Means, Founder & Principal, Digital Village Associates; Meg Whitman, President & CEO, eBay Inc.; Christopher Greene, President & CEO, Greene Engineers; Brad Smith, Sr. Vice President & General Counsel, Microsoft Corporation; Raouf Y. Halim, CEO, Mindspeed Technologies, Inc.; Harry W. Kellogg, Jr.,; Vice Chairman, Silicon Valley Bank; Chuck Moran, President & CEO, SkillSoft; Robert Farnsworth, CEO, Sonnet Technologies, Inc.; John S. Chen, Chairman, President & CEO, Sybase, Inc.; John Thompson, Chairman & CEO, Symantec Corporation; Aart de Geus, Chairman and CEO, Synopsys, Inc.; Willem Roelandts, CEO, Xilinx; Robin L. Curle, President, CEO & Chairman, Zebra Imaging, Inc.

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[From the Association of American Universities]

STATEMENT ON THE NATIONAL INNOVATION ACT OF 2005

The Association of American Universities applauds Senators Ensign and Lieberman for their introduction of the National Innovation Act of 2005. This legislation responds directly to the outstanding set of recommendations made by the Council on Competitiveness for much needed improvements in our Nation's ability to innovate and compete globally.

The Council's report, like subsequent reports by the National Academies and a host of business and academic organizations, makes a powerful case that the Nation's ability to compete effectively in the 21st century is under serious threat. That threat is posed largely by continuing underinvestment in fundamental research and our growing weakness in producing scientists, engineers, and others with the technological skills needed for the workforce of the future.

The proposals contained in the National Innovation Act represent a critical step toward strengthening the Nation's innovation infrastructure for the 21st century. Among other things, the measure would create a Presidential Council on Innovation, authorize doubling research funding at the National Science Foundation by FY 2011, expand graduate fellowships and traineeships, and encourage federal research agencies to devote three percent of their research and development budgets to ''high-risk frontier research.''

The legislation not only addresses the Council's recommendations but also reflects what has become a consensus among the nation's business and academic communities concerning actions we must take to ensure our future global competitiveness and our national security. It is the hope of AAU and the 60 leading U.S. research universities that comprise its membership that Congress will begin acting on these proposals at the earliest possible date.

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COUNCIL OF GRADUATE SCHOOLS,
*Washington, DC, December 14, 2005.*

Hon. JOSEPH LIEBERMAN,
*Hart SOB,*
*Washington, DC.*

DEAR SENATOR LIEBERMAN: I am writing to commend you for supporting U.S. competitiveness, innovation, and research and development through the introduction of the National Innovation Act. The Council of Graduate Schools (CGS) and its 450 plus member institutions are very grateful for your leadership in addressing the important issue of strengthening American competitiveness and for your recognition of the role of graduate education in this process.

We are especially supportive of the National Innovation Act's provisions related to science and technology talent and the strong emphasis on graduate education contained in Sections 201, 202, 203 and 402 of the bill. We are specifically supportive of the following provisions:

Increased funding for the NSF Graduate Research Fellowship and Integrative Graduate Education and Research Traineeship program;

Authorization of funds for new and existing Professional Science Master's Degree programs to increase the number of qualified scientists and engineers entering the workforce and;

Authorization of a competitive traineeship program for undergraduate and graduate students in defense science and engineering focusing on multidisciplinary learning and innovation-oriented studies, and extension of the SMART program supporting additional participants pursuing doctoral and master's degrees in key fields.

Supporting graduate education is critical to achieving the highly skilled workforce needed for the U.S. to compete effectively in the 21st century global economy. Thank you for your leadership in this important policy matter. The Council of Graduate Schools looks forward to working with you to implement this important legislation.

Sincerely,

DEBRA W. STEWART.

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By Mr. CRAPO (for himself, Mrs. LINCOLN, Mr. THOMAS, and Mr. ALLARD):

S. 2110. A bill to amend the Endangered Species Act of 1973 to enhance the role of States in the recovery of endangered species and threatened species, to implement a species conservation recovery system, to establish certain recovery programs, to provide Federal financial assistance and a system of incentives to promote the recovery of species, and for other purposes; to the Committee on Finance.

Mr. CRAPO. Mr. President, I rise today to introduce the Collaboration for the Recovery of the Endangered Species Act, or CRESA. Over the years, this body and the Nation as a whole have fiercely debated the merits of the Endangered Species Act. But there is one fundamental concept on which we all agree—saving endangered species is essential.

We have 30 years of experience with the laws that govern species management. We know the original intent. We have witnessed the strengths of the Act and its capability and commitment to save species from extinction. We know about the endless litigation. We have seen disappointingly few species recover. We have lost farms and valuable ranch land, putting families out of business. Ironically, the biggest losers are the very species we are attempting to recover.

However, we have also seen amazing things happen in Idaho, in Arkansas, Wyoming and in California to name just a few. We have seen landowners, conservationists, local, state and Federal agencies come together, figure out a workable plan and set about to do the business of recovering species. These plans are tried and true—they work, and they need to have the strength of the law behind them.

Some ask why the Endangered Species Act needs to be improved. The answer is short—we must apply lessons learned, the most important one being that collaboration works. Collabortion allows the process to move forward. By its very nature, litigation sets one group against another—making them rivals, not partners. Too often we work against each other, rather than with and for each other. We need to encourage what works in order to create the results we all want.

The next logical step and what is needed now is a way to facilitate the

ESA in its methods of promoting ongoing species recovery—something that requires collaboration by all—from the marble halls of Federal agencies here in Washington to rangeland in rural Idaho and forests of Arkansas. So, too, in every other state. This is not just a Western problem; the. entire country is searching for effective ways to accomplish the goals of the ESA. The good news is that many of these valuable partnerships are in place, functioning very effectively all across our country.

Take one example from my home State of Idaho, that of sage grouse recovery. Landowners and conservation groups came together to establish strong conservation programs that respected landowners' rights and satisfied environmental concerns. This collaborative, cooperative effort, utilizing the wisdom of those who live and work on the land, the expertise of specialists and those with knowledge of government rules and regulations, has been a magnificently successful alternative to the perils and dead end road of litigation.

Collaboration means more voices. More voices mean more solutions. More solutions mean more options. More options create the best solutions and also bring ownership by all members of the group. Applying this method to species recovery and the ESA means that more people will become involved and concerned about recovering species, especially those who bear the direct burden of compliance with the law. More voices bleans greater innovation in the field of species recovery. Collaboration decreases conflict, and conflict, as we in this body know all too well, usually puts us nowhere.

Collaboration works. Our bill codifies these proven solutions to protect them from the dead-end often found in litigation.

Why do we need to make a change? It is time to build on lessons learned with regard to species recovery, and our bill will put these lessons into concrete, effective action.

CRESA accomplishes the goal of species recovery by building on the successes of the ESA and by applying valuable lessons learned over the past 3 decades.

It promotes species restoration and recovery by rewarding landowners for their recovery efforts. Private property rights are guaranteed to us by our laws. Cost burdens can be onerous, and landowners should be rewarded for recovery efforts under the Endangered Species Act.

Laws must first positively reinforce public values and penalize only as a last resort. We have had it backward for many years and littered in the wake of this travesty are lost family farms and ranches. The old adage about the danger of burning bridges is relevant here: much of the action driven by existing ESA rules and regulations burns bridges—bridges that left intact could bring species across the chasm of extinction to recovery.

CRESA also promotes flexibility. One lesson learned in the course of creating and implementing the successful species management partnerships that I have mentioned today is that it is vital to work at the point of recovery—on the ground, as we tend to say. Working at the point of recovery realizes the benefits of fine-tuning individual solutions to meet specific challenges, but with the greater and broader goal of species recovery. This is flexibility and it cannot be achieved 2,500 miles from where a species needs restoration. It is on the ground that our resources should be applied.

CRESA promotes a freedom of process which encourages flexibility. I cannot emphasize how many times I have spoken with Idaho farmers and ranchers who tell me that, ''that solution might work in the halls of Congress—it doesn't work here on my land.'' It is ludicrous to believe that one-size-fits-all in the arena of species recovery. No two species, topography, environment or human natural resource use are the same, not even in the same county. There are multiple considerations that must be addressed in a cooperative, collaborative manner in order to achieve any kind of effectiveness.

Private property rights are not the enemy of conservation. Rather, the law can encourage landowners to involve themselves in the process. Landowners have a great deal of respect for species. Many of them are the first ones to tell you about the bear they caught sight of in the dim light of evening or the early morning grazing of deer in their fields. If landowners, especially ranchers and farmers, didn't like animals, they likely wouldn't do what they do. It doesn't make sense.

In the same way, environmentalists don't hate people. They, too, live on land somewhere, and many use the products that large landowners produce for our country: meat, wood, leather, and mining products, to name a few. Put in that perspective, it is obvious that working against one another is futile and counterproductive for people and species. We have innovative solutions that work for both species and people, and we need laws that facilitate this critical flexibility.

It is time to come together, sit down at the table and get down to the real matter at hand. We have to, in the words of a good friend who knows this issue well, ''concentrate on problem-solving rather than ideologies.'' While there are great ideological divides on this issue, the ideas for how to solve conservation challenges are not polarized. There is a consensus that there are conservation solutions that can benefit people and species.

We have a tremendous responsibility with regard to our valuable natural resources. Growing up and living in Idaho, I cannot fully convey to those who have never seen it the absolute wonder of my State's wildlife and land. It is farfetched to imagine that I or anyone else who lives and works this breathtaking setting would want to destroy it. Clearly, this is not just an Idaho issue. There are endangered species and wonderful lands in all 50 States and landowners nationwide are instrumental to solving the challenge of species recovery and restoration.

The Collaboration for the Recovery of Endangered Species Act facilitates this tried and true method of species recovery—species recovery not just for today or next week or next year, but for our children and grandchildren. I look forward to this bipartisan, progressive approach to species recovery and encourage all of my colleagues to give very careful consideration to this important legislation that we are introducing today.

I yield the floor.

Mr. THOMAS. Mr. President, I join with my friend from Idaho as a cosponsor to this bill on endangered species. He and I and others have worked on this for a good long time. Both of us have been on the Committee on Environment and Public Works. We are no longer there, but we started working there. We certainly are excited about the opportunity to bring to the floor some ideas that would deal with this whole notion of endangered species.

As the Senator has mentioned, all of us support the idea of continuing to have a program to protect endangered species. That concept is a good one. All of us support that. What we are talking about is a program that would be modernized and reorganized to be able to do that in a more efficient way.

We have good evidence that the program as it is, is not working. In a very simple way, what we have had is nearly 1,500 species listed. We have had less than a dozen delisted or put back where we want them. The emphasis has been on the listing, the emphasis has been on lawsuits, and the emphasis has been on disagreements. We should do what we can do to bring together the people who are interested. Whether they are environmentalists, whether they are landowners, whether they are naturalists, whatever, we all have the notion that we want to continue to make this program work, and we believe we have some ways to make it work better.

As was mentioned, the law is about 30 years old, so it is time to be updated. I agree with the Senator from Oklahoma, we need to review programs as time goes by. What we have learned as they have been in operation is we can make them much more effective.

There are two things that concern me. One is that there needs to be a substantial amount and a necessary amount of scientific data and science required for the listing. We have had some experience in Wyoming with having species listed, and it turns out they were not endangered at all. They were not identified properly and, therefore, we went through all of this debate and all of this discussion only to discover that they were not, in fact, endangered species. So we need to have more

science and get into what is necessary to identify an animal or a plant as an endangered species.

Second, the other challenge is to have a plan for recovery, to have a plan for getting cooperation between the landowners and the users and all the people who are interested in a way to lead us to recovery.

One of our latest experiences in Wyoming and in the western part of the country where we are has been with grizzly bears. Grizzly bears were listed, nearly 20 years ago, as endangered species. The numbers that were set forth in the plan for recovery were reached 15 years ago, and we are just now in the process of actually having the recovery and the delisting take place. So we have really lost sight of the goals of recovering species.

This is bipartisan language. We will have supporters from both sides of the aisle, and there is also an Endangered Species Revision Act that passed in the House. So we will have an opportunity when this is passed to come together with the House program to put together something that will be amenable and acceptable to both the House and Senate. It is bipartisan legislation, as indeed it should be.

I am sure we will have hearings, as we should, because there is a lot of interest in this issue. As the Senator pointed out, you have them on the east coast and you have them on the west coast and the situations are different. This bipartisan language would require recovery goals to be published at the time the species is listed. So there is a plan, and we do not go through this endless proposition. It would make it easier to delist them as soon as recovery goals are met, and that should be the purpose of the program.

It increases the State's role. This is very important. Many on the side of animals as opposed to plants, you have Fish and Wildlife Service, you have Park Service, you have Forest Service, you have State game and fish, you have State land agencies, so there needs to be a good deal of cooperation.

There also, of course, needs to be involvement with landowners who are impacted and affected by the plan for listing and the existence of those critters. So that needs to be there.

We need to provide incentives for working together. Much of this can be done without a lot of rules and regulations. The sage grouse was mentioned. There is a good deal of progress being made there in the private sector with groups coming together. We can do that.

I will not take any more time. I look forward to working with my colleagues. It is going to be in the Finance Committee. We hope we can have hearings soon and get this bill on the floor, work with the House, and be able to have a successful program put into place so we can continue to protect endangered species.

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By Mr. BAYH:

S. 2111. A bill to amend the Internal Revenue Code of 1986 to provide a credit for small business employee training expenses, to increase the exclusion of capital gains from small business stocks, to extend expensing for small businesses, and for other purposes; to the Committee on Finance.

Mr. BAYH. Mr. President, I rise today to introduce the Small Business Growth Initiative of 2005, which is critical to expanding opportunities for our small businesses to excel in the U.S economy and compete with larger businesses at home and abroad. Our Nation's competitiveness hinges on our ability to cultivate the entrepreneurial spirit and provide a policy environment that helps our Nation's job creators start or expand small businesses. Since I joined the Small Business Committee in 2003, I have redoubled my efforts to help small businesses, and this bill represents my latest ideas and work to provide additional assistance to the small business community.

In my home State of Indiana, small businesses employ nearly 1.3 million Hoosiers and make up 97.5 percent of all Indiana companies. Nationwide, small businesses have created between 60 and 80 percent of net new jobs over the last decade. Despite this success, small businesses are confronted with unique challenges. To understand what small business owners must overcome to build a successful enterprise, one need only know that one-third of small businesses fail in the first 2 years, and about half fail in the first 4 years. To help more small businesses succeed, my bill is designed to help small businesses train their employees, increase access to capital, encourage long-term investments in new technologies and equipment, expand opportunities to conduct research and development for the Federal Government, and finally, offer employee retirement plans.

The global economy requires that successful small businesses continually update workers' skills to remain competitive. To meet this requirement, the first section of the bill provides a $1,000 tax credit for training costs per employee for up to five employees. This tax credit can be used for employees to, among other activities, obtain a new job certification, attend a community college course, or attend a 1-day seminar. Statistics indicate that the U.S. faces a growing skills gap in its workforce. With technology playing a critical role in the economy, it is vital that we continually educate workers so that they are able to meet the challenges of new and innovative tasks. Companies are often reluctant to invest in worker training due to the fear that workers will take their new training to new jobs. This tax credit reduces the cost to the employer and provides much-needed support for employers to develop a skilled workforce.

Access to capital is critical for emerging small businesses as they seek to innovate, create jobs, and create wealth. The second provision in this bill provides a significant incentive to individuals and companies to invest in emerging small businesses, thereby increasing the amount of capital available to small businesses. Specifically, this bill provides a zero capital gains rate for long-term individual and corporate investments in small business stock. A 2004 report by the Council on Competitiveness highlighted small businesses' difficulty in trying to access venture capital. The study found: ''Recently, (the funding gap) has been widening as Venture Capital firms are shifting investments to focus on more mature firms with larger capital needs. Entrepreneurs report difficulty in raising money between $2 million and $5 million.''

The third section of my bill extends a critical incentive that small businesses have used to invest in new technologies, expand their operations, and most important, create jobs. Under current law, small businesses can expense—rather than depreciate—up to $100,000 in new qualifying machinery or equipment in each year through 2007. My bill extends this tax provision through the end of 2010. This will allow small businesses to enjoy a 5-year planning horizon for new investment. It is difficult for small businesses to make significant investments when the tax code is riddled with ''here today, gone tomorrow'' provisions. This provision will provide tax savings to small businesses and reduce the amount of time that small businesses would otherwise be forced to spend complying with complex depreciation rules.

The fourth section of my bill would expand research and development opportunities for small businesses by increasing the amount of federal R&D opportunities available through the Small Business Innovation Research Program, SBIR, and the Small Business Technology Transfer Program, STTR. Small businesses produce 13 to 14 times more patents per employee than large firms. Small business patents are twice as likely as large firm patents to be among the 1 percent most cited patents. These programs are critical to expand opportunities for small businesses to enter the Federal marketplace and in so doing, develop new products that can be commercialized and create new jobs. They play a major role in helping the government advance cutting-edge research. According to the Small Business Administration, approximately 1 in 4 SBIR projects will result in the sale of new commercial products or processes.

The fifth and final section of my bill is designed to help small businesses offer employee retirement plans. Too many workers at small companies do not have the opportunity to contribute to their retirement security. Only 31 percent of small businesses with 10 to 24 employees provide retirement plans to their employees. By comparison, 72 percent of large firms with 1,000 or more employees provide retirement plan options to their employees. As we

consider ways to help small businesses grow and be competitive, it is important to provide incentives that allow them to recruit and retain qualified employees and better compete with larger businesses at home and abroad that provide retirement plans for their employees.

The problem for small businesses stems, in part, from the administrative costs of starting a retirement plan. To address this problem, my bill doubles the existing tax credit to offset start-up costs associated with setting up new retirement plans. Under this bill, small companies would be eligible to take a 50 percent credit on the first $2,000 in approved costs incurred in each of the first 3 years of a qualified pension plan's existence.

In conclusion, small businesses are the engine of our economy and we need to focus attention on advancing policies that help small businesses grow and prosper. I look forward to working with my colleagues on these and other proposals to help our Nation's entrepreneurs continue to lead the world in innovation and compete effectively with large companies both here and abroad in the global economy.

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By Ms. STABENOW (for herself, Mr. SMITH, Mr. LAUTENBERG, Mrs. MURRAY, Mr. MCCAIN, Mr. COLEMAN, and Mr. DAYTON):

S. 2115. A bill to amend the Public Health Service Act to improve provisions relating to Parkinson's disease research; to the Committee on Health, Education, Labor, and Pensions.

Ms. STABENOW. Mr. President, today I rise to introduce the Morris K. Udall Parkinson's Disease Research Act Amendments of 2005. I am pleased to be joined in this endeavor by my colleague, Senator SMITH, who co-chairs the Senate Parkinson's Caucus with me, as well as Senators Murray, Lautenberg, McCain, and Coleman as cosponsors.

Monday, December 12, marked the anniversary of the death of Mo Udall of Arizona, an amazing congressman and champion of the environment who passed away from Parkinson's in 1998. In recognition of Congressman UDALL, Senators Wellstone and MCCAIN introduced the Morris K. Udall Parkinson's Research Act of 1997, which expanded basic and clinical research by establishing Udall Centers of Excellence around the nation to further scientific advances against Parkinson's.

In the United States, an estimated 60,000 new cases are diagnosed each year, joining the 1.5 million Americans who currently have Parkinson's disease. I know first-hand the anguish that a family goes through when a loved one is struck with this horrible disease as my grandmother had Parkinson's.

Top scientists say that Parkinson's is one of the first neurological diseases that could be cured but only if the resources are there. The legislation I am introducing today will help give scientists the tools they need by building on the original Parkinson's Research Act. The Udall Act Amendments Act does not call for additional spending. Rather, my bill makes targeted, process-oriented changes to maximize the federal dollars already spent on Parkinson's research.

I am also pleased to have the support of the entire Parkinson's patient community, including the Parkinson's Action Network, Michael J. Fox Foundation for Parkinson's Research, Parkinson's Disease Foundation, National Parkinson Foundation, Parkinson Alliance, and American Parkinson Disease Association.

Additionally, I am pleased to have the support of Henry Ford Health System. Michigan universities and research institutions are leading the Nation in cutting-edge research into health care, and Henry Ford is doing amazing work in Parkinson's research and epidemiology. The William T. Gossett Parkinson's Disease Center at Henry Ford provides comprehensive, experienced, and individualized diagnostic and therapeutic services to patients with Parkinson's disease and other movement disorders. State-of-the-art clinical programs are provided at Henry Ford Hospital, the Henry Ford Medical Center in West Bloomfield, and the Allen Park Neurology Center.

I ask unanimous consent that the text the bill and the support letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2115

*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 ''Morris K. Udall Parkinson's Disease Research Act Amendments of 2005''.

**SEC. 2. MORRIS K. UDALL PARKINSON'S DISEASE RESEARCH ACT OF 1997.**

(a) FINDINGS.—Subsection (b) of section 603 of the Morris K. Udall Parkinson's Disease Research Act of 1977 (42 U.S.C. 284f note) is amended by striking paragraph (1) and inserting the following:

''(1) FINDING.—Congress finds that, to take full advantage of the tremendous potential for finding a cure or effective treatment, the Federal investment in Parkinson's must be expanded, as well as the coordination strengthened among the National Institutes of Health research institutes.''.

(b) PUBLIC HEALTH SERVICE ACT.—Section 409B of the Public Health Service Act (42 U.S.C. 284f) is amended—

(1) in subsection (b), by striking paragraph (2) and inserting the following:

''(2) CONFERENCE.—

''(A) IN GENERAL.—The Director of NIH shall convene a coordinating and planning conference every 2 years with relevant institutes and non-governmental organizations to conduct a thorough investigation of all Parkinson's research that is funded in whole or in part by the National Institutes of Health and to identify shortcomings and opportunities for more effective treatments and a cure for Parkinson's disease. The Director shall report to Congress on the coordination among the institutes in carrying out such research.

''(B) RESEARCH INVESTMENT PLAN.—

''(i) IN GENERAL.—The results of each conference convened under subparagraph (A) shall be included in a research investment plan that provides for measurable results with the goals of better treatments and a cure for Parkinson's disease being the determining factors in the allocation of Parkinson's disease research dollars. The plan shall include an outline of the manner in which to fully utilize the Udall Center program to ensure the continuation of a particular focus on translational research, including a clinical component.

''(ii) BUDGET AND IMPLEMENTATION STRATEGY.—The plan submitted under clause (i) shall include a budget (that includes both programmatic and dollar line items) and implementation strategy (that incorporates the use of special initiatives such as Requests for Applications, Program Announcements with set-asides or similar directed research mechanisms) together with results to be reported back to Congress. The budget shall include

''(C) SUBMISSIONS TO CONGRESS.—The plan under subparagraph (B) (including the budget and implementation strategy) and the expected results of plan implementation shall be submitted to Congress not later than 3 months after the conference is convened under subparagraph (A). Reports on the outcomes of the plan, including actual spending and actual results, shall be submitted to Congress on an annual basis.

''(D) FUNDING.—The Secretary shall ensure that adequate funding is available under this section to carry out the activities described in the investment plan under subparagraph (B).'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''not more than 10''; and

(ii) by adding at the end the following: ''The Director shall ensure that an additional center shall be funded under this paragraph to serve as the coordinating center to coordinate the activities conducted by each of the centers funded under this paragraph to further focus and manage the interdisciplinary efforts of such centers.'';

(B) in paragraph (2)(A)(ii), by striking ''conduct basic and clinical research'' and inserting ''in carrying out research, ensure that a significant clinical component is provided for in addition to ongoing basic research''; and

(C) by adding at the end the following:

''(5) REVIEW PROCESS.—The Director of NIH shall establish a review process with respect to applications received for grants under paragraph (1). Such process shall provide for the evaluation of applicants in a manner that recognizes the unique aspects of the clinical, coordination, and multidisciplinary components of the applicants.'';

(3) in subsection (d)—

(A) by striking ''is authorized to establish a grant program'' and inserting ''shall award grants''; and

(B) by inserting before the period at the end the following: ''and shall be awarded in a manner consistent with the research investment plan under subsection (b)(2)(B)''; and

(4) by striking subsection (e) and inserting the following:

''(e) REPORT.—The Director of NIH, in consultation with the Director of the Centers for Disease Control and Prevention, shall conduct an investigation, and prepare and submit to the appropriate committees of Congress a report, on the incidence of Parkinson's disease, including age, occupation, and geographic population clusters, and related environmental factors relating to such disease.

''(f) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, section 301, and this title with respect to research focused on Parkinson's disease, there are authorized to be appropriated not to exceed such sums as may be necessary for each of fiscal years 2007 through 2012.''.

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HENRY FORD HEALTH SYSTEM,
*Detroit, MI, December 12, 2005.*

Re Morris K. Udall Parkinson's Disease Research Act Amendments of 2005.

Hon. DEBBIE STABENOW,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR STABENOW: The Henry Ford Health System strongly supports your legislation which would reauthorize the Morris K. Udall Parkinson's Disease Research Centers and allow an expansion of this important research to other states, including Michigan.

The Henry Ford Health System has been engaged in significant Parkinson's Disease research for many years, with published research on linkages between Parkinson's Disease and occupational exposure to lead, copper and agricultural pesticides, as well as life-style going back to 1993. The etiology of Parkinson's Disease is considered to have a strong environmental component, but relatively few studies have investigated the potential association between occupation and the disease. The HFHS research is enriched by our strong clinical and research programs in Neurology, Biostatistics, and Research Epidemiology at the HFHS Health Sciences Center, as well as our formal affiliation with Wayne State University and the National Institute of Environmental Health Sciences Center in Molecular and Cellular Toxicology with Human Applications at WSU.

Henry Ford Health System provides healthcare to more than 1 million patients, including approximately 25% of residents in the greater Southeast Michigan region, as well as many patients from virtually every state in the nation. Patients are drawn to Henry Ford Health System because of important advancements in diagnostics and treatment that may not be readily available elsewhere. Because of our ability to combine research with our strong clinical programs, HFHS offers an ideal setting for the kinds of changes called for in this legislation. We believe the intent to focus more of the National Institutes of Health Parkinson's dollars on translational research and therapies will bring a strong return on investment and lead to better treatments for more than one million Americans fighting Parkinson's disease.

Thank you for your leadership on this important health care issue. We appreciate your dedication and support for funding the research that can eventually lead to a cure for Parkinson's Disease. We look forward to working with you on this legislation and offer our assistance in achieving the positive changes called for in the Udall Act Amendments.

Sincerely,

NANCY M. SCHLICHTING,
*President & CEO.*

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PARKINSON'S ACTION NETWORK,
*Washington, DC, November 1, 2005.*

Hon. DEBBIE STABENOW,
*U.S. Senate,*
*Washington, DC.*

Hon. GORDON SMITH,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR STABENOW AND SENATOR SMITH: The Parkinson's community strongly supports your legislation, the Morris K. Udall Parkinson's Disease Research Act Amendments of 2005.

Recognizing the need to accelerate the pace of Parkinson's disease research, Congress passed the Morris K. Udall Parkinson's Research Act of 1997 (Udall Act) and it was signed into law. The Udall Act Amendments builds on the historic 1997 Udall Act to strengthen and focus critical Parkinson's disease research.

Your legislation will ensure that NIH-funded research will hasten discovery of better treatments and a cure for Parkinson's disease. We believe the positive changes called for in the Udall Act Amendments will require the NIH to focus more of its Parkinson's dollars on translational research and therapies, recognize the unique aspects of the Udall Centers, and give us a stronger understanding of who is impacted by this devastating disease and why. We are confident that the Udall Act Amendments will ensure that federally-funded Parkinson's disease research brings the strongest return on investment possible and will ultimately lead to better treatments and a cure for the more than one million Americans fighting Parkinson's disease.

The Parkinson's community applauds your legislation and looks forward to working with you to ease the burden and find a cure for Parkinson's disease. We thank you for your leadership and dedicated efforts on behalf of the entire Parkinson's community.

Sincerely,

JOEL GERSTEL,
*American Parkinson Disease Association.*

AMY COMSTOCK,
*Parkinson's Action Network.*

DEBI BROOKS,
*The Michael J. Fox Foundation for Parkinson's Research.*

JOSE GARCIA-PEDROSA,
*National Parkinson Foundation.*

ROBIN ELLIOTT,
*Parkinson's Disease Foundation.*

CAROL WALTON,
*The Parkinson Alliance.*

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 334—RELATIVE TO THE DEATH OF WILLIAM PROXMIRE, FORMER UNITED STATES SENATOR FROM THE STATE OF WISCONSIN

Mr. FRIST (for himself, Mr. REID, Mr. KOHL, Mr. FEINGOLD, Mr. AKAKA, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BAYH, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BROWNBACK, Mr. BUNNING, Mr. BURNS, Mr. BURR, Mr. BYRD, Ms. CANTWELL, Mr. CARPER, Mr. CHAFEE, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COBURN, Mr. COCHRAN, Mr. COLEMAN, Ms. COLLINS, Mr. CONRAD, Mr. CORNYN, Mr. CORZINE, Mr. CRAIG, Mr. CRAPO, Mr. DAYTON, Mr. DEMINT, Mr. DEWINE, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DORGAN, Mr. DURBIN, Mr. ENSIGN, Mr. ENZI, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. GRASSLEY, Mr. GREGG, Mr. HAGEL, Mr. HARKIN, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. ISAKSON, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KYL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MARTINEZ, Mr. MCCAIN, Mr. MCCONNELL, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. OBAMA, Mr. PRYOR, Mr. REED, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SANTORUM, Mr. SARBANES, Mr. SCHUMER, Mr. SESSIONS, Mr. SHELBY, Mr. SMITH, Ms. SNOWE, Mr. SPECTER, Ms. STABENOW, Mr. STEVENS, Mr. SUNUNU, Mr. TALENT, Mr. THOMAS, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. WARNER, and Mr. WYDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 334

Whereas William Proxmire served in the Military Intelligence Service of the United States Army from 1941 to 1946;

Whereas William Proxmire served the people of Wisconsin with distinction from 1957 to 1989 in the United States Senate;

Whereas William Proxmire served the Senate as Chairman of the Committee on Banking, Housing, and Urban Affairs in the ninety-fourth to ninety-sixth and one hundredth Congresses;

Whereas William Proxmire held the longest unbroken record for rollcall votes in the Senate;

Whereas William Proxmire tirelessly fought government waste, issuing monthly ''Golden Fleece'' awards beginning in 1975 for the ''biggest or most ridiculous or most ironic example of government waste;''

Whereas William Proxmire worked endlessly to eradicate the world of genocide, culminating in the ratification by the Senate of an international treaty outlawing genocide;

*Revolved,* That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable William Proxmire, former member of the United States Senate.

*Resolved,* That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

*Resolved,* That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the Honorable William Proxmire.

### SENATE CONCURRENT RESOLUTION 70—URGING THE GOVERNMENT OF THE RUSSIAN FEDERATION TO WITHDRAW THE FIRST DRAFT OF THE PROPOSED LEGISLATION AS PASSED IN ITS FIRST READING THE STATE DUMA THAT WOULD HAVE THE EFFECT OF SEVERELY RESTRICTING THE ESTABLISHMENT, OPERATIONS, AND ACTIVITIES OF DOMESTIC, INTERNATIONAL, AND FOREIGN NONGOVERNMENTAL ORGANIZATIONS IN THE RUSSIAN FEDERATION, OR TO MODIFY THE PROPOSED LEGISLATION TO ENTIRELY REMOVE THESE RESTRICTIONS

Mr. MCCAIN (for himself, Mr. BIDEN, and Mr. LIEBERMAN) submitted the following concurrent resolution, which was referred to the Committee on Foreign Relations:

S. CON. RES. 70

Whereas Russian Federation President Putin has stated that ''modern Russia's greatest achievement is the democratic process (and) the achievements of our civil society'';

Whereas the unobstructed establishment and free and autonomous operations and activities of nongovernmental organizations and a robust civil society free from excessive government control are central and indispensable elements of a democratic society;

Whereas the free and autonomous operations of nongovernmental organizations in any society necessarily encompass activities, including political activities, that may be contrary to government policies;

Whereas domestic, international, and foreign nongovernmental organizations are crucial in assisting the Russian Federation and the Russian people in tackling the many challenges they face, including in such areas as education, infectious diseases, and the establishment of a flourishing democracy;

Whereas the Government of the Russian Federation has proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, including erecting unprecedented barriers to foreign assistance;

Whereas the State Duma of the Russian Federation is considering the first draft of such legislation;

Whereas the restrictions in the first draft of this legislation would impose disabling restraints on the establishment, operations, and activities of nongovernmental organizations and on civil society throughout the Russian Federation, regardless of the stated intent of the Government of the Russian Federation;

Whereas the stated concerns of the Government of the Russian Federation regarding the use of nongovernmental organizations by foreign interests and intelligence agencies to undermine the Government of the Russian Federation and the security of the Russian Federation as a whole can be fully addressed without imposing disabling restraints on nongovernmental organizations and on civil society;

Whereas there is active debate underway in the Russian Federation over concerns regarding such restrictions on nongovernmental organizations;

Whereas the State Duma and the Federation Council of the Federal Assembly play a central role in the system of checks and balances that are prerequisites for a democracy;

Whereas the first draft of the proposed legislation has already passed its first reading in the State Duma;

Whereas President Putin has indicated his desire for changes in the first draft that would ''correspond more closely to the principles according to which civil society functions''; and

Whereas Russia's destiny and the interests of her people lie in her assumption of her rightful place as a full and equal member of the international community of democracies: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress—

(1) urges the Government of the Russian Federation to withdraw the first draft of the proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions; and

(2) in the event that the first draft of the proposed legislation is not withdrawn, urges the State Duma and the Federation Council of the Federal Assembly to modify the legislation to ensure the unobstructed establishment and free and autonomous operations and activities of such nongovernmental organizations in accordance with the practices universally adopted by democracies, including the provisions regarding foreign assistance.

## SENATE CONCURRENT RESOLUTION 71—EXPRESSING THE SENSE OF CONGRESS THAT STATES SHOULD REQUIRE CANDIDATES FOR DRIVER'S LICENSES TO DEMONSTRATE AN ABILITY TO EXERCISE GREATLY INCREASED CAUTION WHEN DRIVING IN THE PROXIMITY OF A POTENTIALLY VISUALLY IMPAIRED INDIVIDUAL

Mr. AKAKA (for himself, Mr. INOUYE, and Mr. SALAZAR) submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 71

Whereas many people in the United States who are blind or otherwise visually impaired have the ability to travel throughout their communities without assistance;

Whereas visually impaired individuals encounter hazards that a pedestrian with average vision could easily avoid, many of which involve crossing streets and roadways;

Whereas the white cane and guide dog should be generally recognized as aids to mobility for visually impaired individuals;

Whereas many States do not require candidates for driver's licenses to associate the use of the white cane or guide dog with potentially visually impaired individuals; and

Whereas visually impaired individuals have had their white canes and guide dogs run over by motor vehicles, have been struck by the side view mirrors of motor vehicles, and have suffered serious personal injury and death as the result of being hit by motor vehicles: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of Congress that each State should require any candidate for a driver's license in such State to demonstrate, as a condition of obtaining a driver's license, an ability to associate the use of the white cane and guide dog with visually impaired individuals and to exercise greatly increased caution when driving in proximity to a potentially visually impaired individual.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 2677. Mr. MCCONNELL (for Mr. STEVENS) proposed an amendment to the bill S. 1390, to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes.

SA 2678. Mr. MCCONNELL (for Mr. STEVENS) proposed an amendment to the bill S. 1390, supra.

SA 2679. Mr. MCCONNELL (for Mr. AKAKA) proposed an amendment to the concurrent resolution H. Con. Res. 218, recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century.

## TEXT OF AMENDMENTS

**SA 2677.** Mr. MCCONNELL (for Mr. STEVENS) proposed an amendment to the bill S. 1390, to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; as follows:

On page 3, beginning in line 24, strike ''impacts or other physical damage to coral reefs, including'' and insert ''impacts, derelict fishing gear, vessel anchors and anchor chains, or''.

**SA 2678.** Mr. MCCONNELL (for Mr. STEVENS) proposed an amendment to the bill S. 1390, to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes; as follows:

On page 4, strike lines 14 through 19, and insert the following:

''(2) leverage resources of other agencies.''.

**SA 2679.** Mr. MCCONNELL (for Mr. AKAKA) proposed an amendment to the concurrent resolution H. Con. Res. 218, recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century; as follows:

Beginning in page 4, line 8, strike ''requests that the President issue a proclamation calling on'' and insert ''urges''.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, December 15, 2005, at 10 a.m. on pending committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Thursday, December 15, 2005, at 10 a.m., for a hearing titled, ''Hurricane Katrina: Who's In Charge of the New Orleans Levees?''.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affaris be authorized to hold an off-the-floor markup during the session on Thursday, December 15, 2005, to consider the nominations of George W. Foresman to be Under Secretary for Preparedness, U.S. Department of Homeland Security, and Mary M. Rose to be Member, Merit Systems Protection Board.

Agenda

*Nominations*

(1) George W. Foresman to be Under Secretary for Preparedness, U.S. Department of Homeland Security.

(2) Mary M. Rose to be Member, Merit Systems Protection Board.

*Post Office Naming Bills*

(1) S. 1445, a bill to designate the facility of the U.S. Postal Service located at 520 Colorado Avenue in Arriba, CO, as the ''William H. Emery Post Office.''

(2) S. 1792/H.R. 3770, a bill to designate the facility of the U.S. Postal Service located at 205 West Washington Street in Knox, IN, as the ''Grant W. Green Post Office Building.''

(3) S. 1820, a bill to designate the facility of the U.S. Postal Service located at 6110 East 51st Place in Tulsa, OK, as the ''Dewey F. Bartlett Post Office.''

(4) S. 2036, a bill to designate the facility of the U.S. Postal Service located at 320 High Street in Clinton, MA, as the ''Raymond J. Salmon Post Office.''

(5) S. 2064, a bill to designate the facility of the U.S. Postal Service located at 122 South Bill Street in Francesville, IN, as the ''Malcolm Melville 'Mac' Lawrence Post Office.''

(6) S. 2089, a bill to designate the facility of the U.S. Postal Service located at 1271 North King Street in Honolulu, Oahu, HA, as the ''Hiram L. Fong Post Office Building.''

(7) H.R. 2113, a bill to designate the facility of the U.S. Postal Service located at 2000 McDonough Street in Joliet, IL, as the ''John F. Whiteside Joliet Post Office Building.''

(8) H.R. 2346, a bill to designate the facility of the U.S. Postal Service located at 105 NW Railroad Avenue in Hammond, LA, as the ''John J. Hainkel, Jr. Post Office Building.''

(9) H.R. 2413, a bill to designate the facility of the U.S. Postal Service located at 1202 1st Street in Humble, TX, as the ''Lillian McKay Post Office Building.''

(10) H.R. 2630, a bill to designate the facility of the U.S. Postal Service located at 1927 Sangamon Avenue in Springfield, IL, as the ''J.M. Dietrich Northeast Annex.''

(11) H.R. 2894, a bill to designate the facility of the U.S. Postal Service located at 102 South Walters Avenue in Hodgenville, KY, as the ''Abraham Lincoln Birthplace Post Office Building.''

(12) H.R. 3256, a bill to designate the facility of the U.S. Postal Service located at 3038 West Liberty Avenue in Pittsburgh, PA, as the ''Congressman James Grove Fulton Memorial Post Office Building.''

(13) H.R. 3368, a bill to designate the facility of the U.S. Postal Service located at 6483 Lincoln Street in Gagetown, MI, as the ''Gagetown Veterans Memorial Post Office.''

(14) H.R. 3439, a bill to designate the facility of the U.S. Postal Service located at 201 North 3rd Street in Smithfield, NC, as the ''Ava Gardner Post Office.''

(15) H.R. 3548, a bill to designate the facility of the U.S. Postal Service located on Franklin Avenue in Pearl River, NY, as the ''Heinz Ahlmeyer, Jr. Post Office Building.''

(16) H.R. 3703, a bill to designate the facility of the U.S. Postal Service located at 8501 Philatelic Drive in Spring Hill, FL, as the ''Staff Sergeant Michael Schafer Post Office.''

(17) H.R. 3825, a bill to designate the facility of the U.S. Postal Service located at 770 Trumbull Drive in Pittsburgh, PA, the ''Clayton J. Smith Memorial Post Office.''

(18) H.R. 3830, a bill to designate the facility of the U.S. Postal Service located at 130 East Marion Avenue in Punta Gorda, FL, as the ''U.S. Cleveland Post Office Building.''

(19) H.R. 4053, a bill to designate the facility of the U.S. Postal Service located at 545 North Rimsdale Avenue in Covina, CA, as the ''Lillian Kinkella Keil Post Office.''

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. SPECTER. Mr. President, I ask unanimous consent at the Select Committee on Intelligence be authorized to meet during the session of the Senate on December 15, 2005, at 2:30 p.m., to hold a closed meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that privilege of the floor be granted to Katie Winthrop, a detailee from the Bureau of Land Management serving on my staff, for the remainder of this session.

The PRESIDING OFFICER. Without objection, it is so ordered.

## RELATIVE TO THE DEATH OF FORMER SENATOR WILLIAM PROXMIRE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 334, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 334) relative to the death of William Proxmire, former United States Senator from the State of Wisconsin.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. It is with deep sadness that I note the passing of the distinguished public servant, Wisconsin's own William Proxmire.

William Proxmire was a man of fierce iconoclasm, robust physical energy, and strong moral fiber. During his 32 years of service in the Senate, he proved himself a friend to consumers everywhere and a steadfast enemy of Government wastefulness.

Born in Lake Forest, IL, as Edward William Proxmire, Senator Proxmire dropped his given first name as a youth to emulate his childhood hero, the cowboy William Hart.

Following an education at Yale and Harvard Universities, he returned to the Midwest where he worked as a newspaper reporter, a farm implement dealer, a printer, and a radio announcer. He won a seat in the Wisconsin State Assembly in 1950, followed by three unsuccessful attempts to become Governor. Finally, in a special election, he won a seat in the U.S. Senate.

Senator Proxmire was an arch opponent of profligate spending. Every month, he would name his Golden Fleece Award to the latest boondoggle on the Government books. He uncovered Government efforts to subsidize surfing, study the body shapes of female airline flight attendants, and investigate the mechanics of why people fall in love.

In 22 years, he never missed a single vote, setting the record which stands to this day for having cast the most consecutive rollcall votes in the Senate.

Between 1967 and 1986, the Senator came to the floor each day to call upon his colleagues to ratify the Convention for the Prevention and Punishment of the Crime of Genocide. Finally, in 1986, after years of tenacious advocacy, the Senate acted and approved the convention.

Senator Proxmire became so popular with the people of Wisconsin that the last two times he stood for elections, he refused to accept any campaign contributions. Aside from filing fees, his main campaign expenses, the Washington Post reported, ended up being envelopes—for returning contributions that citizens sent in anyway.

Even as he aged, he stood by a sturdy regime of clean living: 100 pushups after waking up, long daily runs, a healthy diet, and early bedtimes.

Senator Proxmire was proud of the liberal, progressive politics he learned growing up in Wisconsin. But he also clung to a steadfast desire to protect the American taxpayer. His chaperone eagle eye on the Government budget earned him the admiration of many on the political right. Even today, he remains a hero to many in the tax reform movement.

William Proxmire proved himself an able public servant to the people of Wisconsin, the American taxpayer, and, indeed, the American public at large.

On behalf of my colleagues, I extend my deepest sympathies to the Senator's wife Ellen and the entire Proxmire family.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements related thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 334) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 334

Whereas William Proxmire served in the Military Intelligence Service of the United States Army from 1941 to 1946;

Whereas William Proxmire served the people of Wisconsin with distinction from 1957 to 1989 in the United States Senate;

Whereas William Proxmire served the Senate as Chairman of the Committee on Banking, Housing, and Urban Affairs in the ninety-fourth to ninety-sixth and one hundredth Congresses;

Whereas William Proxmire held the longest unbroken record for roll call votes in the Senate;

Whereas William Proxmire tirelessly fought government waste, issuing monthly ''Golden Fleece'' awards beginning in 1975 for the ''biggest or most ridiculous or most ironic example of government waste;''

Whereas William Proxmire worked endlessly to eradicate the world of genocide, culminating in the ratification by the Senate of an international treaty outlawing genocide;

*Resolved*, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable William Proxmire, former member of the United States Senate.

*Resolved*, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

*Resolved*, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the Honorable William Proxmire.

## TRANSFERRING PROPERTY TO THE SUPREME COURT

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of S. 2116 introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2116) to transfer jurisdiction of certain real property to the Supreme Court.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2116) was read the third time and passed, as follows:

S. 2116

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

**SECTION 1. TRANSFER OF JURISDICTION OVER CERTAIN REAL PROPERTY TO THE SUPREME COURT.**

(a) SHORT TITLE.—This section may be cited as the ''Supreme Court Grounds Transfer Act of 2005''.

(b) TRANSFER OF JURISDICTION.—

(1) IN GENERAL.—Jurisdiction over the parcel of Federal real property described under paragraph (2) (over which jurisdiction was transferred to the Architect of the Capitol under section 514(b)(2)(B)(i) of the Omnibus Parks and Public Lands Management Act of 1996 (40 U.S.C. 5102 note; Public Law 104–333; 110 Stat. 4165)) is transferred to the Supreme Court of the United States, without consideration.

(2) PARCEL.—The parcel of Federal real property referred to under paragraph (1) is that portion of the triangle of Federal land in Reservation No. 204 in the District of Columbia under the jurisdiction of the Architect of the Capitol, including any contiguous sidewalks, bound by Constitution Avenue, N.E., on the north, the branch of Maryland Avenue, N.E., running in a northeast direction on the west, the major portion of Maryland Avenue, N.E., on the south, and 2nd Street, N.E., on the east, including the contiguous sidewalks.

(c) MISCELLANEOUS.—

(1) COMPLIANCE WITH OTHER LAWS.—Compliance with this section shall be deemed to satisfy the requirements of all laws otherwise applicable to transfers of jurisdiction over parcels of Federal real property.

(2) INCLUSION IN SUPREME COURT GROUNDS.—Section 6101(b)(2) of title 40, United States Code, is amended by inserting before the period ''and that parcel transferred under the Supreme Court Grounds Transfer Act of 2005''.

(3) UNITED STATES CAPITOL GROUNDS.—

(A) DEFINITION.—Section 5102 of title 40, United States Code, is amended to exclude within the definition of the United States Capitol Grounds the parcel of Federal real property described in subsection (b)(2).

(B) JURISDICTION OF CAPITOL POLICE.—The United States Capitol Police shall not have jurisdiction over the parcel of Federal real property described in subsection (b)(2) by reason of such parcel formerly being part of the United States Capitol Grounds.

(4) RECORDING OF MAP OF SUPREME COURT GROUNDS.—The Architect of the Capitol shall record with the Office of the Surveyor of the District of Columbia a map showing areas comprising the grounds of the Supreme Court of the United States that reflects—

(A) the legal boundaries described under section 6101(b)(1) of title 40, United States Code; and

(B) any portion of the United States Capitol Grounds as described under section 5102 of title 40, United States Code, which is contiguous to the boundaries or property described under subparagraph (A) of this paragraph.

(d) EFFECTIVE DATE.—This Act shall apply to fiscal year 2006 and each fiscal year thereafter.

## CORAL REEF CONSERVATION AMENDMENTS ACT OF 2005

Mr. MCCONNELL. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 294, S. 1390.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1390) to reauthorize the Coral Reef Conservation Act of 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments.

(Strike the parts shown in black brackets and insert the parts shown in italic.)

S. 1390

*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 ''Coral Reef Conservation Amendments Act of 2005''.

**SEC. 2. EXPANSION OF CORAL REEF CONSERVATION PROGRAM.**

(a) PROJECT DIVERSITY.—Section 204(d) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6403(d)) is amended—

(1) by striking ''GEOGRAPHIC AND BIOLOGICAL'' in the heading and inserting ''PROJECT''; *and*

[(2) by striking ''40 percent'' in paragraph (2) and inserting ''30 percent''; and

(3)] *(2)* by striking paragraph (3) and inserting the following:

''(3) Remaining funds shall be awarded for—

''(A) projects (with priority given to community-based local action strategies) that address emerging priorities or threats, including international and territorial priorities, or threats identified by the Administrator in consultation with the Coral Reef Task Force; and

''(B) other appropriate projects, as determined by the Administrator, including monitoring and assessment, research, pollution reduction, education, and technical support.''.

(b) APPROVAL CRITERIA.—Section 204(g) of that Act (16 U.S.C. 6403(g)) is amended—

(1) by striking ''or'' after the semicolon in paragraph (9);

[(2) by redesignating paragraph (10) as paragraph (12); and]

*(2) by striking paragraph (10); and*

(3) by inserting after paragraph (9) the following:

''(10) *promoting* activities designed to minimize the likelihood of vessel impacts on coral reefs, particularly those activities described in section 210(b), including the promotion of ecologically sound navigation and anchorages near coral reefs; *or*

''(11) promoting and assisting entities to work with local communities, and all appropriate governmental and nongovernmental organizations, to support community-based planning and management initiatives for the protection of coral reef [systems; or''.] *systems.*''.

**SEC. 3. EMERGENCY RESPONSE.**

Section 206 of the Coral Reef Conservation Act of 2000 (16 U.S.C. [6404] *6405) is amended to read as follows:*

**"SEC. 206. EMERGENCY RESPONSE ACTIONS.**

''(a) IN GENERAL.—The Administrator may undertake or authorize action necessary to prevent or minimize the destruction or loss of, or injury to, coral reefs or coral reef ecosystems from vessel impacts or other physical damage to coral reefs, including damage from unforeseen or disaster-related circumstances.

''(b) ACTIONS AUTHORIZED.—Action authorized by subsection (a) includes vessel removal and emergency restabilization of the vessel and any impacted coral reef.

''(c) PARTNERING WITH OTHER FEDERAL AGENCIES.—When possible, action by the Administrator under this section should—

''(1) be conducted in partnership with other Federal agencies, including the United States Coast Guard, the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, and the Department of the Interior; and

''(2) leverage resources of such other agencies, including funding or assistance authorized under other Federal laws, such as the Oil Pollution Act of 1990, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Federal Water Pollution Control Act.''.

**SEC. 4. NATIONAL PROGRAM.**

Section 207(b) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6406) is amended—

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

(2) by striking ''partners.'' in paragraph (4) and inserting ''partners; and''; and

(3) by adding at the end the following:

''(5) activities designed to minimize the likelihood of vessel impacts or other physical damage to coral reefs, including those activities [described] identified in section 210(b).''.

**SEC. 5. REPORT TO CONGRESS.**

(a) IN GENERAL.—Section 208 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6407) is amended to read as follows:

**''SEC. 208. REPORT TO CONGRESS.**

''Not later than March 1, 2007, and every 3 years thereafter, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing all activities undertaken to implement the strategy, including—

''(1) a description of the funds obligated by each participating Federal agency to advance coral reef conservation during each of the 3 fiscal years next preceding the fiscal year in which the report is submitted;

''(2) a description of Federal interagency and cooperative efforts with States and United States territories to prevent or address overharvesting, coastal runoff, or other anthropogenic impacts on coral reefs, including projects undertaken with the Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the United States Army Corps of Engineers;

''(3) a summary of the information contained in the vessel grounding inventory established under section 210, including additional authorization or funding, needed for response and removal of such vessels;''

''(4) a description of Federal disaster response actions taken pursuant to the National Response Plan to address damage to coral reefs and coral reef ecosystems; and

''(5) an assessment of the condition of United States coral reefs, accomplishments under this Act, and the effectiveness of management actions to address threats to coral reefs.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended by striking the item relating to section 208 and inserting the following:

''208. Report to Congress.''.

**SEC. 6. FUND; GRANTS; GROUNDING INVENTORY; COORDINATION.**

(a) IN GENERAL.—The Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by striking ''organization solely'' and all that follows in section 205(a) (16 U.S.C. 6404(a)) and inserting ''organization—

''(1) to support partnerships between the public and private sectors that further the purposes of this Act and are consistent with the national coral reef strategy under section 203; and

''(2) to address emergency response actions under section 206.'';

(2) by adding at the end of section 205(b) 16 U.S.C. 6404(b)) ''The organization is encouraged to solicit funding and in-kind services from the private sector, including nongovernmental organizations, for emergency response actions under section 206 and for activities to prevent damage to coral reefs, including activities described in section 210(b)(2).'';

(3) by striking ''the grant program'' in section 205(c) (16 U.S.C. 6404(c)) and inserting ''any grant program or emergency response action'';

(4) by redesignating sections 209 and 210 as sections 212 and 213, respectively; and

(5) by inserting after section 208 the following:

**''SEC. 209. COMMUNITY-BASED PLANNING GRANTS.**

''(a) IN GENERAL.—The Administrator may make grants to entities who have received grants under section 204(c) to provide additional funds to such entities to work with local communities and through appropriate Federal and State entities to prepare and implement plans for the increased protection of coral reef areas identified by the community and [the best scientific information available] *scientific experts* as high priorities for focused attention. The plans shall—

''(1) support attainment of 1 or more of the criteria described in section 204(g);

''(2) be developed at the community level;

''(3) utilize watershed-based approaches;

''(4) provide for coordination with Federal and State experts and managers; and

''(5) build upon local approaches or models, including traditional or island-based resource management concepts.

''(b) TERMS AND CONDITIONS.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b)(1) to grants under this section, '[25 percent] *75 percent*' shall be substituted for '50 percent'.

**''SEC. 210. VESSEL GROUNDING INVENTORY.**

''(a) IN GENERAL.—The Administrator may maintain an inventory of all vessel grounding incidents involving coral reef resources, including a description of—

''(1) the impacts to such resources;

''(2) vessel and ownership information, if available;

''(3) the estimated cost of removal, mitigation, or restoration;

''(4) the response action taken by the owner, the Administrator, the Commandant of the Coast Guard, or other Federal or State agency representatives;

''(5) the status of the response action, including the dates of vessel removal and mitigation or restoration and any actions taken to prevent future grounding incidents; and

''(6) recommendations for additional navigational aids or other mechanisms for preventing future grounding incidents.

''(b) IDENTIFICATION OF AT-RISK REEFS.—The Administrator may—

''(1) use information from any inventory maintained under subsection (a) or any other available information source to identify coral reef areas outside designated National Marine Sanctuaries that have a high incidence of vessel impacts, including groundings and anchor damage; and

''(2) identify appropriate measures, including action by other agencies, to reduce the likelihood of such impacts.

**''SEC. 211. REGIONAL COORDINATION.**

''The Administrator shall work in coordination and collaboration with other Federal agencies, States, and United States territorial governments to implement the strategies developed under section 203, including regional and local strategies, to address multiple threats to coral reefs and coral reef ecosystems such as coastal runoff, vessel impacts, and overharvesting.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by redesignating the items relating to sections 208 through 211 as relating to sections 211 through 214; and

(2) by inserting the following after the item relating to section 207:

''209. Community-based planning grants.

''210. Vessel grounding inventory.

''211. Regional coordination.''.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

Section 212 of the Coral Reef Conservation Act of 2000 (formerly 16 U.S.C. 6408), as redesignated by section 6, is amended—

(1) by striking ''$16,000,000 for each of fiscal years 2001, 2002, 2003, and 2004,'' in subsection (a) and inserting ''$30,000,000 for fiscal year 2006, $32,000,000 for fiscal year 2007, $34,000,000 for fiscal year 2008, and $35,000,000 for each of fiscal years 2009 through 2012, of which no less than 30 percent per year (for each of fiscal years 2006 through 2012) shall be used for the grant program under section 204 and up to 10 percent per year shall be used for the Fund established under section 205,'';

(2) by striking ''$1,000,000'' in subsection (b) and inserting ''$2,000,000''; and

(3) by striking subsection (c) and inserting the following:

''(c) COMMUNITY-BASED PLANNING GRANTS.—There is authorized to be appropriated to the Administrator to carry out section 209 the sum of $8,000,000 for fiscal years 2007 through 2012, such sum to remain available until expended.''; and

(4) by striking subsection (d).

Mr. MCCONNELL. Mr. President, I ask unanimous consent the amendments at the desk be agreed to, the committee-reported amendments, as amended, if amended, be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 2677 and 2678) were agreed to, as follows:

AMENDMENT NO. 2678

(Purpose: To strike references to certain laws)

On page 4, strike lines 14 through 19, and insert the following:

''(2) leverage resources of other agencies.''.

AMENDMENT NO. 2677

(Purpose: To make it clear that damage from derelict fishing gear and vessel anchors and anchor chains warrants emergency response action)

On page 3, beginning in line 24, strike ''impacts or other physical damage to coral reefs, including'' and insert ''impacts, derelict fishing gear, vessel anchors and anchor chains, or''.

The committee amendments were agreed to.

The bill (S. 1390), as amended, was read the third time, and passed as follows:

S. 1390

*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 ''Coral Reef Conservation Amendments Act of 2005''.

**SEC. 2. EXPANSION OF CORAL REEF CONSERVATION PROGRAM.**

(a) PROJECT DIVERSITY.—Section 204(d) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6403(d)) is amended—

(1) by striking ''GEOGRAPHIC AND BIOLOGICAL'' in the heading and inserting ''PROJECT''; and

(2) by striking paragraph (3) and inserting the following:

''(3) Remaining funds shall be awarded for—

''(A) projects (with priority given to community-based local action strategies) that

address emerging priorities or threats, including international and territorial priorities, or threats identified by the Administrator in consultation with the Coral Reef Task Force; and

''(B) other appropriate projects, as determined by the Administrator, including monitoring and assessment, research, pollution reduction, education, and technical support.''.

(b) APPROVAL CRITERIA.—Section 204(g) of that Act (16 U.S.C. 6403(g)) is amended—

(1) by striking ''or'' after the semicolon in paragraph (9);

(2) by striking paragraph (10); and

(3) by inserting after paragraph (9) the following:

''(10) promoting activities designed to minimize the likelihood of vessel impacts on coral reefs, particularly those activities described in section 210(b), including the promotion of ecologically sound navigation and anchorages near coral reefs; or

''(11) promoting and assisting entities to work with local communities, and all appropriate governmental and nongovernmental organizations, to support community-based planning and management initiatives for the protection of coral reef systems.''.

**SEC. 3. EMERGENCY RESPONSE.**

Section 206 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6405) is amended to read as follows:

**''SEC. 206. EMERGENCY RESPONSE ACTIONS.**

''(a) IN GENERAL.—The Administrator may undertake or authorize action necessary to prevent or minimize the destruction or loss of, or injury to, coral reefs or coral reef ecosystems from vessel impacts, derelict fishing gear, vessel anchors and anchor chains, or damage from unforeseen or disaster-related circumstances.

''(b) ACTIONS AUTHORIZED.—Action authorized by subsection (a) includes vessel removal and emergency restabilization of the vessel and any impacted coral reef.

''(c) PARTNERING WITH OTHER FEDERAL AGENCIES.—When possible, action by the Administrator under this section should—

''(1) be conducted in partnership with other Federal agencies, including the United States Coast Guard, the Federal Emergency Management Agency, the U.S. Army Corps of Engineers, and the Department of the Interior; and

''(2) leverage resources of other agencies.''.

**SEC. 4. NATIONAL PROGRAM.**

Section 207(b) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6406) is amended—

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

(2) by striking ''partners.'' in paragraph (4) and inserting ''partners; and''; and

(3) by adding at the end the following:

''(5) activities designed to minimize the likelihood of vessel impacts or other physical damage to coral reefs, including those activities identified in section 210(b).''.

**SEC. 5. REPORT TO CONGRESS.**

(a) IN GENERAL.—Section 208 of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6407) is amended to read as follows:

**''SEC. 208. REPORT TO CONGRESS.**

''Not later than March 1, 2007, and every 3 years thereafter, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing all activities undertaken to implement the strategy, including—

''(1) a description of the funds obligated by each participating Federal agency to advance coral reef conservation during each of the 3 fiscal years next preceding the fiscal year in which the report is submitted;

''(2) a description of Federal interagency and cooperative efforts with States and United States territories to prevent or address overharvesting, coastal runoff, or other anthropogenic impacts on coral reefs, including projects undertaken with the Department of Interior, Department of Agriculture, the Environmental Protection Agency, and the United States Army Corps of Engineers;

''(3) a summary of the information contained in the vessel grounding inventory established under section 210, including additional authorization or funding, needed for response and removal of such vessels;''

''(4) a description of Federal disaster response actions taken pursuant to the National Response Plan to address damage to coral reefs and coral reef ecosystems; and

''(5) an assessment of the condition of United States coral reefs, accomplishments under this Act, and the effectiveness of management actions to address threats to coral reefs.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended by striking the item relating to section 208 and inserting the following:

''208. Report to Congress.''.

**SEC. 6. FUND; GRANTS; GROUNDING INVENTORY; COORDINATION.**

(a) IN GENERAL.—The Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by striking ''organization solely'' and all that follows in section 205(a) (16 U.S.C. 6404(a)) and inserting ''organization—

''(1) to support partnerships between the public and private sectors that further the purposes of this Act and are consistent with the national coral reef strategy under section 203; and

''(2) to address emergency response actions under section 206.'';

(2) by adding at the end of section 205(b) 16 U.S.C. 6404(b)) ''The organization is encouraged to solicit funding and in-kind services from the private sector, including nongovernmental organizations, for emergency response actions under section 206 and for activities to prevent damage to coral reefs, including activities described in section 210(b)(2).'';

(3) by striking ''the grant program'' in section 205(c) (16 U.S.C. 6404(c)) and inserting ''any grant program or emergency response action'';

(4) by redesignating sections 209 and 210 as sections 212 and 213, respectively; and

(5) by inserting after section 208 the following:

**''SEC. 209. COMMUNITY-BASED PLANNING GRANTS.**

''(a) IN GENERAL.—The Administrator may make grants to entities who have received grants under section 204(c) to provide additional funds to such entities to work with local communities and through appropriate Federal and State entities to prepare and implement plans for the increased protection of coral reef areas identified by the community and scientific experts as high priorities for focused attention. The plans shall—

''(1) support attainment of 1 or more of the criteria described in section 204(g);

''(2) be developed at the community level;

''(3) utilize watershed-based approaches;

''(4) provide for coordination with Federal and State experts and managers; and

''(5) build upon local approaches or models, including traditional or island-based resource management concepts.

''(b) TERMS AND CONDITIONS.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a), except that, for the purpose of applying section 204(b)(1) to grants under this section, '75 percent' shall be substituted for '50 percent'.

**''SEC. 210. VESSEL GROUNDING INVENTORY.**

''(a) IN GENERAL.—The Administrator may maintain an inventory of all vessel grounding incidents involving coral reef resources, including a description of—

''(1) the impacts to such resources;

''(2) vessel and ownership information, if available;

''(3) the estimated cost of removal, mitigation, or restoration;

''(4) the response action taken by the owner, the Administrator, the Commandant of the Coast Guard, or other Federal or State agency representatives;

''(5) the status of the response action, including the dates of vessel removal and mitigation or restoration and any actions taken to prevent future grounding incidents; and

''(6) recommendations for additional navigational aids or other mechanisms for preventing future grounding incidents.

''(b) IDENTIFICATION OF AT-RISK REEFS.—The Administrator may—

''(1) use information from any inventory maintained under subsection (a) or any other available information source to identify coral reef areas outside designated National Marine Sanctuaries that have a high incidence of vessel impacts, including groundings and anchor damage; and

''(2) identify appropriate measures, including action by other agencies, to reduce the likelihood of such impacts.

**''SEC. 211. REGIONAL COORDINATION.**

''The Administrator shall work in coordination and collaboration with other Federal agencies, States, and United States territorial governments to implement the strategies developed under section 203, including regional and local strategies, to address multiple threats to coral reefs and coral reef ecosystems such as coastal runoff, vessel impacts, and overharvesting.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.) is amended—

(1) by redesignating the items relating to sections 208 through 211 as relating to sections 211 through 214; and

(2) by inserting the following after the item relating to section 207:

''209. Community-based planning grants.

''210. Vessel grounding inventory.

''211. Regional coordination.''.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

Section 212 of the Coral Reef Conservation Act of 2000 (formerly 16 U.S.C. 6408), as redesignated by section 6, is amended—

(1) by striking ''$16,000,000 for each of fiscal years 2001, 2002, 2003, and 2004,'' in subsection (a) and inserting ''$30,000,000 for fiscal year 2006, $32,000,000 for fiscal year 2007, $34,000,000 for fiscal year 2008, and $35,000,000 for each of fiscal years 2009 through 2012, of which no less than 30 percent per year (for each of fiscal years 2006 through 2012) shall be used for the grant program under section 204 and up to 10 percent per year shall be used for the Fund established under section 205,'';

(2) by striking ''$1,000,000'' in subsection (b) and inserting ''$2,000,000''; and

(3) by striking subsection (c) and inserting the following:

''(c) COMMUNITY-BASED PLANNING GRANTS.—There is authorized to be appropriated to the Administrator to carry out section 209 the sum of $8,000,000 for fiscal years 2007 through 2012, such sum to remain available until expended.''; and

(4) by striking subsection (d).

## PROVIDING AUTHORITIES FOR THE DEPARTMENT OF STATE

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4436, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4436) to provide certain authorities for the Department of State, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4436) was read the third time and passed.

## CENTENNIAL OF SUSTAINED IMMIGRATION FROM THE PHILIPPINES TO THE UNITED STATES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 218, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 218) recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. MCCONNELL. I ask unanimous consent that an Akaka amendment at the desk be agreed to, the concurrent resolution, as amended, be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2679) was agreed to, as follows:

Beginning on page 4, line 8, strike ''requests that the President issue a proclamation calling on'' and insert ''urges''.

The concurrent resolution (H. Con. Res. 218), as amended, was agreed to.

The preamble was agreed to.

## MEASURE READ THE FIRST TIME—H.R. 2892

Mr. MCCONNELL. Mr. President, I understand there is a bill at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2892) to amend section 255 of the National Housing Act to remove the limitation on the number of reverse mortgages that may be insured under the FHA mortgage insurance program for such mortgages.

Mr. MCCONNELL. I now ask for its second reading and, in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read again on the next legislative day.

## ORDER TO SUBMIT TRIBUTES

Mr. MCCONNELL. Mr. President, I ask unanimous consent that Senators be permitted to submit tributes to Senator (Governor-elect) CORZINE for the RECORD until December 29, 2005, and that they be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PREDISASTER MITIGATION PROGRAM REAUTHORIZATION ACT OF 2005

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be discharged from further consideration of H.R. 4324, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4324) to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4324) was read the third time and passed.

## ORDERS FOR FRIDAY, DECEMBER 16, 2005

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on tomorrow, Friday, December 16. I further ask that following the prayer and the pledge the morning hour be deemed to have expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period of morning business for up to 30 minutes, with the Democrats in control of the first 15 minutes and the majority controlling the second 15 minutes.

I further ask that the Senate then resume consideration of the conference report to accompany H.R. 3199, the PATRIOT Act, and there then be 60 minutes of debate equally divided between the majority and the minority, followed by a vote on a motion to invoke cloture on the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. MCCONNELL. Tomorrow morning at approximately 11 o'clock, the Senate will have a cloture vote on the PATRIOT Act conference report. Senators should anticipate additional votes during tomorrow's session as we work through these last must-do items for this session. Executive items will also be considered as we work to complete action before breaking for the Christmas holidays. We will likely be in session through the weekend.

I thank Senators for their patience and hard work to get through the final stretch of activity for this session of the 109th Congress.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order and as a further mark of respect to Senator William Proxmire.

There being no objection, the Senate, at 7:54 p.m., adjourned until Friday, December 16, 2005, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate December 15, 2005:

### THE JUDICIARY

STEPHEN G. LARSON, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT CALIFORNIA, VICE ROBERT J. TIMLIN, RETIRED.

### DEPARTMENT OF JUSTICE

TERRANCE P. FLYNN, OF NEW YORK, TO BE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NEW YORK FOR THE TERM OF FOUR YEARS, VICE MICHAEL A. BATTLE, RESIGNED.

# EXTENSIONS OF REMARKS

## HONORING RETIRING CHAUTAUQUA COUNTY EXECUTIVE MARK THOMAS

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, for the past eight years, Chautauqua County government has been led by one of the singularly intelligent, committed and respected public officials in New York State. Mr. Speaker, today I rise today to honor Mark Thomas, whose service as Chautauqua County Executive will be concluded on December 31, 2005.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Mr. Thomas traveled that path with his head held high and a smile on his face the entire way. I have no doubt that his kind demeanor left a lasting impression on the voters of Chautauqua County.

Mark is the type of person who leaves a lasting impact on his community. For many years, as a candidate and as an elected leader, Mark's efforts to better Chautauqua County have left a permanent impression not only on the county itself but on its residents. His face, voice, opinions and successes were and still are a staple in Chautauqua County. Our county and our residents are better for the undying work and issues that Mr. Thomas uncovered during his campaign and during his tenure.

A true testimony to Mark can be found in many areas of the county and in many people whose lives he touched. One doesn't have to look far to see what a strong work ethic can do. His campaign was full of energy and enthusiasm. I have no doubt that good things are still to come from Mark; he is a truly dedicated and determined person.

As a state legislator from 1998 to 2004, I knew Mark Thomas well. Quietly, without a lot of fanfare, Mark Thomas trudged the halls in Albany working diligently for the reform of the Medicaid program, which has threatened to cripple county governments throughout New York State. In 2004, New York State began what is hoped to be a long process of providing Medicaid relief to local governments. No elected leader in New York State is more responsible for that success than is Mark Thomas.

I had the opportunity to get to know Mark even better in 2004, when we competed against one another in a primary election for the Democratic Party's nomination for this congressional seat. Throughout that campaign, I always said that if I couldn't win, I wanted Mark Thomas to win, because Mark is a true believer, someone who believes that government is in place to help people, and to help make one's area a better place to live, work and raise a family. During that campaign, I was consistently amazed at the level of respect that the people of Chautauqua County had for him. During my first year in Congress, Mark and I have worked together closely on a number of projects important to Chautauqua County, and my respect for him, his dear wife Elaine and his family only continues to grow.

Mr. Speaker, in closing, I want to thank Mark Thomas. Mark has shown me the way in Chautauqua County, and I will forever be grateful to him for that gift.

Chautauqua County is blessed to have such strong individuals with a desire to make this county the wonderful place that we all know it can be. Mark Thomas is one of those people and that is why I rise to honor him and his service to this community.

## HONORING THE GOVERNMENT STREET PRESBYTERIAN CHURCH ON THE OCCASION OF ITS 175TH YEAR

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BONNER. Mr. Speaker, today I rise to pay tribute to the Government Street Presbyterian Church on the occasion of its 175th year.

Government Street Presbyterian Church has been a vital partner of the city of Mobile and the State of Alabama. The church was founded in 1831, and the present sanctuary was built in 1836. For 166 years, this congregation has been worshipping God from the same location. Designated a National Landmark, the oldest sanctuary in Mobile is one of the most beautiful buildings in the city.

True to its mission to glorify God, the congregation of the Government Street Presbyterian Church uses its resources and opportunities to provide hope, comfort, instruction, and inspiration to all people so that they may become followers of Jesus Christ.

For the past twenty years, the Government Street Presbyterian Church has lovingly served the people of Mobile through its Coffee Club and Meals on Wheels, providing 35,000 meals annually to the homeless and poor. Members are also actively involved through urban ministries, international ministries, Baytreat ministries, worship, education, and fellowship.

It is my sincere hope that the Government Street Presbyterian Church will continue to be such a source of inspiration, hope, and comfort to Mobilians for another 175 years, and I rise today to salute this congregation and the many contributions they have made toward the betterment of south Alabama.

## RECOGNIZING PUBLIC SERVICE OF EDWARD E. NICHOLS

### HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. WOLF. Mr. Speaker, I am proud today to recognize my constituent, Mr. Edward E. Nichols of Purcellville, Virginia, who has served the town of Purcellville in some capacity for the last 55 years. During his dedicated service to the people of Purcellville and Loudoun County, Mr. Nichols served 20 years on the Purcellville Town Council, 8 years on the Planning Commission, 5 years on the Board of Zoning Appeals, as well as on numerous other advisory committees.

It gives me great pleasure to recognize Mr. Nichols' contributions to the Purcellville community. Mr. Nichols's father opened "Nichols Hardware" which has been in business for 91 years. Even today Ed's son Ted is part-owner of the family business. Mr. Nichols and his wife Meg have raised two sons, one daughter, and are the proud grandparents of seven and also have one great granddaughter. Mr. Nichols should be commended on raising an exceptional family while continually remaining actively involved in his community. Today, at 86 years-old, Mr. Nichols continues to serve on the Board of Zoning Appeals, and shows tremendous passion for serving the people of Purcellville.

## CELEBRATING THE BIRTH OF LUCAS SCOTT WAGNER

### HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. WILSON of South Carolina. Mr. Speaker, today I am happy to congratulate Matt and Kate Wagner of Columbus, Georgia, on the birth of their new baby son. Lucas Scott Wagner was born on December 15, 2005 at 1:29 PM, weighing 6 pounds, 11 ounces and measuring 19 inches long. Luke has been born into a loving home, where he will be raised by parents who are devoted to his well-being and bright future. His birth is a blessing.

## HONORING KEN LASKER FOR HIS CAMPAIGN TO BECOME CHAUTAUQUA COUNTY DISTRICT ATTORNEY

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, I rise today to honor Ken Lasker, a resident of Chautauqua County for his quest to become the Chautauqua County District Attorney.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Mr. Lasker traveled that path with his head held high and a smile on his face the entire way. I have no doubt that his kind demeanor left a lasting impression on the voters of Chautauqua County.

Ken is one of those people that leave a huge impact on his community. For many

years, both as a candidate or as an attorney at the law firm, Burgett and Robbins, his efforts to better Chautauqua County have left a lasting impression not only on the county itself but on its residents. His face, voice, opinions and successes were and still are a staple in Chautauqua County. Our county and our residents are better for the undying work and issues that Mr. Lasker uncovered during his campaign.

A true testimony to Ken can be found in many areas of the county and in many people whose lives he touched. One doesn't have to look far to see what a strong work ethic can do. His campaign was full of energy and enthusiasm. I have no doubt that good things are still to come from Ken, he is a truly dedicated and determined person.

Chautauqua County is blessed to have such strong individuals with a desire to make this county the wonderful place that we all know it can be. Ken is one of those people and that is why, Mr. Speaker, I rise to honor him today.

## PERSONAL EXPLANATION

### HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. COSTA. Mr. Speaker, on rollcall No. 630, I would vote to put the House on record as opposed to torture of prisoners held by the U.S. government.

Had I been present, I would have voted "aye."

## RECOGNIZING MS. OLGA WAGNER'S VOLUNTEER WORK AT OVERLEA-FULLERTON SENIOR CENTER

### HON. C. A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. RUPPERSBERGER. Mr. Speaker, I wish to recognize Ms. Olga Wagner for her superior volunteer work at the Overlea-Fullerton Senior Center in Baltimore, Maryland. She has been a loyal aide to the center for close to thirty years; brightening the days of many seniors with her "four hugs a day" rule: a rule in which she must hug at minimum, four people everyday.

Ms. Wagner donates her time-on Mondays and Fridays with the federally sponsored, 'Eating Together' lunch by preparing food and serving meals. She also contributes to the community by cashing-in bingo cards during games.

The Overlea-Fullerton Senior Center is a place for seniors, sixty and over, to gather taking advantage of activities and services such as line dancing, ceramics, painting, aerobics and much more. It is one of eighteen nationally accredited senior centers operated by the Baltimore County Department of Aging.

Because of the dependability Ms. Wagner has shown over the years, she was inducted into the Maryland Senior Citizens Hall of Fame on the twenty seventh of October, two-thousand five. Inductees are recognized statewide for their substantial volunteer work which ultimately benefits the community at large. Ms. Wagner's dedication to improving the lives of seniors in her community is commendable and is a true testament to her character.

Mr. Speaker, I am proud to rise before you today to recognize the good deeds of Ms. Olga Wagner. Her contribution to seniors in the Overlea-Fullerton community is greatly appreciated and worthy of great praise.

## HONORING SCOTT TUCKER

### HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. PELOSI. Mr. Speaker, it gives me great pride to recognize Scott Tucker for his leadership and extraordinary service to the City of San Francisco as he prepares to step down as District Manager of Customer Service and Sales of the San Francisco District of the U.S. Postal Service. Throughout his distinguished career with the Postal Service, he proved the San Francisco District leads the nation in postal quality control systems and customer service.

Scott joined the Postal Service in 1968 as a letter carrier in Hanford, California, and will bring his career to a close in January 2006. He was appointed District Manager in 1992, and has since earned the Postmaster General Award, the second highest award given to postal executives.

A business administration student at College of Sequoias, Sonoma State, Fresno State and Dartmouth College in Massachusetts, Scott used his education everyday supervising a workforce of 10,400 employees. Scott's career is a shining example of excellence in commitment and service.

Throughout his 23 years as District Manager, Scott worked to raise awareness of the multi-cultural groups within our District by establishing a Women's Council, an African American Council, an Asian American/Pacific Island Council and a Hispanic Council. These efforts earned him the Diversity Achievement Award from the Bay Area Federal Executive Board.

With the daunting responsibility of delivering 10 million pieces of mail to three million customers daily throughout northwest California, Scott was largely responsible for our City's reputation as having one of the best on-time mail services of any metropolitan area in the nation. Scott was generous with his time and expertise to assist my District Office staff with constituent concerns.

Scott was instrumental in making the Lunar New Year commemorative stamp series a reality. His close partnership with San Francisco's Asian American community helped produce a spectacular series of stamps for our City to take pride in, and for the rest of the nation to admire and enjoy. As Executive Chair of United Way's Combined Federal Campaign in the Bay Area for two years, Scott was honored for his leadership and tremendous success.

Scott's leadership and dedication remain an inspiration to all who knew and admired him. I join his friends and colleagues in sending best wishes for a well-deserved retirement and many years of health and happiness.

## HONORING LORI CORNELL FOR HER CAMPAIGN TO BECOME CHAUTAUQUA COUNTY CLERK

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, I rise today to honor Lori Cornell, a resident of Chautauqua County for her quest to become the Chautauqua County Clerk.

The campaign trail is a difficult path to take. Any person with a dream may enter but only a few are able to reach the end. Ms. Cornell traveled that path with her head held high and a smile on her face the entire way. I have no doubt that her kind demeanor left a lasting impression on the voters of Chautauqua County.

Lori is one of those people that leave a huge impact on her community. For many years, both as a candidate or as the District Director for Assemblyman Bill Parment, her efforts to better Chautauqua County have left a lasting impression not only on the county itself but on its residents. Her face, voice, opinions and successes were and still are a staple in Chautauqua County. Our county and our residents are better for the undying work and issues that Ms. Cornell uncovered during her campaign.

A true testimony to Lori can be found in many areas of the county and in many people whose lives she touched. One doesn't have to look far to see what a strong work ethic can do. Her campaign was full of energy and enthusiasm. I have no doubt that good things are still to come from Lori, she is a truly dedicated and determined person.

Chautauqua County is blessed to have such strong individuals with a desire to make this county the wonderful place that we all know it can be. Lori is one of those people and that is why, Mr. Speaker, I rise to honor her today.

## CONGRATULATING MR. WILLIAM W. WYNNE, JR. ON THE OCCASION OF HIS RETIREMENT FROM SERVICE TO THE FEDERAL GOVERNMENT AND HIS APPOINTMENT TO THE ALABAMA STATE BOARD OF PARDONS AND PAROLE

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BONNER. Mr. Speaker, it is with great pride and pleasure that I rise to honor Mr. William W. Wynne, Jr. on the occasion of his retirement after serving south Alabama for nearly 30 years. I also rise to congratulate him on his appointment to the Alabama Board of Pardons and Paroles.

A Mobile native, Mr. Wynne has served as a U.S. Probation Officer for the Southern District of Alabama, a district encompassing 13 counties in southwest Alabama, since 1976. He has served as the district's Chief U.S. Probation Officer since 1988. A nationally recognized leader, Mr. Wynne has overseen the district's advances in court management and automation. His tireless work led to the development of the Internal Operating Policy on Disposition of Criminal Cases in his district.

In the midst of his demanding professional schedule, Mr. Wynne also found time to serve on a number of national committees: the Automation and Technology Users' Group; the Probation and Pretrial Services Case Management and Statistics Umbrella Group; the Ad Hoc Task Force on Allotment Simplification; the committee on the National Law Enforcement Telecommunications System; the Electronic Public Access Working Group; the Chiefs' Advisory Group; the District Court Advisory Group; the Budget and Finance Advisory Group; and the Law Enforcement Formula Group.

Mr. Wynne is an outstanding example of the quality of individuals who have devoted their lives to the field of law enforcement. Mr. Speaker, I ask my colleagues to join with me in congratulating him on this remarkable achievement. I know Bill's colleagues, his wife Laura, his family, and many friends join with me in praising his accomplishments and extending thanks for his many efforts over the years on behalf of the citizens of the First Congressional District and the state of Alabama.

## ALLISON BIGGS—2005 PAMELA HARRIMAN FOREIGN SERVICE FELLOWSHIP

### HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. WOLF. Mr. Speaker, I am proud today to recognize and commend my constituent, Ms. Allison Biggs of Front Royal, Virginia, upon being selected as one of three recipients of the 2005 Pamela Harriman Foreign Service Fellowship. In 1999 the College of William and Mary in Virginia, in cooperation with the U.S. Department of State, established the Fellowship program to encourage top students to pursue careers in public service.

The fellowships are offered to three outstanding undergraduates from across the nation. Ms. Biggs, a senior at William and Mary, is an accomplished student and community leader. She was accepted for a highly competitive internship in the State Department's Office of Policy Planning, working on nonproliferation and arms control issues.

Now more than ever, as a nation we need to do everything we can to encourage our best and brightest young people to explore the call of public service, especially in serving our international interests. The Harriman Foreign Service Fellowship program will help Ms. Biggs gain invaluable work experience, and I ask my colleagues to join me in honoring Allison for receiving this outstanding recognition.

## CELEBRATING THE BIRTH OF COLE CHANDLER SWANSON CONATSER

### HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. WILSON of South Carolina. Mr. Speaker, today I am happy to congratulate Elizabeth and Blake Conatser of Washington, DC, on the birth of their new baby son. Cole Chandler Swanson Conatser was born on November 20, 2005 at 2:51 p.m., weighing 9 pounds and measuring 20.5 inches long. Cole has been born into a loving home, where he will be raised by parents who are devoted to his well-being and bright future. His birth is a blessing.

## HONORING RETIRING EDEN TOWN COUNCILMAN TIMOTHY WALKER

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, on December 31, 2005, a dedicated public servant will end his years of service as a member of the Eden Town Board. That day will be the last day of Councilman Tim Walker's service, and I want to take a moment to commemorate his service here today.

Tim Walker is a solid public official whose dedication both to his constituents as well as to the law is inspiring. With more than fifteen years of private sector legal experience, and after a stint as Eden Town Prosecutor, Tim Walker has concurrently served as a member of the Eden Town Board and as a member of that town's school board. Tim's service has been exemplary, as Eden has crept ever so slowly from its status as a very rural town to its status today, as a featured destination for many who seek to escape the hustle and bustle of city or first ring suburban life. Many people do this because Eden is a great place to live and raise a family; it is that way because of dedicated public servants like Tim Walker.

Tim Walker leaves the Eden Town Board because he chose to run for judicial office. Though unsuccessful in that run, many local residents are hopeful that Tim will remain an active member of the local community, and indeed, there is no reason to assume that he will not. Tim Walker is a fine public servant, and I am proud to honor him here today.

I want to thank you, Mr. Speaker, for offering me this opportunity to honor the public service of Tim Walker, and I hope that you will join me in offering to Mr. Walker the House's best wishes of good luck and Godspeed in all of his future endeavors.

## PERSONAL EXPLANATION

### HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. COSTA. Mr. Speaker, on rollcall No. 629, I would have voted "aye." Had I been present, I would have voted "aye."

## HONORING ADOPTION ANGELS, WILLIAM AND MARGURITE ADDISON

### HON. C. A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. RUPPERSBERGER. Mr. Speaker, it is my privilege to bring before the House of Representatives a couple who made the selfless commitment of improving the lives of five children from Maryland's foster care system. I rise before you today to recognize the generosity of Adoption Angels, William and Margurite Addison.

In the year nineteen hundred ninety-eight, the Pikesville couple officially adopted one of their nephews, Ralph, who would be the first of five children to find a permanent home with them. Between the years of nineteen hundred ninety-nine and two thousand four they opened their home to Malik, Kevin, Warren, and Bryleigh who range in ages from three to nine.

Mr. Addison works in Rockville, Maryland, at the Regional Institute for Children and Adolescents as an educator and administrator. The institute is a state-run facility for emotionally disabled young people. His wife, Mrs. Addison, formally worked as a truant officer for the Baltimore City Public School System. Together they have opened their hearts and their home to five children seeking a permanent, safe, and loving family.

As a result of their generosity, the Addisons are recipients of the Two Thousand Five Congressional Angels in Adoption Award, which recognized unsung heroes who have dedicated their lives to helping the future of our most vulnerable children.

Mr. Speaker, I stand before you humbled and honored to recognize the kindness of these two individuals. Because of their humanity five children from Maryland's foster care system will be given an opportunity to experience true family life. By investing in our children, we invest in our future and make our community stronger. Please join with me to commend Mr. and Mrs. William Addison for their extraordinary kindheartedness.

## TRIBUTE TO MR. TONY STEWART

### HON. JULIA CARSON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. CARSON. Mr. Speaker, I rise today to congratulate Mr. Tony Stewart, winner of the 2005 NASCAR Nextel Cup Championship.

On November 20, Mr. Stewart won his second NASCAR Championship, becoming only the second active driver to win multiple NASCAR championships.

Today we recognize this Hoosier who has placed himself among the greatest drivers in the storied history of American racing.

Tony Stewart's passion for the track began as a young boy racing go-karts in his hometown of Columbus, Indiana. His win at the national karting championship in 1987 was a springboard to the Indianapolis Racing League, and a sign of triumphs to come.

In 1999 Mr. Stewart joined the NASCAR circuit, where he has ranked in the top 10 every season since. 2005 marks his most successful year on tour, with a total of five first-place finishes.

In August, Mr. Stewart underscored his strong and deep roots in the Hoosier state by winning the Brickyard 400 at Indianapolis Motor Speedway.

Today let us remember that Tony Stewart is respected by both fans and competitors not only for his racing prowess, but for his respect for and dedication to the sport of car racing.

I am proud to call Tony Stewart a fellow Hoosier, and I once again congratulate him on this remarkable accomplishment.

## HONORING RETIRING HAMBURG TOWN SUPERVISOR PATRICK H. HOAK

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, it is my distinct honor and great pleasure to rise today to honor one of Western New York's premiere elected leaders, and someone who has given nearly twenty years of dedicated service to the residents and taxpayers of the town of Hamburg. I rise today to honor retiring Hamburg Town Supervisor Patrick H. Hoak.

Pat Hoak's love for government service was sparked by the example of his father, the late State Senator Bertrand H. Hoak. Through the years, Pat has served Hamburg as a community leader, a sports and youth league coach, a teacher and a longtime businessman. In 1987, however, he assumed more official duties in the town as a member of the Town Board.

First elected to the Town Board in 1987, Pat served as Councilman until his initial election as Town Supervisor in 1993. As Councilman, Pat put a great deal of focus on the expansion of recreational programs and facilities for town residents, including the expansion of the town's golf course.

Starting in 1992 and for thirteen years afterward, Pat Hoak presided over one of the most efficiently-run town governments in New York State.

As Supervisor, Pat's leadership resulted in the creation of nationally acclaimed programs for Senior Citizens. His administration resulted in an unprecedented level of cooperation between government and the private sector in quality of life issues, including combating drug addiction and family violence. Working with other dedicated town leaders, Pat helped turn the town of Hamburg into a model for town governments statewide, winning awards for fiscal responsibility and making Hamburg into a premiere suburban town for residents to live, work and raise a family.

The Hoak family has been very blessed over the years, and the family has given much back to the community it loves so dearly. For his nearly twenty years of public service and his many decades of community service, the town of Hamburg is better for the contributions made to it by Pat Hoak. We thank him for his service to our community, and wish Pat and his family all the best of good luck and Godspeed in all of his future endeavors.

## CONGRATULATIONS TO LOXLEY ELEMENTARY SCHOOL ON BEING NAMED ''STATE CHAMPION'' BY THE PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BONNER. Mr. Speaker, it is with great pride and pleasure that I rise to congratulate Loxley Elementary School on receiving the State Champion Award by the President's Council on Physical Fitness and Sports.

The President's Challenge Physical Activity and Fitness Awards program, available to the Nation's schools since 1966, offers presidential recognition and awards for fitness to all participating young people.

The State Champion award is presented annually to three schools in each state having the highest number of students scoring at or above the 85th percentile on the President's Challenge Physical Fitness Test.

As a State Champion, Loxley Elementary School is a role model for other schools because of its dedication to helping students encourage physical activity and gain fitness skills along with an understanding of the health benefits of being regularly active. Encouraging adequate amounts of daily physical activity is an excellent way to instill healthy lifestyle habits at an early age.

The five assessments of the President's Challenge Physical Fitness Test measure four components of physical fitness: a one-mile run/walk for heart and lung endurance; curl-ups for abdominal strength and endurance; a ''sit and reach'' stretch for muscular flexibility; pull-ups for upper body strength and endurance; and a shuttle run for agility.

Mr. Speaker, I ask my colleagues to join me in congratulating Loxley Elementary School in Loxley, Alabama, for this honor. This school deserves public recognition and our appreciation for their concerted efforts to instill healthy lifestyle habits in the youth of south Alabama.

## HONORING SSGT DANIEL CLAY, USMC

### HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. MILLER of Florida. Mr. Speaker, this week I attended the funeral of SSgt Daniel Clay. Sergeant Clay was from my district and one of ten Marines killed by an IED in Fallujah, Iraq on December 1, 2005.

Dan's father, Bud Clay, shared with me a letter his son wrote to his loved ones before he was killed. Accompanying his son's letter was a letter Bud had written to President Bush. Mr. Clay asked me to take this to Congress and share with you so that we could all see Dan's final thoughts and wishes.

May God Bless SSgt Daniel Clay, his family, our veterans, our troops, and the United States of America.

MOM, DAD, KRISTIE, JODIE, KIMBERLY, ROBERT, KATY, RICHARD, AND MY LISA: Boy do I love each and every one of you. This letter being read means that I have been deemed worthy of being with Christ. With MaMa Jo, MaMa Clay, Jennifer . . . all those we have been without for our time during the race. This is not a bad thing. It is what we hope for. The secret it out. He lives and His promises are *real*! It is not faith that supports this . . . But fact and I now am a part of the promise. Here is notice! Wake up! All that we hope for is *Real*. Not a hope. But Real.

But here is something tangible. What we have done in Iraq is worth any sacrifice. Why? Because it was our duty. That sounds simple. But all of us have a duty. Duty is defined as a God given task. Without duty life is worthless. It holds no type of fulfillment. The simple fact that our bodies are built for work has to lead us to the conclusion that God (who made us) put us together to do His work. His work is different for each of us. Mom, yours was to be the glue of our family, to be a pillar for those women (all women around you), Dad, yours was to train and build us (like a Platoon Sgt) to better serve Him. Kristie, Kim, Katy you are the five team leaders who support your Squad ldrs, Jodie, Robert and Richard. Lisa you too. You are my XO and you did a hell of a job. You all have your duties. Be thankful that God in His wisdom gives us work. Mine was to ensure that you did not have to experience what it takes to protect what we have as a family. This I am so thankful for. I know what honor is. It is not a word to be thrown around. It has been an Honor to protect and serve all of you. I faced death with the secure knowledge that you would not have to. This is as close to Christ-like I can be. That emulation is where all honor lies. I thank you for making it worthwhile.

As a Marine this is not the last Chapter. I have the privilege of being one who has finished the race. I have been in the company of heroes. I now am counted among them. Never falter! Don't hesitate to honor and support those of us who have the honor of protecting that which is *worth* protecting.

Now here are my final wishes. Do not cry! To do so is to not realize what we have placed all our hope and faith in. We should not fear. We should not be sad. Be thankful. Be so thankful. All we hoped for is true. Celebrate! My race is over, my time in war zone is over. My trials are done. A short time separates all of us from His reality. So laugh. Enjoy the moments and your duty. God is wonderful.

I love each and every one of you.

Spread the word . . . Christ lives and He is *Real*.

SEMPER FIDELIS,

PENSACOLA, FL,
*December 7, 2005.*

President GEORGE BUSH,
*The White House,*
*Washington, DC.*

DEAR PRESIDENT BUSH: My name is Bud Clay. My son, SSgt Daniel Clay—USMC was killed last week, 12/01/05, in Iraq. He was one of the ten Marines killed by the IED in Fallujah.

Dan was a Christian—he knew Jesus as Lord and Savior—so we know where he is. In his final letter (one left with me for the family—to be read in case of his death) he says ''if you are reading this, it means my race is over.'' He's home now—his and our real home.

I am writing to you—to tell you how proud and thankful we (his parents and family) are of you and what you are trying to do to protect us all. This was Dan's second tour in Iraq—he knew and said that his being there was to protect us.

I want to encourage you. I hear in your speeches about ''staying the course''. I also know that many are against you in this ''war on Terror'' and that you must get weary in the fight to do what is right. We and many others are praying for you to see this through—as Lincoln said, ''that these might not have died in vain''.

You have a heavy load—we are praying for you.

God bless you,

BUD CLAY.

## CONGRATULATING TONY STEWART

### HON. MIKE PENCE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. PENCE. Mr. Speaker, I rise today to recognize fellow Columbus, Indiana native Tony Stewart, not only for winning the 2005 NASCAR Nextel Cup Championship this year, but also for consistency and determination to finish each race.

Before winning the 2002 Nextel Cup, Stewart declared, ''If we're going to win the championship, then we need to have consistency . . . winning helps too, but consistency—front-running consistency is what it's all about.''

Tony's racing legacy began at age seven, Tony started his career like many young aspiring auto racing drivers: behind the wheel of a go-kart. In 1983, when Tony was 12, he won his first championship.

In 1989, Stewart moved from go-karts to open wheelers, winning his first championship in the National Midget category in 1994; followed by the U.S. Auto Club's Triple Crown the very next year.

It was in 1997 that Stewart began his NASCAR career racing in both the Indy Racing League and a full Busch schedule with team owner Joe Gibbs.

By 1999, Stewart had taken the Winston Cup Racing Series by storm. That year the Indiana native debuted on the front-row of his first Daytona 500 and went on to score three more victories, more than any rookie driver in Winston Cup history. He also obtained two poles, 12 top-five finishes, and 21 top-10 finishes, snagging 1999 Rookie of the Year.

The hometown crowd was there this past August when Stewart, already a winner on short tracks, super-speedway and road course, capped an emotional day by clinching the Indianapolis Brickyard. And now, Stewart has out-dueled his rivals to take a second Nextel Cup title.

Congratulations, Tony. Just like 2002, you got the job done with consistency and determination that makes Hoosiers proud.

## HONORING RETIRING BOSTON TOWN COUNCILMAN KARL J. SIMMETH

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, today I rise to honor a public official whose service as a member of the Boston Town Board has been honorable and whose dedication to his community has been steadfast. Today, I want to honor the service of Councilman Karl Simmeth.

Karl Simmeth served as a member of the Boston Town Board while his town continued to see growth and expansion, as more Western New Yorkers choose to live in towns beyond the first ring of Erie County's suburbs. The town of Boston is well-known as a great place to live and raise a family, and it is so, in no small measure, because of the dedicated service of public officials like Karl.

Karl took his work on the town board very seriously. Karl's areas of expertise included committees and other town board functions involving street lighting, the town's Conservation Advisory Council, drainage and solid waste, and the oversight of South Boston Park. In short, Karl worked to deal with issues important to local residents.

Karl wears another hat in town, and that hat is political—he is Chairman of the town's Republican committee. Accordingly, when it comes to matters political, Karl and I were rarely on the same side of the fence. However, when it comes to his love for the town of Boston and for his work on its behalf, Karl always checked his politics at the door. His work was always professional and I am grateful to him for his advocacy on the town's behalf.

Mr. Speaker, when all is said and done, a public servant wants to leave government in better shape than when he or she came in; that is certainly the case here. The town of Boston is a better place for Karl Simmeth's service, and I am pleased and appreciative to have had the opportunity to recognize him here today.

## CONGRATULATING MS. ANNA BELLE NEWMAN ON THE OCCASION OF HER RETIREMENT

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BONNER. Mr. Speaker, it is with great pride and pleasure that I rise to honor Ms. Anna Belle Newman on the occasion of her retirement after serving Mobile County for 17 years.

Ms. Newman was elected to the position of general administrator of Mobile County in 1988, and she is currently the longest serving local Republican elected official in Mobile County. A ninth generation Mobilian, Ms. Newman is a graduate of Murphy High School. She attended both the University of Alabama and Spring Hill College.

In the midst of her professional schedule, Ms. Newman also finds time to serve the community. She is an active member of St. Paul's Episcopal Church, the Daughters of the American Revolution, the Colonial Dames of the 17th Century, and the Friends of Mobile. She is a former founding member of the Mobile Art Patrons League and a former member of the Mobile County Republican Executive Committee.

Mr. Speaker, I ask my colleagues to join me in congratulating a dedicated community leader and friend to many throughout south Alabama. I know Ms. Newman's colleagues, her family, and her many friends join with me in praising her accomplishments and extending thanks for her many efforts over the years on behalf of Mobile County and the First Congressional District.

## FURTHER CONFERENCE REPORT ON H.R. 3010, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

SPEECH OF

### HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Ms. LEE. Mr. Speaker, I rise in strong opposition to this conference report and thank Mr. OBEY, Ranking Member of Approps Committee, for the time.

This morning I greeted hundreds of faith leaders on the steps of the Cannon building. They gathered from across the country to march together and pray together and to deliver a message to Congress. Their message was simple: the budget is a moral document and we have a moral obligation to ensure its priorities reflect our values.

Mr. Speaker, I have to ask why aren't we listening to them?

Who better than faith leaders, who serve on the front lines, who feed the hungry, who clothe the naked, who house the homeless, to tell Congress about the impact of this immoral budget on our families and our communities?

They recognize that the priorities reflected in our budget are not a partisan issue, but an issue of who we are as a Nation, and what our values are.

We know that the Republican budget cuts and this conference report, which is a critical part of their budget, is nothing more than an assault on the least among us—and it does not reflect our values.

That is why I encourage my colleagues to vote with their values and let's defeat this bill just like we did a month ago.

Don't tell me we can't do better.

## ILLEGAL IMMIGRATION

### HON. KENNY MARCHANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. MARCHANT. Mr. Speaker, illegal immigration touches us all, whether you live in a border state, such as Texas, or not. Millions of Americans pass through airports daily. Before they travel city to city or state to state, they have to show a valid i.d., remove their shoes, have their belongings examined, and walk through metal detectors. Meanwhile, thousands of illegal immigrants waltz across our borders, undetected, every day. America's failure to control its borders has cost us billions of dollars, and heightened the possibility of criminal and terrorist activity on our home soil.

It is time to prevent illegal immigration. The first step is taking control at the borders and holding people accountable. We can achieve this by passing legislation such as The Border Protection, Antiterrorism, and Illegal Immigration Control Act.

Mr. Speaker, this country has been enriched by foreigners who respect our laws and become citizens the proper way. We do not wish to deny others this opportunity. However, illegal immigration and disrespect for our laws

cannot be tolerated. We cannot secure this nation without securing its borders.

## IN HONOR AND REMEMBRANCE OF ALEX HUMEL McCANN

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. KUCINICH. Mr. Speaker, I rise today to celebrate the life of Alex Humel McCann, cherished son, brother, grandson, cousin, nephew and friend to many, whose unexpected passing has saddened our entire community. Although he will be greatly missed, Alex's young life had a profound impact upon the lives of countless individuals, in Cleveland, Ohio and around the world, and his inner light will shine on forever.

When Alex was in kindergarten, he journeyed with his parents and brothers to Botswana, Africa, to participate in a three-year mission with Habitat for Humanity International. In his 17 young years, Alex traveled to 17 countries and 5 continents. With an open heart, Alex absorbed the colorful offerings of every new culture and developed a profound sensitivity to human injustices and struggles that exist around the world.

An independent thinker and adventurous soul, Alex's passion and joy for life paralleled his passion for helping others. As a student at St. Edward High School, Alex was an active member with the Council on Human Relations, the Free Thought Society and his most cherished activity, the St. Edward Wilderness Retreat Program. His diagnosis of epilepsy at age thirteen did not lessen his enthusiasm and energy for living. He was an avid cyclist, golfer, hiker, and camper. He was a talented young actor who graced the stages of the Beck Center, St. Ed's and St. Joseph Academy. His energy and talent were consistently matched by his unique sense of humor, quick smile and kind heart.

Mr. Speaker and Colleagues, please join me in honor and remembrance of Alex Humel McCann. I extend my deepest condolences to his mother and father, Joyce Humel and Michael McCann; his brothers, Nick and Aaron; his extended family members and many friends. Alex Humel McCann's young life reflected limitless joy and love and he will live forever in the hearts and memories of those who loved him most—his family and friends—from Cleveland, Ohio to Botswana, Africa, and he will never be forgotten.

## HONORING RETIRING CONCORD TOWN SUPERVISOR MARK STEFFAN

### HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HIGGINS. Mr. Speaker, today I rise to honor a man whose years of service, both as a councilman, and for the last four years as Supervisor of the town of Concord, have served his town admirably. Today, I want to honor retiring Concord Town Supervisor Mark Steffan.

Mark Steffan is someone who loved his town with every fiber of his being. A successful businessman, Mark was elected to the Concord Town Board and his recent service as Supervisor has come at a time when more people in Erie County and Western New York look to the town of Concord and its incorporated village of Springville as an outstanding place to live, work and raise a family. It is that way because of the dedicated service of public officials like Mark Steffan.

Mark Steffan and his family are moving on with a planned move out of Western New York. I want to take this opportunity, Mr. Speaker, to commend Mark Steffan for his service to the residents and the taxpayers of the town of Concord, and remind him that local residents are better for the service he provided to town government.

## HONORING THE MEMORY OF MR. VICTOR A. McSWAIN

### HON. JO BONNER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BONNER. Mr. Speaker, the city of Mobile and indeed the entire state of Alabama recently lost a dear friend, and I rise today to honor him and pay tribute to his memory.

Mr. Victor A. McSwain was a devoted family man and dedicated community leader throughout his life.

Mr. McSwain began his 44 year career with the city of Mobile in his late teens. After serving in various positions, he worked his way up to the position of traffic engineer—a position he held for 17 years before becoming Mobile's director of transportation. Mr. McSwain worked for the city while obtaining two college degrees—a bachelor's degree in civil engineering from the University of South Alabama and a master's degree in civil engineering from Penn State University.

In the midst of his intense professional schedule, Mr. McSwain also found time to serve in many community organizations. He served on both the city's Planning Commission and the Metropolitan Planning Organization. Mr. McSwain was a past president of the University of South Alabama Alumni Association, the Crichton Optimist Club, and the Order of the Inca, a local Mardi Gras Society.

Mr. Speaker, I ask my colleagues to join me in remembering a dedicated community leader and friend to many throughout south Alabama. Mr. McSwain will be deeply missed by his family—his wife of 42 years, Barbara McSwain; his children, Angel Odom and Yvette Jones; and four grandchildren, Justin and Kyle Odom and Kelsey and Melody Jones—as well as the countless friends he leaves behind. Our thoughts and prayers are with them all at this difficult time.

## TRIBUTE TO DORA BAKOYANNIS

### HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BILIRAKIS. Mr. Speaker, I rise today to congratulate Dora Bakoyannis, Mayor of Athens, Greece, who was chosen to receive the 2005 World Mayor Award. This recognition is part of the World Mayor Project, which aims to bring greater attention to mayors who have well served their own communities as well as other national and international cities.

The World Mayor Project was launched in January of 2004 by City Mayors, an internet based platform designed to raise awareness about issues facing the world's cities. City Mayors was created by a group of economists and journalists from Europe, the Americas and Asia in April of 2003. From January to October of 2005, over 87,000 people worldwide voted in the annual internet based. World Mayor contest.

After being elected in 2003, Mayor Bakoyannis had the great challenge of preparing the historic city of Athens to host the 2004 summer Olympic Games. Due to her outstanding leadership, Athens rose magnificently to the challenge and demonstrated the pride and honor that comes with hosting the biggest sporting event in the world.

Mr. Speaker and colleagues, please join me in recognizing Dora Bakoyannis whose work has not only brought physical transformation to Athens, but also a renewed sense of national pride for her citizens which reflects true leadership. We wish her continued success as she works to enhance the quality of life for all Athenians.

## INTRODUCTION OF A RESOLUTION URGING THE OBSERVANCE OF GLOBAL FAMILY DAY OF PEACE AND SHARING

### HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. CONYERS. Mr. Speaker, today I rise to introduce a resolution calling for the observance of Global Family Day, One Day of Peace and Sharing.

Everyone in this body is concerned with finding a way to achieve peace. Peace in Iraq, peace in every corner of the world. Many of us have widely divergent views about how to achieve that peace—but I am confident—we all want peace.

We all have families back home who are longing for peace in the world and an end to the suffering caused by poverty, disease and hunger. Our friends, our neighbors, our parents and our children, all are hoping that this holiday season can bring more understanding, more generosity, more genuine friendship and caring among people of all faiths and cultures.

Perhaps we can't agree on military strategies, or budgets. Perhaps we will remain at odds on many matters when we come back after the holiday recess. But there's one matter on which the Congress agreed in 2000 and which I believe a unanimous Congress can agree upon now.

Mr. Speaker, I am today introducing a concurrent resolution which calls upon all Americans to observe Global Family Day, One Day of Peace and Sharing every January 1st. It asks that we use the first day of every year as a time to reach out to others in the spirit of peace, to share a meal, to help the needy at home and around the world.

This is a matter that once agreed on by Congress, can lead to greater understanding

and cooperation among political parties, faith groups, people of different races and economic class. In other words, it's something that can help us all—and that positive effect can begin during this holiday season.

In the year 2000, the Congress adopted a similar resolution asking the president to issue an annual proclamation recognizing this special day, and in 2001, following the tragedy of 9/11, the United Nations General Assembly followed suit. Heads of state in more than 20 countries have personally endorsed the initiative. However, there is little public knowledge that this important tool for peace already exists. Members of Congress can remedy that.

We all know how powerful an influence holidays have in our lives. Our earliest memories are often of family gatherings at Thanksgiving, or parades on the Fourth of July. Holidays teach us about the beliefs that our families hold, they inspire us, they reunite us and remind us annually about the ways in which we ought to behave.

As we approach the 20th anniversary next year of our national celebration of the life and teachings of Dr. Martin Luther King, I ask that the Congress take the time to ratify once again its recommendation that our increasingly interdependent world celebrate each year with a holiday of peace and sharing that belongs equally to all our human family.

Mr. Speaker, many Americans are troubled by our deteriorating image in the world, by the growing disputes among our elected leaders, by the dangers of terrorism and by the suffering of others, both at home and abroad. Yet they feel helpless to do anything about it.

Global Family Day provides a way in which every man, woman and child in the United States can help to reduce suffering at home, repair our damaged image abroad, and help us remember that in the end, all peoples belong to the same family.

I urge immediate action on this resolution.

## CONGRATULATING THE HIGHLAND PARK'S TEAM TENNIS FOR WINNING ITS THIRD STRAIGHT TEXAS CLASS 4A DIVISION I HIGH SCHOOL CHAMPIONSHIP

### HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. SESSIONS. Mr. Speaker, I rise today to congratulate the Highland Park Scots Tennis Team for winning its third straight State Championship. On Saturday, November 5th, the Scots defeated New Braunfels High School 10–3 for the title.

This program and its coach have shown an incredible amount of character since losing to San Antonio Alamo Heights in the 2002 state finals. They have not lost a single match since then, winning a state record seventy straight team matches.

The team of twenty-five varsity players (thirteen boys and twelve girls) is so filled with talent that Head Coach Dan Holden had reserve players who are nationally ranked on the sidelines, a testament to the depth of this team. Coach Holden has not only prepared his players for the championship match, however; he has also helped them to seek higher education. This two-pronged approach to coaching is what Coach Holden calls his "Win-Win" strategy. He kept practices shorter than normal so that the players could have time to work with their personal coaches to improve their abilities for U.S. Tennis Association Tournaments. These tournaments provide excellent recruiting opportunities for college scouts, in turn providing the exposure necessary for the players to impress scouts in the hopes of earning a college scholarship.

Proof of his success is evident. For example, Tyler Taransky, a senior at Highland Park, came back to Highland Park for his last year after a brief foray into the world of full-time competitive tennis and home schooling. As a result, he helped to lead his team to victory one last time before enrolling at Texas A&M, where he will play tennis next fall for the Aggies.

For his efforts, the United States Professional Tennis Association named Coach Holden the 2004 National High School Coach of the Year. He was also honored as the Dallas Morning News' 2004 All-Area Tennis Coach of the Year.

In closing, I would like to congratulate Coach Dan Holden and the Highland Park Scots' Team Tennis on their outstanding achievement. Their competitive spirit and domination in their field are truly inspirational.

## PROVIDING FOR CONSIDERATION OF H.R. 4297, TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

SPEECH OF

### HON. JAMES A. LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 8, 2005*

Mr. LEACH. Mr. Speaker, reluctantly I rise to oppose a bill which has a number of provisions I support and others which I might have been inclined to back in a different economic and historical context. But this Congress jeopardizes America's fiscal house as it continues to "pay" for a war with tax cuts. This is, after all, the first time in our history—and perhaps the history of the world—in which a government has sent soldiers into combat at the same time it has reduced the public's tax burden. And just as war cannot be paid for with tax cuts, social balance cannot be maintained if the costs of rebuilding one region of the country devastated by hurricanes are coupled with the reduction of support for needy citizens in other areas.

I am an advocate of tax simplification—the replacement of a deduction-centric tax code with a simplified lower rate system. But I have doubts about taking the radical step of eliminating social progressivity with a flat, single-rate tax. The complexity of the current system is the result of a myriad of tax rules, not the fact that rates are slightly staggered. What has been missed in today's debate is that the taxation of dividend income at substantially lower levels than earned income means that the working middle class will be taxed at much steeper rates than upper-income citizens. The approach on the table today will not only eliminate tax progressivity, it will create an inverted tax system, one that is profoundly regressive.

No tax system can stand the test of common sense if a high school principal, electrician, or registered nurse are taxed at a higher rate than a billionaire who receives his income from dividends. Yes, there is an argument that taxing dividend income may, in some cases, represent "double" taxation, but this concern is not as compelling as many assume because the deduction-oriented tax codes allow many large companies to have negligible income tax liabilities. This is why, according to a University of Michigan study, many of America's largest estates have been subjected to surprisingly little, if any, taxation in the accumulating years.

Priorities are askew. When Congress attempts to cover the cost of man-made wars and nature-made hurricanes while expanding tax breaks that disproportionately benefit higher income individuals, it is forced to limit spending on programs for low-income students and our needier citizens to keep the fiscal deficit from skyrocketing.

As long as this war continues, Congress is obligated to keep its eye not only on fiscal responsibility, but social justice. If it does not pay attention to fairness, the kind of internal strife that has broken out in recent weeks in France and the kind of internal division which was evidenced in the wake of Katrina in New Orleans will be magnified at great social cost.

A thriftier government may be a credible goal, but Congress is obligated to pay for whatever commitments it makes. I did not vote for the Iraq war primarily because of policy rather than expense concerns. But there is a cost dimension and the burden of responsibility for funding public commitments falls at this time particularly on those who chose to authorize this war. Failure to accept this responsibility weighs down the public balance sheet and pushes payment of debt obligations to future generations.

Accordingly, I am compelled to register my opposition to the fiscal irresponsibility implicit in this resolution.

## TRIBUTE TO MR. CHESTER DEVENOW

### HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. KAPTUR. Mr. Speaker, it is a privilege to pay tribute today to Mr. Chester Devenow, an Ohio business and civic leader whose recent loss our community has sustained. Regarded as a "titan of industry," Chester Devenow always took on broader missions to those beyond his board and firm. He located Sheller Globe's headquarters in the heart of our community to strengthen it economically, and struck labor agreements with its employees that helped build our region's middle class. He was highly regarded for his philanthropy and contributions to the institutions of our community.

His business acumen enabled him to create a Fortune 500 company, and he was truly a leader in industry. In his later career, his skills were often utilized in the mediation of labor-management disputes. Even after a well-earned retirement, Chester Devenow's abilities remained valuable to area business leaders. His knowledge and institutional memory were well-regarded by his peers.

Upon graduation from high school in Detroit, he studied music at the Julliard School. A

decorated veteran, Chester Devenow received a degree in political science from New York University and attended Harvard Law School.

President Theodore Roosevelt noted ''We demand that big business give the people a square deal; in return we must insist that when anyone engaged in big business honestly endeavors to do right he shall himself be given a square deal.'' Chester Devenow earned this distinction among the industry's titans.

We offer our sympathy to Maudette, loving wife of 27 years; his brother Leonard; sons Mark and Jeffrey; daughter Susie; stepchildren William and Abigail Schachner; his six grandchildren; and his numerous friends. May they find some small peace as Chester Devenow joins his daughter Sara and the Creator of us all.

## A TRIBUTE TO ROBERT THOMAS

### HON. DORIS O. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. MATSUI. Mr. Speaker, it gives me great pleasure today to honor Mr. Robert Thomas, the City of Sacramento's City Manager, who is retiring this week from a distinguished career of public service. As his friends, family and coworkers all gather to celebrate his career, I ask all my colleagues to join me in honoring one of Sacramento's finest citizens.

Mr. Thomas began his career in Sacramento with the North Highlands Recreation and Park District and later worked with the County of Sacramento, Southgate Recreation and Park District and City of Santa Cruz. At each step of his career Bob eagerly took on increased responsibilities for the recreational facilities that make Sacramento and California such a wonderful place to live.

In 1981, he returned to Sacramento as the Director of Parks and Community Services. For ten years Bob headed the department, managing over 600 employees and hundreds of volunteers. Under his direction the department increased revenue, grant funding and accomplished many important projects, including an expansion of the Crocker Art Museum.

Recognizing his management abilities, Bob was appointed Deputy City Manager in 1991, and he served in that position until being named Sacramento County's Executive in 1996. While with the County, he implemented the Board of Supervisors' policies and was ultimately responsible for managing over ten thousand employees and an annual budget of 1.4 billion dollars. Among the long list of achievements with the County, he was able to effectively reorganize the Economic Development Program and helped implement reuse plans at McClellan and Mather Air Force Bases, both of which were shut down.

From 1999 until the present day, the people of Sacramento have been incredibly fortunate to have Mr. Thomas serve as Sacramento's City Manager. He has been an effective leader, working with the City Council on many issues of great importance. These include flood control projects, major transportation upgrades across the city and managing the development of many new neighborhoods. In recognition of his superb work, Mr. Thomas was named Public Administrator of the Year in 2005 by the American Society for Public Administration.

Bob was also an active member of the California National Guard 175th Medical Brigade until his retirement from the Guard this year. Given his extensive background in municipal government, work with the California National Guard and decades spent living in Sacramento, I was always confident that Sacramento was being taken care of with Bob Thomas at the helm, as was my late husband Congressman Robert Matsui.

Whether it has been with the California National Guard, County of Sacramento, or with the City of Sacramento, Bob Thomas has left a legacy of successful public management and service that will be hard to match. On behalf of the people of Sacramento and the Fifth Congressional District of California, I ask all my colleagues to join me in thanking Bob Thomas for his public service and to wish him a healthy and happy retirement.

## TRIBUTE TO JACK WILSON

### HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of Jack Wilson, a prominent real estate developer, who helped the Tampa Bay area evolve into the vibrant, bustling community it is today.

Born in Royston, Georgia, Jack earned his bachelor's degree from the Georgia Institute of Technology and his master's degree from Harvard Business School. He came to Tampa in the 1970's as Florida president of the Landmarks Group, but soon he was developing important projects through his own company, the Wilson Co.

Jack rapidly put his mark on Tampa. The cofounder and first president of the Westshore Alliance, Jack helped turn this area around and make Westshore a hub of business activity. Jack also worked on revitalizing Tampa's downtown, renovating the Franklin Exchange and a number of office towers. Thousands of Tampa Bay residents have come to know Jack's projects—whether they work in Bayport Plaza or Cypress Center, have visited the Grand Hyatt Tampa Bay, or reside in one of the thousands of affordable rental housing units that Jack built.

Tampa's sports fans owe a huge debt of gratitude to Jack as well. He supervised the construction of the New York Yankees Legends Field, helped secure public funding for Raymond James Stadium and headed up the task force that brought Super Bowl XXXV to Tampa.

But Jack was always focused on more than just building his business. He also cared deeply about building up his community, and it showed in the quality of his work, the foresight in his development plans and the attention he paid to the impact of his projects on the environment. In fact, Jack was the first developer to receive an award from the Tampa Audubon Society.

Jack served Tampa's business community as well, working as chairman of the Greater Tampa Chamber of Commerce and the Tampa Bay Partnership and volunteering his time for a long list of other business and charitable organizations. In 2001, he was inducted into the Tampa Bay Business Hall of Fame.

Those who had the privilege of getting to know Jack will remember his generosity, his Southern charm, his thoughtfulness and his constant willingness to help others. There is no doubt about it—Jack had an enormous amount of class. On behalf of the residents of Tampa Bay, I would like to extend my deepest sympathies to Jack's family. His legacy will live on not only in the structures he built but in the community he improved.

## CFTC REAUTHORIZATION ACT OF 2005

SPEECH OF

### HON. NYDIA M. VELÁZQUEZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Ms. VELÁZQUEZ. Mr. Speaker, I rise to express concerns with Title II of H.R. 4473, which reauthorizes the Commodity Exchange Act (CEA). When the CEA was previously reauthorized in 2000, changes were made that brought much needed legal clarity to over-the-counter derivatives and foreign currency markets. In the same legislation, the regulatory structure of U.S. futures exchanges was enhanced, providing a more flexible approach to the oversight of complex financial instruments. Together, these two developments provided a structure that has promoted the depth and breadth of U.S. capital markets throughout the world. Such vibrancy of U.S. capital markets is critical to creating new jobs, building wealth, and attracting investment.

While the reauthorization of the CEA is essential to the efficient functioning of our Nation's capital markets, I am concerned that title II of H.R. 4473—while well intentioned—may disrupt the balance created through the reauthorization of the CEA in 2000. Title II of H.R. 4473 provides the Commodity Futures Trading Commission (CFTC) with expansive new powers that may be interpreted as applying the CEA to over-the-counter natural gas contracts. Doing so may jeopardize the legal certainty of certain natural gas contracts, potentially undermining the efficiency and robustness of the very markets that proponents of Title II are seeking to promote. The Federal Reserve and the Department of Treasury have raised similar concerns about this legislation.

In addition, other concerns have been expressed about H.R. 4473. Section 201 provides the CFTC with new market surveillance powers, which require the CFTC to investigate any highly unusual price changes in futures contracts for natural gas. Such new powers may not be the most appropriate policy response to address widely fluctuating natural gas prices. The Federal Reserve has noted that wide swings in natural gas prices are not a result of weak regulation, but rather due to supply and demand imbalances related to insufficient infrastructure necessary to produce and transport the underlying commodity. Further, section 202 imposes new position reporting standards on holders of natural gas futures or options contracts, requiring that records of such contracts be maintained for five years and provided to the CFTC as their request. These new requirements are not without costs, which could be significant and may be

passed on to homeowners and businesses. As a result, this provision could have the unintended affect of increasing costs on energy consumers.

By potentially expanding CFTC authority beyond that established in the 2000, serious questions have been raised about CEA's scope and construction and the potential impact these new changes may have on energy consumers, investors, and industry participants. As this legislation heads to conference, I urge my colleagues to thoroughly discuss and address these issues and concerns so that we can be confident that our Nation's capital markets remain strong and vibrant.

## TRIBUTE TO SCOTT TUCKER

### HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. WOOLSEY. Mr. Speaker, we rise today to honor Scott Tucker, of Petaluma, California. On January 1, 2006, Scott will officially retire after 13 years as the San Francisco District Manager, and 38 years with the United States Postal Service. He is the longest serving postal service executive at any major metropolitan area in consecutive years.

Mr. Tucker's career with the United States Postal Service began in 1968 in Hanford, California as a letter carrier. He held a succession of managerial positions in postal operations, until in September 1992, he was appointed to his current position as the San Francisco District Manager.

As the District Manager, Scott is responsible on a daily basis for the delivery of approximately 10 million pieces of mail to 3 million customers throughout northwest California that ranges from Sunnyvale in the south to the Oregon Border in the north. He supervises a workforce of 10,400 mail carriers, mail handlers, mail clerks, postmasters, and operations managers. In the North Bay we have grown to approximately 3,000 employees spread throughout 205 postal facilities under Scott's leadership.

The San Francisco postal district has for nine consecutive quarters, under Scott's leadership, received the ''Order of Yellow Jersey'' award for excellence in customer satisfaction and commitment to professionalism. The district has been repeatedly recognized by IBM's Business Consulting Services Unit, as one of the best on-time mail services for any metropolitan area in the Nation.

In the past 13 years, Scott has helped increase awareness of multicultural groups within the district. Under his leadership, numerous diversity leadership advisory councils were established including the Women's Council, African American Council, Asian American/Pacific Island Council, and the Hispanic Council. The Bay Area Federal Executive Board recognized his efforts and presented him with a diversity leadership achievement award.

Mr. Speaker, it is with great pleasure that we honor Scott Tucker today for the years he has dedicated to consistently improving upon how we all receive our mail. The San Francisco District of the United States Postal Service employees and customers will greatly miss him. He has left some very big shoes to fill.

## TRIBUTE TO FRANKLIN REGIONAL HIGH SCHOOL PANTHERS FOOTBALL TEAM

### HON. MELISSA A. HART

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. HART. Mr. Speaker, I would like to take this opportunity to congratulate the Franklin Regional High School Panthers Football team for winning the Western Pennsylvanian Interscholastic Athletic League (WPIAL) 2005 AAA Championship.

The Panthers have had an excellent season with a record of 14 wins. The team, under the leadership of head coach Greg Botta, have worked incredibly hard in the season, and off season, to earn the title of WPIAL.

The Panthers travel to Central Pennsylvania on December 9, 2005 to battle the Pottsville Area High School Tide for the AAA State Champion title. The game will take place at Hershey Park Stadium at 7 pm.

I ask my colleagues in the United States House of Representatives to join me in honoring the Franklin Regional High School Varsity Football team. It is an honor to represent the Fourth Congressional District of Pennsylvania and a pleasure to salute the determined scholar-athletes, like the Panthers, and their dedicated coaching staff.

## PATRIOT ACT

SPEECH OF

### HON. RICHARD W. POMBO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Mr. POMBO. Madam Speaker, yesterday the House passed the conference report to H.R. 3199, reauthorizing the Patriot Act. While much has already been said about the national security aspects of this report, I would like to commend my colleagues for including the Combat Meth Act in the report. The meth epidemic is sweeping the nation, and has become a major law enforcement problem in California's 11th District.

All the law enforcement officers I meet with tell me that meth is the number one problem they face today. From manufacturers to dealers, and the attendant social crimes they create, meth is devastating communities across the country. Methamphetamine production and distribution leads to murders, assaults and property crimes. Additionally, there is an associated increase in domestic abuse, prostitution, child abuse and neglect, and homelessness. The provisions included in H.R. 3199 are a positive development in the fight against this scourge.

H.R. 3199 will repeal the so-called ''blister pack exemption,'' which currently allows the sale of unlimited quantities of pseudoephedrine. Pseudoephedrine and other major precursor chemicals in meth production will now be classified as ''Schedule Listed Chemicals'' with a daily purchase limit of 3.6 grams. These drugs will now be kept in locked cabinets or behind the counter at drug stores and other retailers. These measures will help reduce the manufacture of meth in the United States.

As meth is an international problem, the bill contains provisions for international monitoring, and funding for cooperative efforts with Mexico, a source of much of the meth in California. It also strengthens federal penalties against meth smugglers and traffickers.

Finally, there is language to clarify that employers registered under the Controlled Substances Act may ask prospective employees about prior drug convictions, as a safeguard to ensure that people with access to controlled substances do not pose risks to the public welfare. This clarification is necessary to stop the diversion of drugs from pharmacies for illegal purposes. Currently, in many states, employers are not allowed to ask this critical question.

Madam Speaker, as a member of the Methamphetamine Caucus, I applaud the passage of this important language. While we still have a long way to go in the war on meth, this is certainly a step in the right direction.

## TRIBUTE TO MR. MEL KING

### HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor Robert ''Sonny'' Smith who was recently inducted into the Babe Ruth Baseball Hall of Fame. Babe Ruth Baseball was started as a ''grass roots'' movement in the small, rural communities of Colorado. The town of Las Animas is no exception, and like most towns, the Babe Ruth program has flourished because of the efforts and actions of volunteers like Sonny who stepped up to the plate to serve others.

Sonny's involvement with Babe Ruth began around 1982. He was the District 2 Commissioner for 10 years and then became the Assistant State Commissioner for the 15 year-old Babe Ruth program. He has held that position from 1992 to the present time.

Sonny has not just been active in Babe Ruth in his community, but in other endeavors as well. He was the Las Animas Ball Association Vice President from 1978–1980. He served as a Las Animas City Councilman from 1982–1986 and was the chairman for the Parks and Swimming Pool committees. Sonny was a member of the Las Animas School Board from 1996–2000. He has been a member of the Bent County Recreation Committee from 1978 to the present time. He served on the St. Mary's Catholic Church Council from 1988–1992, and he has served as a football, baseball, softball, and basketball official from 1978 to the present time.

One of Sonny's most notable achievements was his work on the Ad Hoc Committee for building the new baseball field in Las Animas from 1998–2004. This field has hosted many area tournaments, as well as the local Babe Ruth League games.

Where does this man get the energy to accomplish these feats? I believe it comes from a strong desire to see the young people in his community and around the state have an opportunity to participate and excel in the great game of baseball.

Sonny has been a very valuable member of the Colorado Babe Ruth League, Inc. management team. His good-natured attitude and

"laid back" style have served him well when handling issues that come up at the various levels of tournament play. He has even worked on Babe Ruth Tournaments for the Midwest Region.

Because of Sonny's love for kids and his commitment to the Babe Ruth program, he has been welcomed into the Colorado Babe Ruth Hall of Fame, and I am proud to represent such a fine individual in the U.S. Congress. I ask my colleagues to join me in congratulating Robert "Sonny" Smith for his outstanding contributions to his community.

## ON "EXPRESSING THE SENSE OF THE HOUSE OF REPRESENTATIVES THAT THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DEPLORABLY INFRINGED ON PARENTAL RIGHTS IN FIELDS V. PALMDALE SCHOOL DISTRICT."

### HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. McCOLLUM of Minnesota. Mr. Speaker, today this House considers a resolution to condemn a ruling by a United States Court of Appeals. Whether we agree with the Court's decision or not, the Court returned its decisions based on Constitutional law. A Congressional resolution in reaction to the Palmdale School District's part in the development and use of the survey tool would be the more appropriate role for this Congress. The Palmdale School District, not the Court, failed the parents and students. Parents have the right to a final say in the type of education their child receives and the right to deny their child's participation in surveys and research. Parents can only do so when they are given full and accurate information.

As a Member of Congress, it is my role to create, consider, and vote on legislation. The Court's role is to rule on those laws. I will vote "present" on this resolution before us today because I believe strongly in the separate branches of our government and that Congress oversteps our role by denouncing the Court's decision.

## ONE FOR TINA DUBLIN

### HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. CUELLAR. Mr. Speaker, I rise today to celebrate the wedding anniversary of John and Frances Cuellar, a couple from South Texas who has been married for 50 years.

Mr. Speaker, John Cuellar and Frances Gonzales were both born during the Depression and derived great family values from having little to their name. Family, honesty and love have led them to 50 years of happiness. They met while they were independently involved in the Catholic Youth Organization in Cuero, Texas.

After they met, Mr. Cuellar joined the U.S. Navy and was sent to Maryland. The couple wed on Dec. 28, 1955 while John was home on leave for Christmas. They both moved to Maryland after their marriage to start their lives together.

After his tour in the Navy was over, Mr. Cuellar joined the Texas Highway Department and then transitioned into law enforcement with the Cuero Police Department. At the close of his professional career, he was employed with the U.S. Marshall's office in Victoria, Texas. Mrs. Cuellar worked as a deputy county clerk and is now retired. She is a licensed nurse and prides herself on being so.

The Cuellar's raised four children, John Jr., Mike, Ronnie and Tina. They have fifteen grandchildren and five great grandchildren. Texas is honored to have such a fine couple who has served Southern Texas faithfully and diligently.

Mr. Speaker, I am proud to honor John and Francis Cuellar and I thank you for this time.

## HONORING DOUGLAS W. DODGE

### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. RADANOVICH. Mr. Speaker, I rise to honor Captain Douglas W. Dodge of Turlock, CA upon his retirement for his tremendous service to his community. Turlock Police Services will hold an event to honor Captain Dodge on December 15th, 2005.

After returning from service with the United States Army in Vietnam, Douglas Dodge took a position as a reserve officer with the Turlock Police Services in 1973. In September of 1974, he was hired as a full-time Parking Enforcement Officer and worked in this classification for approximately one and one-half years. During this assignment he worked other duties, including property/evidence, dispatch, and identifications for the Investigations Bureau. In February of 1976, he became a full-time sworn police officer and worked patrol and investigations assignments. Over the years he was promoted up through the ranks and in April of 2002 made the rank of Captain.

In 1999, Captain Dodge returned to college to pursue a Bachelor's Degree in Business Management. He is a member of the Stanislaus County Peace Officer's Association and an associate member of the California Police Chief's Association. At present, he serves on the Steering Committees for the Ray Simon Regional Criminal Justice Training Center and the Sacramento Valley High Tech Crimes Task Force.

Mr. Speaker, I rise to honor Captain Douglas W. Dodge of Turlock, CA for his years of dedicated service. I invite my colleagues to join me in thanking Captain Dodge for his tireless efforts and in wishing him many years of continued success.

## TRIBUTE TO CARDON AND JOYCE BERRY—2005 MERITORIOUS SERVICE

### HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor Cardon and Joyce Berry, the 2005 4–H Meritorious Service Award winners. At the 2005 Kiowa County 4–H Achievement Banquet on Friday, November 4, 2005 the Meritorious Service Award was presented to a couple that believe in the 4–H program and the benefits and opportunities it offers to youth. They were both ten-year 4–H members and have devoted numerous years as leaders. They raised two children who were very active in 4–H and are now assisting their grandchildren who are active members in a local club today.

The Berrys made an important decision to have their children participate in 4–H, knowing how much it had meant in their youth. Cardon grew up in Kiowa County and raised his own family in the same home in which he had lived. The 4–H Club he participated in was no more, but the community had once again found itself with many youngsters. The Berrys helped to reinstate the Prairie Queen 4–H Club for the kids who benefited from the experience.

The Berry family is faithful in attending numerous 4–H activities, and have sponsored many trophies over the years. They are both active in many different civic roles within Kiowa County and they make their community a better place.

I am honored to be representing Cardon and Joyce Berry in the U.S. Congress. Individuals like this make 4–H and the youth who participate a valuable asset to the community. I'm sure Kiowa County will be blessed for many more years because of the selflessness of the Berry Family.

## 30TH ANNIVERSARY OF THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

### HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Ms. McCOLLUM of Minnesota. Mr. Speaker, today I rise in support of this resolution celebrating the 30th anniversary of the enactment of the Education for All Handicapped Children Act and reaffirming Congress's support for the Individuals with Disabilities Education Act (IDEA).

I believe strongly that Congress must provide the funding promised nearly 30 years ago for IDEA and that is why I support legislation that would fully fund this commitment to special education. All American children must have access to a free public education in an environment that is appropriate and supportive.

While this resolution today acknowledges the promise to our states and schools to fund IDEA at 40 percent of the average per pupil expenditure, it fails to address how far we are from making that goal a reality. This Republican-controlled Congress funds IDEA at less than 20 percent of its promise. We owe it to our students, their families, and our communities to make full funding a reality. I will continue to work with my colleagues on both sides of the aisle to fully fund our commitment to special education.

Because of the efforts of families, teachers, and school administrators across the country, we are, today, able to make the needs of students with disabilities a priority. It is time that

this Congress remembers not only the anniversary, but also the promise and commitment made to families and children. I urge my colleagues to support this important resolution and to continue to vote in favor of funding our federal responsibility to special education in order to move us forward in our goal to provide an equal, quality education for all students.

## ONE FOR DEBUTANT

### HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. CUELLAR. Mr. Speaker, I rise today to honor the 80th anniversary of The Pals, an organization in San Antonio, Texas that has been helping young black women enter adulthood with more ease and grace through their annual Debutante Ball.

Mr. Speaker, in 1925, four young ladies were meeting weekly for a social game of bridge. One of the women, Vivian Lowery Vincent suggested that they start The Pals. The name derived from the phrase ''pleasant attitude toward life.'' Others soon joined the group, and by 1927, these women envisioned a dream to present young, African American girls approaching adulthood to society. This dream became reality when The Pals hosted the first Debutante Ball in 1928.

The Club members believed that the social life of young Black women in San Antonio would be more secure by having, in their background, the interest of older, caring, dynamic women. They also knew that, in the goal for the perpetuity of African Americans, there was an urgency to preserve ''gentility'' within the race. Subsequently, The Pals selected and sponsored debutantes to develop and promote social and civic awareness, cultural dignity, pride and sense of self.

In 1979, The Pals were honored by the United Negro College Fund, Inc and presented the Fred D. Patterson Award and in 1992, the National Council of Negro Women, Inc honored The Pals for the organization's outstanding leadership toward the growth and development of the Minority Community of San Antonio. Each year accolades are received from parents, citizens and debutantes.

Mr. Speaker, I am proud to honor The Pals for helping young women in our community.

## HONORING CHIEF LONALD LOTT

### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. RADANOVICH. Mr. Speaker, I rise to honor chief Lonald Lott of Turlock, CA upon his retirement for his dedicated service to his community. Turlock Police Services will hold an event to honor Chief Lott on December 15th, 2005.

After serving in the United States Coast Guard, Lonald Lott entered law enforcement in 1973 as a reserve police officer for the City of Hayward. A year later, he moved to the Central Valley after having accepted a position as a police officer for the City of Modesto. In 1980, Officer Lott traveled slightly south to the City of Turlock to serve as a police officer. Having demonstrated tremendous leadership, Officer Lott was appointed to the position of Chief of Police in February of 1997.

Chief Lonald Lott holds a Bachelor of Science degree in Organizational Behavior, a Master of Arts degree in Criminal Justice, and is a graduate of the FBI National Academy. Chief Lott has held leadership positions in numerous law enforcement organizations, including the California Police Chiefs Association, Stanislaus County Association of Law Enforcement Executives and has served as a member of the Stanislaus County Peace Officers Association, the California Peace Officers Association and the International Association of Chiefs of Police.

Chief Lott also serves as a part-time faculty member at California State University-Stanislaus where he teaches courses in Criminal Justice, Management, and Leadership.

Mr. Speaker, I rise to honor Chief Lonald Lott of Turlock, CA for his years of dedicated service. I invite my colleagues to join me in thanking Chief Lott for his tireless efforts and in wishing him many years of continued success.

## TRIBUTE TO MR. MEL KING

### HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mrs. MUSGRAVE. Mr. Speaker, I rise today to pay tribute to the patriotism and heroism of Mr. Mel King.

Mr. King served with distinction in the Army Air Corp during the harrowing days of the Second World War. As a B–17 crew member in the 815th Squadron of the 483 Bombardment Group, Mr. King and his fellow crew members played an integral role in the Allied defeat of Nazi Germany.

The crew of the Good Deal formed in November 1943 with Mr. Melbourne King of Crook, CO as one of the thirteen member crew, which included Paul E. Ray, Warren O. Griffin, Carl B. Hardy, Gerald Kramer, Foster F. Knight, James I. Korshak, Walter J. Gladieux, August O. Bresciz, Theodore Engelun, Fred A. Clark, Jr., Robert J. Dalzin, and John M. Spear.

On April 12, 1944 Mr. King and the crew of the Good Deal participated in their first mission to Split, Yugoslavia. In the following months, the crew of the Good Deal saw action over Toulon, Milan, Weiner Neustadt, Vienna, Budapest, Blechhammer, Ploesti, and Memmingen.

Despite the fact that fourteen of twenty-six American B–17s were lost over the German town of Memmingen on July 18, 1944, Mr. King and his crewmates successfully downed seven German fighters.

Mr. Speaker, I am proud of Mr. King's distinguished service and humbled by his courageous patriotism. The sacrifices he and the men of the Good Deal made to ensure the liberty and freedom of future generations will never be forgotten. I urge my colleagues to join me in honoring Mr. Melbourne D. Ring and the crew of the Good Deal.

## COMMEMORATING THE JAVITS-WAGNER O'DAY PROGRAM

### HON. JACK KINGSTON

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. KINGSTON. Mr. Speaker, I wish to commemorate the Javits- Wagner 0'Day program (JWOD) on the service they provide to thousands of individuals.

The JWOD program is the single largest source of employment for individuals who are blind or have severe disabilities. This program employs more than 45,000 people. The JWOD program trains persons with disabilities to acquire job skills that will be resourceful in their everyday lives. With these skills and training, a participant in this program can receive wages and benefits thereby gaining a greater independence and quality of life.

In my district in Georgia, there is a JWOD program named Happy Hour that exemplifies the good work that this organization is built upon. Happy Hour employs 170 disabled individuals and gives them an opportunity to contribute to their communities. Executive Director Steve Smith leads an office of 90–100 hard working staffers along with many volunteers who are all dedicated to ensuring each person reaches a common goal.

Happy Hour has a working relationship with Robins Air Force Base. Through this relationship Happy Hour participants are able to help the government and save tax payers money. A few of the projects that help Robins Air Force Base is Robin's Recycling, respiratory cleaning and repair, tool de numbering, and air craft hardware sorting. Though they may seem minor, without Happy Hour, workers who do these tasks at Robins AFB would have a much harder time operating.

## FURTHER CONFERENCE REPORT ON H.R. 3010, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006

SPEECH OF

### HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Mr. LEVIN. Mr. Speaker, this Labor, Health and Human Services, and Education Appropriations bill is a very flawed bill which would badly underfund health care, education, and social services critical to all Americans. Although I was unable to vote in favor of the bill, I do want to call attention to one bright spot.

For the first time, the Congress has provided dedicated funding to educate women, their families, and their physicians about the risk factors and early warning signs of gynecologic cancer. Each year, tens of thousands of women die of gynecologic cancers that could have been treated had they been detected earlier. Ovarian cancer, the deadliest of the gynecologic cancers, has a survival rate of 80 to 90 percent if detected in Stage One or Stage Two and a survival rate of 20 percent or less in the late stages.

Although only cervical cancer has a screening test reliable enough for routine use on

women without symptoms, gynecologic cancers have clear risk factors and early warning signs. A recent study found that almost 90 percent of women with early stage ovarian cancer had symptoms before being diagnosed. That's why public education is key—if women and their doctors know the risk factors and early signs, a specialist can use diagnostic tools to rule out cancer or detect it in the early stages.

I first became aware of the tremendous opportunity for the federal government to save lives when I heard the story of one of my constituents. Johanna Silver Gordon was a health-conscious public school teacher who died of ovarian cancer after being diagnosed in a later stage—leaving friends, family, and students heartbroken that they and she had not known the early warning signs. Unfortunately, her story is all too common. I first heard Johanna's story from her sister, Sheryl, and I introduced legislation to create Johanna's Law, a national public education campaign to eradicate gynecologic cancer death. Thanks to Sheryl's work and that of thousands of other tireless cancer survivors, family members, and physicians, Johanna's Law has the support of a majority of the House of Representatives and provided the inspiration for the language in this bill.

The language in this bill directs the Secretary of HHS and the Office of Women's Health to coordinate their education and outreach efforts on gynecologic cancers into a national public education campaign, focused on early detection. The bill provides $100,000 in dedicated resources, in addition to the resources HHS already has for cancer education. It is a small but important first step toward ensuring that what happened to Johanna does not happen to other women. I commend the conferees for its inclusion, and hope we can work in a bipartisan fashion to build upon this effort.

I also want to commend my colleagues, DARRELL ISSA, ROSA DELAURO, and KAY GRANGER, who have worked tirelessly with me to promote Johanna's Law and raise awareness of gynecologic cancers. I hope we can continue to work together to build on this start.

## URGING OBSERVANCE OF AMERICAN JEWISH HISTORY MONTH

SPEECH OF

### HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am here today to urge President Bush to issue a proclamation for the observance of an American Jewish history month. I further urge all Americans to share in this commemoration to have a greater appreciation for the role the Jewish American community has had in helping to defend and further the liberties and freedom of all Americans.

In 1654, Jewish refugees from Brazil arrived on North American shores and formally established North America's first Jewish community in New Amsterdam, now New York City. America welcomed Jews among the millions of immigrants that streamed through our Nation's gates. The waves of Jewish immigrants arriving in America helped shape our great Nation.

Jewish immigration to America throughout the last 350 years brought with it legions of notable researchers, lawyers, statesmen, inventors, entertainers, artists, scientists, authors, musicians, doctors, ethicists, entrepreneurs and spiritual leaders—men and women who substantially transformed this nation and its urban communities.

In this month of observance of American Jewish history, I think it is also important that we also focus on our country's relationship with Israel. Israel has been one of our strongest and most committed allies since its conception in 1948. For 50 years, the United States and Israel have worked closely to pursue peace in the Middle East. I strongly believe that the dream of peace and stability in the Middle East can become a reality within our lifetime.

I ask my colleagues to support this resolution and urge President Bush to issue a proclamation for the observance of an American Jewish history month. A proclamation by the President will honor the contributions of American Jews throughout our nation's history, but also reiterate the continued importance of our taking an active role in the peace process in the Middle East. We have both an obligation and a vested interest in supporting Israel in its road to secure itself in peaceful, stable, and democratic region. I will leave you with a quote from one of the most famous Jewish American immigrants, Albert Einstein. He said ''He who cherishes the values of culture cannot fail to be a pacifist.'' Let's urge the President to reaffirm the value of the Jewish American Culture to the United States, and in doing so take one small step towards peace in the region.

## RECOGNIZING MR. GEORGE KAITSA

### HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. TIBERI. Mr. Speaker, I rise today to recognize Mr. George Kaitsa for his dedication to public service as he prepares to return to private life.

Mr. Kaitsa has a record of dedicated public service as a Member of Council and leader for Powell, Ohio. I am certain that his foresight and commitment to building a brighter future for the citizens of Powell will continue to inspire others. Providing Powell with the best representation and leadership possible has always been George's goal, and his service in office and commitment to his constituents over the years ensures his legacy will continue to be felt far into the future.

Thank you, George, for your service. Please allow me to join your friends and family in wishing you good health and prosperity.

## WOOD CHIP CO-GENERATION SYSTEM TO HEAT AND POWER VERMONT HOSPITAL

### HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. SANDERS. Mr. Speaker, I wanted to share with you some information regarding a bold new system that will help a small hospital in my state save hundreds of thousands of dollars annually in energy costs, while dramatically reducing greenhouse gas emissions and other environmental pollutants.

North Country Hospital in Newport, Vermont, has instituted an ingenious heating and electricity co-generation system that utilizes biomass wood chips instead of traditional heating oil as its fuel source. It is believed to be the first use of such technology in any hospital in the country. At today's energy prices, this new biomass gasification system could save the hospital as much as $328,000 annually in energy costs.

In addition to providing heat for the hospital complex, the process heats water from the chips into steam, which not only provides a supplemental source of electricity, but will produce the hospital's hot water and also help operate other critical equipment within the hospital, such as sterilization equipment, dishwashers and clothes dryers.

Energy cost savings realized by this environmentally sound energy choice will save the hospital, and hence its patients, substantial money that can be better directed toward critical healthcare services. This system provides an innovative example to hospitals and other public buildings in Vermont, across the country, and throughout the world.

Already, business people, government officials and hospital administrators from other regions are touring the new facility with an eye toward implementing such a system themselves. A company in Spain is designing a system based on North Country's model, with the exception that it will actually burn tomato vines instead of wood chips as its energy source. Surely, a system so versatile has tremendous potential to be effectively used far and wide.

Wood chips are a renewable source of energy, which recycles carbon that already exists in the natural carbon cycle; meaning no new carbon dioxide is added to the atmosphere from this biomass energy source. Wood chips are supplied from within Vermont; hence money spent on wood chips stays in the local economy and supports jobs in the area's forest products industry. For buildings 50,000 sq. ft. and larger, fuel cost savings likely more than offset capital financing costs and additional maintenance staff time requirements; hence, in many cases, a system can pay for itself in 5 to 10 years.

I enthusiastically commend the Board of Trustees at North Country Hospital and their innovative staff, especially Larry Labor, Steve Wolff and Terry Robbins, for taking energy matters into their own hands and raising the bar for how local leadership can have national and international significance and positive impact. Each of them deserves high praise for their efforts. They have given us a sterling example of how American hospitals can save substantial money on energy costs, help improve environmental conditions related to heat

and energy production, and help support their local job markets in the process. I encourage other hospitals and institutions in Vermont and across the country to study the potential of this new system for their own facilities and to duplicate it where appropriate.

## HONORING THE LIFE AND LEGACY OF HENRY KIRKSEY

### HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. THOMPSON of Mississippi. Mr. Speaker, I would like to recognize the life and legacy of Kirksey, former Mississippi State Senator, veteran proponent of civil rights and retired Tougaloo College professor.

Henry Kirksey personified the face of bravery. He was the lead plaintiff in most of the redistricting cases brought in Mississippi to bring the state into compliance with the 1965 Voting Rights Act in the late 1960s and early 1970s, when Mississippi was a dangerous place to do so. This was instrumental in opening the door to the creation of fair redistricting plans throughout the State. In 1965, Kirksey filed suit against the State, challenging county-wide election of State Representatives and Senators. That suit resulted in the adoption of single-member legislative districts in 1979.

We blacks elected in the State of Mississippi today owe that election more so to Henry Kirksey than anyone else. As a result of Kirksey's sacrifice, Mississippi today appears to have more African American elected and appointed officials at every level of government than any other State in the Nation. Kirksey's service as a plaintiff, expert witness and community organizer has led to the election of almost 600 African-Americans to public office in Mississippi. As part of this process, Kirksey became the first African American elected to the Mississippi Senate since Reconstruction.

He became known for filing the lawsuit that led to Jackson changing its form of government in 1985 to the mayor-seven-member council system. He also was a member of the group that fought for reapportionment changes in the late 1970s that led to a record number of black candidates being elected to the Legislature. Kirksey was instrumental in challenging the districts from which state court judges ran, resulting in more diversity on the bench.

As a noted map-maker, Kirksey was significant to the formation of Mississippi's majority-black 2nd Congressional District, which I have the distinct pleasure of representing today.

I applaud the life and legacy of Henry Kirksey.

## SUPPORT FOR MILITARY TECHNOLOGICAL CAPABILITIES

### HON. MICHAEL T. McCAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. MCCAUL of Texas. Mr. Speaker, our military forces need and deserve ample resources and superior technological capabilities to remain strong, which requires ongoing development efforts by both the public and private sector.

In fact, some of the military's most innovative technologies are being developed by small companies. Two examples are in the 10th District of Texas, with each of these Austin-based companies developing a technology with significant military value. To accelerate the availability of these new technologies for military applications, I have recommended that funding support be included in the Department of Defense Appropriations Act for 2006.

One of the technologies is a unique 3–D holographic imaging system developed by Zebra Imaging, which will soon be deployed by the Army in Iraq for intelligence and operational uses. The $2.25 million requested for this technology would advance the current non-portable imaging system to a field deployable unit for combat forces, with this capability available within 24 months. Army intelligence and operational units have urged the acceleration of this development effort because of the strategic and tactical value to combat troops, which the requested funding seeks to achieve.

The second technology is in the field of micro-electronics and involves RF MEMS switches and relays under development by TeraVicta Technologies. These micro devices, which provide enormous advances in the size, capabilities and performance of military electronics, are key to achieving faster and more powerful network communications, radar and satellite systems. The $2.25 million requested will accelerate TeraVicta's development work, specifically supporting a program to bring RF MEMS switches to a production-ready status and available for a variety of military applications.

These two technologies are recognized within the military as crucial developments, and I hope the Defense Appropriators provide the necessary funding to quickly bring them to operational use.

## A NEW TECHNOLOGY IN PERMANENT, SELF-CLEANING AIR FILTERS FOR MILITARY VEHICLES

### HON. MICHAEL T. McCAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. MCCAUL of Texas. Mr. Speaker, I rise today to support a new technology in permanent, self-cleaning air filters for military vehicles operating in high-dust environments, such as in the Middle East.

A company in my district, Signature Science LLC, and its partners are proposing to adapt, integrate and fully test a new self-cleaning air filter technology developed for military vehicles that will save the Department of Defense millions of dollars annually by eliminating the cost of disposable air filters in addition to reducing maintenance costs of vehicle engines. Diesel engines on military vehicles currently use disposable air filters that require frequent changes to protect engines from the damage caused by dusty environments. In Iraq for example, these filters must be replaced after as little as 16 hours of use on some vehicles operating there.

Signature Science's technology for a permanent, self-cleaning air filter will save American tax dollars while avoiding logistical problems for the military such as operational burdens, decreased fuel efficiency and increased security risks.

For these reasons we need to advance this technology beyond the research phase in the very near term, and I believe that the Defense Appropriators would be serving the national interest by funding the development and testing of these air-filter prototypes for our military vehicles.

## H.R. 4550, THE NATIONAL HEPATITIS B ACT

### HON. MICHAEL M. HONDA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HONDA. Mr. Speaker, I rise today in strong support of H.R. 4550, the National Hepatitis B Act. Mr. DENT from Pennsylvania and I have partnered in this bipartisan effort to address the needs of Americans afflicted with chronic Hepatitis B.

Chronic Hepatitis B is a serious public health concern here in the United States and worldwide. The Hepatitis B vaccine is the most effective way to prevent chronic Hepatitis B and its deadly implications of liver cancer and liver failure. Yet, vaccination rates remain low and Hepatitis B is one of the most commonly reported vaccine-preventable diseases in the U.S.

Chronic Hepatitis B is often called a "silent disease" because more than two-thirds of those infected with Hepatitis B have no recognized symptoms. Without appropriate screening and management of the disease, one in four Hepatitis B carriers dies from liver cancer or liver disease. Early detection reduces the likelihood that the virus is unknowingly transmitted to others. Unfortunately, many of those who become infected with the disease do not recognize the symptoms until after they have developed significant liver damage or have already passed it on.

Mr. Speaker, as Chair of the Congressional Asian Pacific American Caucus, I am especially concerned because Hepatitis B is one of the greatest health disparities affecting the Asian Pacific Islander American community. As many as 1 in 10 Asian Pacific Islander Americans are chronically infected with the Hepatitis B virus.

We all have constituents affected by this disease. More importantly, we have the ability to stop the spread of this disease. Last May, I was pleased by the strong bipartisan support in both the House and Senate for the resolutions supporting National Hepatitis B Awareness Week. We also had tremendous bipartisan interest in the Hepatitis B "Aim for the B" Congressional Briefing held on July 21, 2005.

We know that there is hope. We have vaccines and treatments available that were not available 25 years ago. With treatment, patients have a better shot at beating this disease and preventing its progression to liver disease. However, there is much work that needs to be done. We need to increase public education about Hepatitis B, help infected patients and their physicians identify and manage this disease, raise awareness of the consequences of untreated chronic Hepatitis B, and help increase the length and quality of life

for those diagnosed with this life-threatening disease. We need to improve state-by-state tracking of trends, incidences and prevalence of chronic Hepatitis B.

I urge all my colleagues to come together to prioritize this public health issue and support H.R. 4550.

## RECOGNIZING GRANDPARENT-HEADED AND OTHER RELATIVE-HEADED HOUSEHOLDS

### HON. MAURICE D. HINCHEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HINCHEY. Mr. Speaker, there are more than six million grandparent-headed and other relative-headed households in the United States. In my home state of New York, 9 percent of the children live with non-parent relatives. These relatives have opened their hearts and homes to children who can no longer, for a variety of reasons, live with their parents. During this holiday season, I would like to recognize these relatives for providing safety, shelter, food, and love. Their kindness and generosity is acknowledge. I extend my most sincere appreciation for the selflessness these families demonstrate and note that their selflessness provides a benefit not only to the children under their care but also to the community at large.

## HONORING CAREY HOBBS

### HON. JEB HENSARLING

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HENSARLING. Mr. Speaker, today I would like to recognize the outstanding achievements of Mr. Carey Hobbs. I have had the pleasure of knowing Carey Hobbs for more than 20 years. He is a man who loves his country and cares deeply about his community. He is selfless and unassuming. He is a dedicated family man and a devoted Christian, and I am very proud to call him my friend.

Following his graduation from high school in Abilene, Texas, Carey Hobbs began his lifelong association with Texas Tech University as an undergraduate student. After earning his degree, Carey Hobbs joined the military in 1958 and received a commission in the United States Marine Corps. During his five years of active duty, he flew jet fighters and also served as a test pilot.

Over the course of his professional career, Carey Hobbs has become a successful small business owner and a leader in the textile industry. He is a true entrepreneur, who has helped drive innovation and job creation. Since 1972, he has been the President and CEO of Hobbs Bonded Fibers in Waco, Texas. He holds several patents and has served on board of directors for both the National Association of Nonwoven Fabrics Industry and the National Cotton Batting Institute. For eight years, he was a member of the U.S. Department of Commerce Industry Sector Advisory Committee for Trade Policy Matters for Textiles and Apparel. In 1988, Carey Hobbs was named Small Business Person of the Year for the Dallas District.

Through the years, Carey Hobbs has remained a steadfast supporter of his alma mater, Texas Tech University, and higher education in Texas. He has served on the Texas Tech Board of regents and was President of the Texas Tech Alumni Association National Board of Directors. He has also dedicated his time to enriching higher education through his service on the Texas Higher Education Coordinating Board and as a participant in Texas A&M University's Visiting Executive Program.

Carey Hobbs is an important and positive role for the youth of Texas. He is an active member of the Stonegate Community Church in Waco. He serves on the board of World Hunger Relief and the International Medical Education Foundation, which is working to build a hospital in the Ukraine. Carey Hobbs is also a devoted family man. He and his wife Brenda have five children: Larry, Terri, Angela, Andy and Cindy.

As the Congressman for the Fifth District of Texas and a longtime friend of Carey Hobbs, it is my honor to recognize him for his outstanding achievements in business and in life. Carey Hobbs has truly made his community and his country a better place.

## TRIBUTE TO TEXAS STATE UNIVERSITY

### HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. CUELLAR. Mr. Speaker, I rise today to honor the achievements of the Texas State University Football Team that made it all tbe way to the semi-finals of the Division 1-AA playoffs.

Mr. Speaker, Texas State University, which is located in San Marcos, Texas, represented their school with tremendous pride and ability. The Bobcats finished the season with an 11–3 record and a Southland Conference championship, their first conference championship since 1983.

In only his second year, Head Coach David Bailiff and staff have taken the Bobcats from a good record in 2004 to a great one in 2005. Coach Bailiff and his staff will attempt to bring the national championship to San Marcos next year, a title that would be a restoration of the powerful tradition of Division II national championships in prior years.

Texas State football players have made their school proud off the field as well. Several players have spent time in area San Marcos elementary schools mentoring the children in the community. The team was also honored to have six student-athletes named to the conference's All-Academic team, a testament to the dedication the coaches and players have to achieve in the classroom as well.

Mr. Speaker, I am proud to celebrate Texas State's outstanding football season and I thank you for this time.

## IN RECOGNITION OF BARBARA CONACCHIO

### HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. ACKERMAN. Mr. Speaker, I rise today in recognition of Barbara Conacchio, who will be honored by the Queens Board of Elections on January 26, 2006 for her 25 years of dedicated service.

Barbara's career with the Queens Board of Elections began in January of 1981, when she was hired as a temporary employee. Less than a week later, realizing what a great asset Barbara was, the Board of Elections offered her a permanent position. Seven years later, in 1988, the Board once again recognized her outstanding work and promoted Barbara to Administrative Assistant, where she performed masterfully. In June of 1991, she was appointed as Chief Clerk of the Queens Board of Elections. Over the past fourteen years, Barbara has held this post with remarkable poise, leadership and distinction.

Despite her hectic career, Barbara has voluntarily served our community through a number of organizations. She is a Past-President of the Knights of Columbus—General Father Sherman Shine Columbiettes, a member of the Queens Historical Society, and Secretary of the Board of Directors of the Mitchell Gardens Co-op.

While Barbara has had a distinguished and praiseworthy career at the Board of Elections, and is celebrated as a community leader, her family—her husband of 30 years, Ronald, along with her two daughters, Amanda and Lisa, and two granddaughters, Brianna and Tiffani—remains the source of her greatest pride and inspiration.

Mr. Speaker, it is with great satisfaction that I rise to commend Barbara Conacchio. The accolades bestowed upon her for the 25 years of outstanding service she has given to the Queens Board of Elections are entirely deserved. I know all my colleagues in the House will join me in honoring Barbara for her outstanding work and wishing her many more years of success.

## TRIBUTE TO DORENA KNEPPER

### HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. SHERMAN. Mr. Speaker, I rise today on behalf of myself and my California colleague Howard "Buck" McKeon to honor a talented individual, Dorena Knepper, on the occasion of her retirement as director of Government Affairs at California State University, Northridge. Due in no small part to Dorena's hard work, guidance and support, CSUN has become one of the largest and most prominent universities in the California State University system.

Just last year we congratulated Dorena upon the celebration of her 40 years of public service at CSUN. During her impressive tenure, Dorena has made an exceptional contribution both to the university and to the greater community. Working with her on Federal appropriations and other legislative

issues, I have been impressed by her dedication and efficacy. Few individuals are as deserving of recognition.

Dorena's 40 years of service speak volumes about her personal investment in, and dedication to, the CSUN community. Dorena began her relationship with the university as a student at what was then San Fernando Valley State College. Dorena has been employed at CSUN since 1964. Beginning in 1972, she held a variety of positions in the Office of the President, including 16 years as executive assistant for former President James Cleary. Her career in governmental relations began in 1982 when she dealt primarily with community inquiries. Today, as director of Governmental Affairs, Dorena oversees the seamless operation of CSUN's local, State, and Federal Government relations.

Dorena is equally comfortable whether working with national leaders, students, staff, or community members. She is a leader on campus, serving on and chairing diverse faculty, administrative, staff and student committees. She also deals effectively with the concerns of the local community. This dexterity was evidenced by her work during the aftermath of the 1994 Northridge Earthquake. The Earthquake hit the University hard, causing extensive damage throughout the campus. Dorena coordinated visits from local and national leaders to help them survey the damage and plan the recovery. She arranged a campus visit by President Clinton on the first anniversary of the earthquake. That presidential visit brought national attention to the importance of CSUN as a vital center of higher education in the Los Angeles area and helped promote the recovery.

Active in numerous business groups, including three chambers of commerce and the Valley Industry and Commerce Association, she also is a legislative advocate for two nonprofit charitable associations.

Mr. Speaker, please join Mr. MCKEON and me in honoring Dorena Knepper, a remarkable woman who has dedicated her life and career to CSUN, its students and to promoting higher education and civic service in the San Fernando Valley. We all wish her a fulfilling retirement.

## URGING MORE AID TO PAKISTAN FOR EARTHQUAKE VICTIMS

### HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. MEEK of Florida. Mr. Speaker, I rise to draw the attention of my colleagues to the growing tragedy in Kashmir, a northern region of Pakistan located along the Indian border. In early October of this year, an earthquake devastated that area, killing tens of thousands of people and leaving millions more homeless. Each passing day brings new heartbreak to that remote region as exposure, illness, and famine continue to wreak havoc on the population. These people are desperate, and they need our help.

The earthquake's epicenter hit Muzaffarabad, the regional capital, and registered a magnitude of 7.6 on the Richter scale. For comparison, the 1989 earthquake that hit San Francisco had a magnitude of 7.1 and its epicenter was more than 70 miles away. The Pakistani Government has reported that at least 73,000 people have died, 15,000 they believe to be school children. The World Bank and the Asian Development Bank reported in their assessment after the quake that at least 3.5 million people have been dislocated, and that another 1.6 million are without adequate food supplies.

This mountainous region of Pakistan lies at the foothills of the great Himalayan Mountains. The area receives as much as 10 feet of snow during the winter months, and nighttime temperatures can easily drop to 50 degrees Fahrenheit below zero. As winter quickly approaches, the severe potential for further catastrophe grows for the millions of homeless Pakistanis living in makeshift tent communities.

Mr. Speaker, the earthquake that devastated the capital city and surrounding communities disastrously separated brother from sister, parent from child, and destroyed the lives and livelihoods of countless families. International aid organizations have speculated that the tragedy of the quake's aftermath could surpass that of the tsunami that struck just months earlier given the region's severe climate, remoteness, and the shortfall of international assistance. Without immediate action by the international community, thousands more will surely perish.

The World Bank estimates that $5.2 billion will be needed to adequately rebuild the region and care for the quake's victims. The Bush administration has provided $50 million in emergency assistance and pledged another $150 million; however, more is needed. For this reason I have written to President Bush requesting that he double his request to Congress, and provide $300 million towards Pakistani reconstruction.

The United States and Pakistan have long worked together, and jointly we are fighting the ongoing war on terror. In addition, additional aid from our country would send a signal to other nations that the United States stands ready to help in times of need. Mr. Speaker, I call upon my colleagues in the House to strongly support measures that would send addition aid to help alleviate the suffering the Pakistani people.

## STATEMENT ON REMOVING NAME FROM H.J. RES. 73

### HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. UDALL of Colorado. Mr. Speaker, I want to explain why I sought and obtained unanimous consent to have my name removed as a cosponsor of H.J. Res. 73, a resolution introduced by my friend and colleague Rep. JACK MURTHA calling for the rapid withdrawal of American forces from Iraq.

In short, my name was added in error. But I'd like to take this opportunity to explain why I cannot support Mr. MURTHA's resolution at this time.

Rep. MURTHA's call for the rapid redeployment of U.S. forces carries significant weight in Congress because he is not only a decorated veteran, but also one of the most respected voices in our country on military and national security policy.

Like Rep. MURTHA, I believe the Bush administration has largely failed in Iraq because the civilian direction of the war has not matched the skill and sacrifice of our soldiers. Going to war the way we did was a strategic mistake, and the aftermath has been a failure because of the president's refusal to plan and refusal to listen.

Unlike Mr. MURTHA, I voted against the resolution authorizing the president to rush to war in the first place. I did so because I had concerns about the president's refusal to consider more aggressive inspections of WMD before going to war, his inability to secure greater international support, his obvious failure to develop a plan for securing peace after ousting Saddam, and his reckless disregard of experienced military advice.

Although I was an outspoken opponent of going to war in Iraq, I have supported our brave soldiers because it has seemed to me that our national security is now linked, like it or not, to a credible plan for stabilizing Iraq and preventing a catastrophic civil war in the region.

I remain concerned about setting an arbitrary date for withdrawal because how we leave is as important as when we leave. Nevertheless, Mr. MURTHA's call, coupled with the evaporation of public confidence in the president's management of the war, should be a wake-up call to the president to develop a strategy that can garner bipartisan support and set an unmistakable path toward exiting Iraq expeditiously and with our interests and security intact.

This country cannot have 535 commanders-in-chief. There can only be one commander-in-chief, and we need him to better explain his strategy and to be honest with the American people about the costs and timetable for executing that strategy.

We were led into war as a divided nation and today we are even more divided. A successful outcome in Iraq can only be helped if Congress and the Bush Administration work to bring unity at home. In a hopeful sign, that kind of unity was on display when the Senate recently passed with overwhelming bipartisan support a resolution requiring accountability by the president in Iraq. The House should, at a minimum, do the same.

## IN MEMORY OF HANK GROVER

### HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HALL. Mr. Speaker, I am saddened to announce the passing of a great Texan, Henry Cushing ''Hank'' Grover, a man of singular vision and integrity. Born of humble roots in Corpus Christi, Texas, and raised in San Antonio during the Great Depression, Hank understood what it was to be humble and poor.

The middle child of eight, Hank was raised with solid grounding in those values Americans hold dear. His mother was a German immigrant, and his father was a descendent of Irish roots. Hank was a sixth generation Texan, whose family predated even the Republic of Texas. His great-great grandfather was the first European doctor on Texas soil, and his studies of Kickapoo medicine are archived in The University of Texas library. His

ancestor was a Minuteman in the Revolutionary War. His great uncle fought at San Jacinto. Another great uncle was a founder of Lawrence, Kansas, and ran an underground railroad out of his barn. Hank's father was a childhood friend of Jesse James and Harry S. Truman, in Independence, Kansas.

With this family background, it is no surprise that Hank studied history as an undergraduate at the University of Saint Thomas and received his master's degree from the University of Houston. He taught history at Lamar High School in the 1950s, where he had such a profound effect on his students that many entered public service, becoming attorneys, judges and legislators. His students encouraged him to run for office, and he first stood for the Texas House in 1959 and was first elected in 1961. He served three terms as a Democrat in the Texas House, then switched to the Republican Party in 1965, a radical move in Texas at that time, and won three more terms as Senator from District 15.

In 1972 Hank ran for governor of Texas and came within 200,000 votes of victory—an amazing accomplishment in a state that had not elected a Republican Governor since Reconstruction. Hank's race helped strengthen the Republican Party in Texas and set the stage for Republican Mark White to be elected Governor. He also was the largest private contributor in the effort to elect Ronald Regan as President in 1980.

Hank believed deeply in limited government and fiscal responsibility. He sought to limit federal power and to rein in deficit spending both at the state and federal level. His was a moral and ethical view, grounded in the history and culture of America. Hank also was devoted to his family—his wonderful wife of 56 years, Kathleen Downey Grover, and his children, Bernard Downey, Bridget Cushing, Joseph Courtney, Hilary Helen, Laetitia Jane, and Patrick Fleming (who served on my staff).

Mr. Speaker, as we complete the Nation's business today, let us do so in honor and in memory of this great American who dedicated his life to upholding the values on which America was founded and whose legacy will live on through his family, his friends and the many students whose lives he influenced. Let us pay our last respects to Henry Cushing "Hank" Grover.

## COMMENDING U.S. COAST GUARD OPERATIONS POST-HURRICANE KATRINA

SPEECH OF

### HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Ms. WOOLSEY. Mr. Speaker, I want to add my voice to those applauding the outstanding disaster response work of the U.S. Coast Guard.

My district is fortunate to host one of the Nation's three Coast Guard highly trained oil spill and hazmat response teams, the Pacific Strike Team located at Hamilton Field in Novato. We are also proud of Coast Guard training center Petaluma, located in the rural Two Rock area. Men and Women from both bases had important roles in the aftermath of Katrina.

For the Pacific Strike Team, quick response to emergencies is normal operating procedure. On the night of August 29, Commander Anthony Lloyd and a dozen or so members of the team flew out of California to join the two other units of the National Strike Force at the forward operating base in Alexandra. In the following weeks they participated in the largest oil cleanup spill since the Exxon Valdez, containing oil spills from 8 or 9 refineries on the Mississippi and the Gulf. With oil spill cleanup almost completed, the Pacific Strike Team has joined the Louisiana environmental officials and the U.S. EPA in an effort to remove hazmat materials scattered along Lousiana's broad coastal zone. To date this unified command, combing the wetlands and bayous, have collected about 1 million commercial 55 gallon drums.

In an emergency, the Coast Guard also relies on its personnel stationed at bases and at sea . . . everyone lends a hand.

Coast Guard Training Center Petaluma, commanded by Captain Brian Marvin, is no exception. Nine Two Rock coasties have recently returned from a 30 day rotation in the Gulf where they performed a variety of duties which exemplify the diverse mission of the Coast Guard. Two chaplains helped with spiritual support and stress management both for hurricane victims and responders; a doctor helped to mend bodies at a relief center in New Orleans; an officer was sent to be in charge of a relief boat command and control center; another officer was sent as a planner; two petty officers served in law enforcement, repairing aids to navigation and participating in search and rescue operations; and another petty officer conducted incident debriefings and helped develop support systems for personnel out in the field.

All these activities were conducted with the highest professionalism, dedication, and compassion—Coast Guard hallmarks. They deserve the highest praise and ongoing support for their mission.

## CONFERENCE REPORT ON H.R. 3199, USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005

SPEECH OF

### HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 14, 2005*

Mr. UDALL of Colorado. Madam Speaker, four years ago I voted against the bill that became the "USA PATRIOT Act," more commonly called simply the "PATRIOT Act."

I agreed that our law-enforcement agencies needed increased power and more tools to fight terrorists. But I also thought then—and still think today—it was imperative for Congress to proceed carefully in order to protect Americans' civil liberties. However, I took some comfort from the fact that a number of the most troublesome provisions of the new law were temporary and would expire at the end of this year unless Congress acts to renew them.

The imminent expiration of those provisions is why the House considered this legislation in July, and provides the impetus for the conference report before us today.

I think the value of such "sunset" provisions is shown by the debate on that bill and today's debate on the conference report. It is evidence that requiring Congressional action to renew agencies' authorities can and does result in ongoing Congressional oversight and periodic reconsideration.

In July, I voted against the bill because it would have made permanent no fewer than 14 of the 16 provisions of the original "Patriot Act" that were covered by the law's "sunset" clause—as well as other new authorities provided by last year's bill to reform the intelligence community—and under the bill the other two would not have faced a "sunset" for a full 10 years.

However, at the same time I noted that there was considerable support in the other body—by Senators on both sides of the aisle—for provisions that would improve on this legislation. And I hoped and expected that once the Senate had acted and the conference was completed, the result would be a measure that deserves the support of all Members of Congress.

Unfortunately, after careful review I have concluded that this conference report, while an improvement over the bill the House passed in July, is still so seriously flawed that I cannot support it.

The conference report does not do enough to reduce the potential that the authority it gives to the FBI and other agencies could be abused or misused in ways that intrude on Americans' privacy and civil liberties—a potential that has led more than 300 communities and seven States, including Colorado—governments representing over 62 million people—to pass resolutions opposing parts of the Patriot Act.

The Senate, to its credit, did a better job than the House in responding to the concerns that prompted such resolutions, while still providing ample tools that the government can use to work against the threat of more terrorist attacks, at home and abroad.

I could have supported enactment of the bill as passed by the Senate. That is why I voted for the motion to recommit. But I cannot support this conference report as it stands.

## COMMENDING WWII VETERAN HARRY THOMPSON

### HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. HALL. Mr. Speaker, it is a privilege to recognize Harry A. Thompson , a veteran of World War II and a WWII Prisoner of War. Harry is a longtime resident Wolfe City, Texas, and for the past fifty years has been working on his memoirs of his experience as a POW in Germany. His book, entitled Patton's Ill-Fated Raid, relates how he fell into enemy hands on the second day of the Battle of the Bulge and the events that transpired thereafter.

Chief Warrant Officer Harry Thompson was a Battalion Personnel Officer assigned to the 924th Field Artillery Battalion of the 99th Infantry Division in Bullingen, Belgium, when the German Army broke through the American lines during the Battle of the Bulge, and he was captured. He was taken to Hammelburg,

the German POW camp for American officers where General Patton's son-in-law also was being held. As a result of the ill-fated raid to liberate the POWs in Hammelburg, all POWs were evacuated from camp and were forced to walk a treacherous journey of 241 miles in subzero weather across Germany before their liberation on May 2, 1945.

Mr. Thompson's account of his harrowing experiences at Hammelburg and during this long march is a sobering reminder to readers of the sacrifices of our men and women in uniform. In his introduction he wrote, "The fiftieth anniversary of the Battle of the Bulge has passed. World War II seems ancient history to my grandchildren as much as the Civil War seemed to me when I was growing up. This narrative is for my family as much as for the public, a memoir of a horrible time, the likes of which I hope they will never have to live."

Mr. Speaker, I want to take this opportunity to commend Harry Thompson for publishing his memoirs. He says that he hopes that other Veterans and POWs will share their stories and "that together we can record what it is for America to be at war, what it is to serve in the armed Forces of the United States of America and, after service during wartime, what it means to salute the flag as well as why we, as Veterans, sometimes have a tear or two when we see a patriotic ceremony or parade."

Harry Thompson has served our Nation in two important ways—by his service and sacrifice during World War II, and by the publication of his book that will be part of the history of America for all to read. I am honored to pay tribute today in the House of Representatives to this great American and Veteran of World War II and to thank him for his service to our Nation.

## TO RECOGNIZE THE DEDICATION OF FORT FILLMORE, NEW MEXICO IN HONOR OF FIRST LIEUTENANT JOHN SALOPEK

### HON. STEVAN PEARCE

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. PEARCE. Mr. Speaker, I rise today to recognize the dedication of Fort Fillmore, New Mexico in honor of First Lieutenant John Salopek, as celebrated in the biography by Gerald Carson, "Big John', or 1Lt John Salopek, to whom Fort Fillmore is being dedicated today, was born on September 17, 1921 in Croatia. At age eight, he arrived in the United States, settling in Las Cruces, New Mexico.

Salopek received a Reserve Officer's Training Corps (ROTC) commission in June 1944. He was assigned to a platoon leader position in 1st Platoon, Company G of the infamous 42nd "Rainbow" Division, 7th US Army. Salopek's unit arrived in Marseille, France in December, 1944. The unit fought in the Ardennes-Alsace Campaign near Gambshein, France. On January 5, 1944, Salopek's platoon was attacked by German panzers, and most were taken prisoner of war (POW) the next day. Salopek was taken to a headquarters command post of the elite Waffen-Schutztaffel (SS). Later, Salopek was transferred to Hammelburg Offizierlager XIIIB (Oflag) POW camp of 1,500 officers, to include the son of Soviet Premier Joseph Stalin and the son-in-law of General Patton. On March 26, 1945, General Patton ordered Task Force Baum to Hammelburg to rescue the paws. Only 300 of the 1,500 were rescued, to include 1LT Salopek. Two days later, Task Force Baum was captured by Germans. Most were either killed or again taken POW. Salopek evaded capture and fled to a German farm house near Richenbuch, where he remained until American troops liberated the Hammelburg POW camp on April 5, 1945. The following year, 1LT Salopek, returned to his family's farm in Mesilla, New Mexico.

Salopek's father left over 300 acres of pecan farms to John in the Las Cruces area. Salopek spent the remainder of his life working his land.

1LT Salopek was awarded the Silver Star, Bronze, and Purple Heart for action in the Ardenned-Alsace Campaign. He died on April 15, 2002."

## TRIBUTE TO LATE JIM DUFF

### HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 15, 2005*

Mr. BACA. Mr. Speaker, it is with regret and deep sadness that I rise to honor James "Jim" Duff, a constituent from Rialto, California who passed away on December 11, 2005. I cannot begin to express how saddened I am by the passing of my friend Jim. All men die, but not all men really live; we can honestly say that Jim lived to the fullest. He was a model citizen, veteran, community leader, father, grandfather, and an extraordinary man.

Jim Duff was born and raised in Bonham, Texas but lived in Rialto, California for many years until his passing. Jim was a remarkable example of courage and sacrifice. He joined the Air Force and fought in World War II and Vietnam. Jim was a dedicated soldier who risked his life in the line of duty. For instance he was part of Project Ivy, the famous first test of a hydrogen bomb at the Eniwetok atoll. Nevertheless, one of his proudest accomplishments was Operation Fiddles, an effort to deliver food to innocent victims of war.

After 25 years of service in the military, Jim retired in 1970 to enjoy retirement with his lovely wife of 55 years, Mrs. Doris Duff. Jim and Doris met in Bonham, Texas where they grew up and went to school together. Aside from Doris, his sister Mary Fae Kamm, his son Bobby Douglas Duff, and two grandchildren. Sequoia and Madrone, survive Jim. His dedication and courage live in his family; his son is a successful business owner in Duncanville, Texas and his deceased daughter Carol D–Lynn lost her life while rescuing her children from a dangerous riptide.

Since retiring from the Air Force, Jim had become a fixture of the community. He was Commander of Post 8737 of the Veterans of Foreign Wars for fourteen years and held office within the organization at the statewide and national level, even serving as National VFW Post American Commander. In the Veterans of Foreign Wars, he dedicated himself to help fellow veterans by volunteering twice a week without fail at Loma Linda Veterans Hospital. Jim helped veterans fill out paperwork, file claims, and fight for the health care rights they deserve. I knew him well as a member of my Veterans Advisory Board.

Mr. Speaker, I therefore wish to offer the condolences of a grateful Nation to the family of Mr. James Duff, an irreplaceable man who will not be forgotten.

# Daily Digest

## Senate

### Chamber Action

*Routine Proceedings, pages S13599–S13687*

**Measures Introduced:** Fourteen bills and three resolutions were introduced, as follows: S. 2105–2118, S. Res. 334, and S. Con. Res. 70–71. **Pages S13659–60**

**Measures Reported:**

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals from the Concurrent Resolution for Fiscal Year 2006.". (S. Rept. No. 109–207)

S. 1312, to amend a provision relating to employees of the United States assigned to, or employed by, an Indian tribe. (S. Rept. No. 109–208)

Report to accompany S. 572, to amend the Homeland Security Act of 2002 to give additional biosecurity responsibilities to the Department of Homeland Security. (S. Rept. No. 109–209)

**Page S13659**

**Measures Passed:**

***Honoring Former Senator William Proxmire:*** Senate agreed to S. Res. 334, relative to the death of William Proxmire, former U.S. Senator from the state of Wisconsin. **Pages S13683–84**

***Real Property Jurisdiction Transfer:*** Senate passed S. 2116, to transfer jurisdiction of certain real property to the Supreme Court. **Page S13684**

***Coral Reef Conservation Amendments Act:*** Senate passed S. 1390, to reauthorize the Coral Reef Conservation Act of 2000, after agreeing to the committee amendments, and the following amendments proposed thereto: **Pages S13684–86**

McConnell (for Stevens) Amendment No. 2677, to make it clear that damage from derelict fishing gear and vessel anchors and anchor chains warrants emergency response action. **Page S13685**

McConnell (for Stevens) Amendment No. 2678, to strike references to certain laws. **Page S13685**

***State Department Authorities:*** Senate passed H.R. 4436, to provide certain authorities for the Department of State, clearing the measure for the President. **Page S13687**

***Philippines Immigration Centennial:*** Senate agreed to H. Con. Res. 218, recognizing the centennial of sustained immigration from the Philippines to the United States and acknowledging the contributions of our Filipino-American community to our country over the last century, after agreeing to the following amendment: **Page S13687**

McConnell (for Akaka) Amendment No. 2679, of a technical nature. **Page S13687**

***Predisaster Mitigation Program Reauthorization Act:*** Committee on Homeland Security and Governmental Affairs was discharged from further consideration of H.R. 4324, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the predisaster mitigation program, clearing the measure for the President. **Page S13687**

**Labor/HHS/Education Appropriations—Conference Report:** Senate began consideration of the conference report to accompany H.R. 3010, making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 2006. **Pages S13600–08**

**U.S. Patriot Act Reauthorization—Conference Report:** Senate continued consideration of the conference report to accompany H.R. 3199, to extend and modify authorities needed to combat terrorism. **Pages S13608–27**

A unanimous-consent-time agreement was reached providing for further consideration of the conference report at approximately 10 a.m., on Friday, December 16, 2005, that there be 60 minutes for debate, to be followed by a vote on the motion to invoke cloture thereon at approximately 11 a.m. **Page S13687**

**Deficit Reduction Act—Motions to Instruct Conferees:** Senate continued consideration of the message from the House of Representatives to accompany S. 1932, to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95), taking action on the following motions to instruct conferees proposed thereto: **Pages S13630–35**

Adopted:

By 71 yeas to 20 nays (Vote No. 354), Senate agreed to DeWine Motion to Instruct Conferees to insist that any conference report shall not include the provisions contained in section 8701 of the House amendment relating to the repeal of section 754 of the Tariff Act of 1930. **Pages S13630–32**

By 75 yeas to 16 nays (Vote No. 355), Senate agreed to Kohl Motion to Instruct Conferees to insist that any conference report shall not include any of the provisions in the House amendment that reduce funding for the child support program established under part D of title IV of the Social Security Act ( 42 U.S.C. 651 et seq.), and to insist that the conference report shall not include any restrictions on the ability of States to use Federal child support incentive payments for child support program expenditures that are eligible for Federal matching payments. **Pages S13632–33**

By 83 yeas to 8 nays (Vote No. 356), Senate agreed to Kennedy Motion to Instruct Conferees to insist that the Senate provisions increasing need based financial aid in the bill S. 1932, which were fully offset by savings in the bill S. 1932, be included in the final conference report and that the House provisions in the bill H.R. 4241 that impose new fees and costs on students in school and in repayment be rejected in the final conference report. **Pages S13633–34**

By 63 yeas to 28 nays (Vote No. 357), Senate agreed to Reed Motion to Instruct Conferees to insist on a provision that makes available $2,920,000,000 for the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), in addition to the $2,183,000,000 made available for such Act in the Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Act, 2006. **Pages S13634–35**

The Chair was authorized to appoint the following conferees on the part of the Senate: Senators Gregg, Domenici, Grassley, Enzi, Allard, Sessions, Stevens, Shelby, Specter, Chambliss, McConnell, Conrad, Murray, Harkin, Sarbanes, Inouye, Bingaman, Baucus, Kennedy, and Leahy. **Page S13635**

**Senator Corzine Tributes—Agreement:** A unanimous-consent agreement was reached providing that Senators be permitted to submit tributes to Senator Corzine for the Congressional Record until December 29, 2005, and that the tributes be printed as a Senate document. **Page S13687**

**Messages From the President:** Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a report relative to the export of accelerometers to the People's Republic of China's Ministry of Railways; which was referred to the Committee on Foreign Relations. (PM–33) **Page S13655**

**Nominations Received:** Senate received the following nominations:

Stephen G. Larson, of California, to be United States District Judge for the Central District of California.

Terrance P. Flynn, of New York, to be United States Attorney for the Western District of New York for the term of four years. **Page S13687**

**Messages From the House:** **Page S13655**

**Measures Read First Time:** **Page S13655**

**Enrolled Bills Presented:** **Page S13655**

**Executive Communications:** **Pages S13655–59**

**Executive Reports of Committees:** **Page S13659**

**Additional Cosponsors:** **Pages S13660–61**

**Statements on Introduced Bills/Resolutions:** **Pages S13661–82**

**Additional Statements:** **Pages S13652–55**

**Amendments Submitted:** **Page S13682**

**Authorities for Committees to Meet:** **Pages S13682–83**

**Privileges of the Floor:** **Page S13683**

**Record Votes:** Four record votes were taken today. (Total—357) **Pages S13631–32, S13632–33, S13634, S13635**

**Adjournment:** Senate convened at 9 a.m., and as a further mark of respect to the memory of the late Senator William J. Proxmire, former United States Senator for the State of Wisconsin, in accordance with S. Res. 334, adjourned at 7:54 p.m., until 9:30 a.m., on Friday, December 16, 2005. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S13687.)

# *Committee Meetings*

*(Committees not listed did not meet)*

## BUSINESS MEETING

*Committee on Commerce, Science, and Transportation:* Committee ordered favorably reported the following business items:

S. 2012, to authorize appropriations to the Secretary of Commerce for the Magnuson-Stevens Fishery Conservation and Management Act for fiscal years 2006 through 2012, with an amendment in the nature of a substitute;

S. 1608, to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception; and

The nomination of one officer in the Coast Guard.

## NEW ORLEANS LEVEES

*Committee on Homeland Security and Governmental Affairs:* Committee held a hearing to examine New Orleans (Louisiana) levees relating to Hurricane Katrina, focusing on storm damage reduction projects in metropolitan New Orleans, federal, state, and local responsibility for operation, maintenance, and inspection of the levees, the role of the Army Corps of Engineers in response to a hurricane, and support of the Federal Emergency Management Agency, receiving testimony from Colonel Richard P. Wagenaar, Commander and District Engineer, Alfred C. Naomi, Senior Project Manager, and Gerard A. Colletti, Operations Manager for Completed Works, all of the New Orleans District, U.S. Army Corps of Engineers; Edmond J. Preau, Jr., Louisiana Department of Transportation and Development, Baton Rouge; and James P. Huey and Max L. Hearn, both of New Orleans, Louisiana, on behalf of the Orleans Levee District.

Hearing recessed subject to the call.

## BUSINESS MEETING

*Committee on Homeland Security and Governmental Affairs:* Committee ordered favorably reported the following business items:

S. 1445, to designate the facility of the United States Postal Service located at 520 Colorado Avenue in Arriba, Colorado, as the ''William H. Emery Post Office'';

S. 1792, to designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the ''Grant W. Green Post Office Building'';

H.R. 3770, to designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the ''Grant W. Green Post Office Building'';

S. 1820, to designate the facility of the United States Postal Service located at 6110 East 51st Place in Tulsa, Oklahoma as the ''Dewey F. Bartlett Post Office'';

S. 2036, to designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office'';

S. 2064, to designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the ''Malcolm Melville 'Mac' Lawrence Post Office'';

S. 2089, to designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the ''Hiram L. Fong Post Office Building'';

H.R. 2113, to designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the ''John F. Whiteside Joliet Post Office Building'';

H.R. 2346, to designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the ''John J. Hainkel, Jr. Post Office Building'';

H.R. 2413, to designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the ''Lillian McKay Post Office Building'';

H.R. 2630, to designate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the ''J.M. Dietrich Northeast Annex'';

H.R. 2894, to designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building'';

H.R. 3256, to designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the ''Congressman James Grove Fulton Memorial Post Office Building'';

H.R. 3368, to designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the ''Gagetown Veterans Memorial Post Office'';

H.R. 3439, to designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the ''Ava Gardner Post Office'';

H.R. 3548, to designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the ''Heinz Ahlmeyer, Jr. Post Office Building'';

H.R. 3703, to designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the ''Staff Sergeant Michael Schafer Post Office'';

H.R. 3825, to designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, the ''Clayton J. Smith Memorial Post Office'';

H.R. 3830, to designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida as the ''United States Cleveland Post Office Building'';

H.R. 4053, to designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California as the ''Lillian Kinkella Keil Post Office'';

H.R. 3989, a bill to designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the "Albert H. Quie Post Office"; and

The nominations of George W. Foresman to be Under Secretary of Homeland Security for Preparedness, and Mary M. Rose to be a Member, Merit Systems Protection Board.

**BUSINESS MEETING**

*Select Committee on Intelligence:* Committee met in closed session to consider pending intelligence matters.

Committee recessed subject to the call.

# House of Representatives

## *Chamber Action*

**Public Bills and Resolutions Introduced:** Will be in the next issue of the Record. **(See next issue.)**

**Additional Cosponsors:** **(See next issue.)**

**Reports Filed:** There were no reports filed today.

**Pension Protection Act of 2005:** The House passed H.R. 2830, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules by a recorded vote of 294 ayes to 132 noes, Roll No. 635. **Pages H11678–H11798**

Rejected the Miller motion to recommit the bill to the Committee on Education and the Workforce and the Committee on Ways and Means with instructions to report the same back to the House forthwith with an amendment, by a yea-and-nay vote of 200 yeas to 227 nays, Roll No. 634, after agreeing to the previous question. **Pages H11770–97**

Pursuant to the rule, in lieu of the amendments reported by the Committees on Education and the Workforce and Ways and Means now printed in the bill, the amendment in the nature of a substitute printed in part A of H. Rept. 109–346 shall be considered as adopted.

H. Res. 602, the rule providing for consideration of the bill was agreed to by a yea-and-nay vote of 226 yeas to 199 nays, Roll No. 633, after agreeing to order the previous question.

**Pages H11660–70, H111678**

**Suspensions:** The House agreed to suspend the rules and pass the following measure which was debated on Wednesday, December 14th: The House agreed to suspend the rules and pass the following measures:

***Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected:*** H. Res. 579, amended, to express the sense of the House of Representatives that the symbols and traditions of Christmas should be protected, by a yea-and-nay vote of 401 yeas to 22 nays with 5 voting "present", Roll No. 637;

**Pages H11799–H11800**

Agreed to amend the title so as to read "Expressing the sense of the House of Representatives that the symbols and traditions of Christmas should be protected for those who celebrate Christmas.".

**Page H11800**

***Urging the President to issue a proclamation for the observance of an American Jewish History Month:*** H. Con. Res. 315, to urge the President to issue a proclamation for the observance of an American Jewish History Month, by a yea-and-nay vote of 423 yeas with none voting "nay", Roll No. 638; and

**Page H11800**

***Urging the Government of the Russian Federation to withdraw or modify proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic and foreign nongovernmental organizations in the Russian Federation:*** H. Con. Res. 312, amended, to urge the Government of the Russian Federation to withdraw or modify proposed legislation that would have the effect of severely restricting the establishment, operations, and activities of domestic and foreign nongovernmental organizations in the Russian Federation, by a yea-and-nay vote of 405 yeas to 15 nays, Roll No. 641. **Pages H11858–59**

Agreed to amend the title so as to read "Urging the Government of the Russian Federation to withdraw the first draft of the proposed legislation as passed in its first reading in the State Duma that would have the effect of severely restricting the establishment, operations, and activities of domestic, international, and foreign nongovernmental organizations in the Russian Federation, or to modify the proposed legislation to entirely remove these restrictions.". **Page H111859**

**Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005:** The House

began consideration on H.R. 4437, to amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security. Further consideration will continue at a later date. **Pages H11800–58**

Pursuant to the rule, the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified by the amendment printed in part A of H. Rept. 109–347, shall be considered as adopted in the House and in the Committee of the Whole and shall be considered as read. **Pages H11820–37**

Agreed to:

Carter amendment (No. 1 printed in H. Rept. 109–347) that requires the Secretary of Homeland Security to include satellite communications in the plan authorized by Section 106 of H.R. 4473; **Pages H11837–38**

Gohmert amendment (No. 2 printed in H. Rept. 109–347) which directs the Inspector General to refer any instances of misconduct or wrongdoing on a contract to the Secretary of the Department of Homeland Security or other appropriate official for the purpose of evaluating whether or not suspension or debarment of the contractor is warranted; **Pages H11838–39**

Johnson, Sam, of Texas amendment (No. 3 printed in H. Rept. 109–347) that expresses the sense of Congress that the President, Attorney General, Secretary of State, Secretary of Homeland Security and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the U.S., as enacted by Congress; **Pages H11839–42**

Renzi amendment (No. 4 printed in H. Rept. 109–347) which states that all uniforms procured for use by Border Patrol agents are to be made in the United States; **Pages H11842–43**

Castle amendment (No. 5 printed in H. Rept. 109–347) that requires DHS to submit a timeline for: (1) equipping all land borders with the US-VISIT entry/exit system; (2) developing and deploying the exit component of the US-VISIT system at all land borders; and (3) making all border screening systems operated by the Department interoperable; **Pages H11843–45**

Campbell amendment (No. 7 printed in H. Rept. 109–347) that amends Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by replacing ''Immigration and Naturalization Service'' with ''Department of Homeland Security'' and enforces Section 642 by stating that the Attorney General shall not provide any grant amount to any Federal, State, or local government agency or entity that violates the Act (which states that any government official or entity may not be prohibited from sending information to DHS regarding the citizenship or immigration status of any individual); **Pages H11846–47**

Castle amendment (No. 9 printed in H. Rept. 109–347) which requires the Department of Homeland Security to report to Congress on: (1) the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry; (2) the number of such aliens that have been deported; and (3) the number of such aliens from countries identified as sponsors of terrorism. Also encourages the Department to develop a strategy for entering the appropriate background information of illegal aliens from countries sponsoring terrorism into appropriate security screening watch lists; **Pages H11850–51**

Brown-Waite, Ginny of Florida amendment (No. 10 printed in H. Rept. 109–347) that inserts a new section declaring that Congress condemns rapes by smugglers along the international land border of the U.S. and urges in the strongest possible terms the government of Mexico to work in coordination with the U.S. Customs and Border Protection of the Department of Homeland Security to take immediate action to prevent such rapes from occurring; **Pages H11851–52**

DeFazio amendment (No. 12 printed in H. Rept. 109–347) that directs Customs and Border Protection (CPB) to conduct a pilot program to evaluate the use of automated systems for immediate prescreening of individual airline passengers bound for the U.S. before they board a plane. Pilot would use at least one airline in two foreign airports and evaluate up to three automated systems. CBP would be required to report to Congress no later than 30 days after completion of the pilot and provide a plan to fully deploy the most preferable prescreening system no later than January 1, 2007; and **Pages H11856–57**

Hunter amendment (No. 11 printed in H. Rept. 109–347) that mandates the construction of specific security fencing, including lights and cameras, along the Southwest border for the purposes of gaining operational control of the border. Fencing has been designated in sectors that have the highest number of immigrant deaths, instances of drug smuggling and illegal border crossings. The amendment includes a requirement for the Secretary of Homeland Security to conduct a study on the use of physical barriers along the Northern border (by a recorded vote of 260 ayes to 159 noes, Roll No. 640). **Pages H11852–56, H11857–58**

Rejected:

Jackson-Lee of Texas amendment (No. 8 printed in H. Rept. 109–347) that sought to provide guidelines for implementing the secured alternatives to

detention provision in section 402(a) (by a recorded vote of 162 ayes to 252 noes, Roll No. 639).

**Pages H11848–50, H11857**

Withdrawn:

Gingrey amendment (No. 6 printed in H. Rept. 109–347) that was offered and subsequently withdrawn, which sought to suspend the Visa Waiver Program until the automated entry-exit program is operational and until ports of entry have functional biometric machine readers. **Pages H11845–46**

H. Res. 610, the rule providing for consideration of the bill, was agreed to, by a yea-and-nay vote of 220 yeas to 206 nays, Roll No. 636, after agreeing to order the previous question.

**Pages H11670–78, H11798–99**

**National Defense Authorization Act for Fiscal Year 2006—Motion to go to Conference:** The House disagreed to the Senate amendment to H.R. 1815, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and agreed to a conference. **Pages H11859–67**

The House debated the Skelton motion to instruct conferees, the Chair announced that further consideration will be postponed. **Pages H11859–67**

**Presidential Message:** Read a message from the President in accordance with the provisions of section 1512 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). Certifying the export of 36 accelerometers to the People's Republic of China—referred to the Committee on International Relations and ordered printed (H. Doc. 109–74). **Page H11868**

**Senate Message:** Message received from the Senate today appears on pages H11845, H11867–68.

**Senate Referrals:** S. 1390 was referred to the Committee on Resources and S. 2116 was held at the desk. **(See next issue.)**

**Quorum Calls—Votes:** Six yea-and-nay votes and three recorded votes developed during the proceedings of today and appear on pages H11678, H11797, H11798, H11798–99, H11799, H11800, H11857, H11858, and H11858–59. There were no quorum calls.

**Adjournment:** The House met at 10 a.m. and at 12:04 a.m. stands in recess subject to call of the Chair.

# *Committee Meetings*

## MISCELLANEOUS MEASURES

*Committee on Energy and Commerce:* Ordered reported the following bills: H.R. 4167, National Uniformity for Food Act of 2005; and without recommendation H.R. 3699, amended, Federal and District of Columbia Government Real Property Act of 2005.

## OVERSIGHT—DRUG DISCOUNT PROGRAM

*Committee on Energy and Commerce:* Subcommittee on Oversight and Investigations held a hearing entitled "Oversight and Administration of the 340B Drug Discount Program: Improving Efficiency and Transparency." Testimony was heard from the following officials of the Department of Health and Human Services: Stuart Wright, Deputy Inspector General, Evaluation and Inspections; and Dennis Williams, Deputy Administrator, Health Resources and Services Administration; and public witnesses.

## LOUISIANA RECOVERY CORPORATION ACT

*Committee on Financial Services:* Ordered reported, as amended, H.R. 4100, Louisiana Recovery Corporation Act.

## INVESTIGATIVE REPORTS; COMMITTEE BUSINESS

*Committee on Government Reform:* Approved the following Investigative Reports "Bringing Communities into the 21st Century: A Report on Improving the Community Development Block Grant Program;" and "The Methamphetamine Epidemic: International Roots of the Problem, and Recommended Solutions."

The Committee also approved other pending Committee business.

## RESOLUTION—IRAQ WAR DOCUMENT REQUEST

*Committee on International Relations:* Ordered reported, as amended, without recommendation H. Res. 549, Requesting the President of the United States provide to the House of Representatives all documents in his possession relating to his October 7, 2002, speech in Cincinnati, Ohio, and his January 28, 2003, State of the Union address.

## OVERSIGHT—HURRICANES KATRINA AND RITA EFFECTS ON GULF FISHING

*Committee on Resources:* Subcommittee on Fisheries and Oceans held an oversight hearing on the Effects of Hurricanes Katrina and Rita on Fishing Resources, the Fishing Industry and Fishing Communities in the Gulf of Mexico. Testimony was heard from William T. Hogarth, Director, National Marine Fisheries

Service, NOAA, Department of Commerce; and public witnesses.

### EXPRESSING THE COMMITMENT OF THE HOUSE OF REPRESENTATIVES TO ACHIEVING VICTORY IN IRAQ

*Committee on Rules:* Testimony was heard from Representatives Ros-Lehtinen and Lantos, but action was deferred on H. Res. 612, Expressing the Commitment of the House of Representatives to Achieving Victory in Iraq.

### OVERSIGHT—VETERANS AFFAIRS FLU VACCINATION/PANDEMIC PREPARATION

*Committee on Veterans' Affairs:* Subcommittee Oversight and Investigations held an oversight hearing on the Department of Veterans Affairs' flu vaccination program, and preparations for a possible Avian Flu Pandemic. Testimony was heard from the following officials of the Department of Veterans Affairs: Lawrence Deyton, M.D., Chief Consultant, Public Health Strategic Health Care Group; and Robert Muder. M.D., Staff Physician, Veterans Affairs Pittsburgh Health Care System; and Denise Cardo, M.D., Director, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention, Department of Health and Human Services.

### BRIEFING—GLOBAL UPDATES/HOTSPOTS

*Permanent Select Committee on Intelligence:* Met in executive session to receive a briefing on Global Updates/Hotspots. The Committee was briefed by departmental witnesses.

### RADICAL ISLAM IN THE UNITED STATES

*Permanent Select Committee on Intelligence:* Subcommittee on Intelligence Policy met in executive session to hold a hearing entitled ''Radical Islam in the United States.'' Testimony was heard from departmental witnesses.

## *Joint Meetings*

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT

*Conferees* agreed to file a conference report on the differences between the Senate and House passed versions of H.R. 1281, to authorize appropriations for the National Aeronautics and Space Administration for science, aeronautics, exploration, exploration capabilities, and the Inspector General, and for other purposes, for fiscal years 2006, 2007, 2008, 2009, and 2010.

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## COMMITTEE MEETINGS FOR FRIDAY, DECEMBER 16, 2005

*(Committee meetings are open unless otherwise indicated)*

### Senate

*Committee on Armed Services:* to receive a closed briefing regarding future naval force structure requirements, 10:30 a.m., SR–222.

### House

*Committee on Homeland Security,* Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity, executive, briefing on announced changes to the prohibited items list that would allow airline passengers to board an aircraft with scissors, pliers and wrenches, 11:30 a.m., 202 John Adams.

Subcommittee on Management, Integration, and Oversight, hearing entitled ''Mismanagement of the Border Surveillance System and Lessons for the New Secure Border Initiative,'' 10 a.m., 311 Cannon.

*Next Meeting of the* SENATE

9:30 a.m., Friday, December 16

Senate Chamber

**Program for Friday:** After the transaction of any morning business (not to extend beyond 30 minutes), Senate will continue consideration of the conference report to accompany H.R. 3199, US PATRIOT Reauthorization Act, with a vote to occur on the motion to invoke cloture thereon. Also, Senate will consider any other cleared legislative and executive business.

*Next Meeting of the* HOUSE OF REPRESENTATIVES

9 a.m., Friday, December 16

House Chamber

**Program for Friday:** Continue consideration of H.R. 4437—Border protction, Antiterrorism, and Illegal Immigration Control Act of 2005 (Subject to a Rule, Complete Consideration).

## Extensions of Remarks, as inserted in this issue

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