United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, TUESDAY, MAY 9, 2006 No. 55

# House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Mrs. DRAKE).

## DESIGNATION OF SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
*May 9, 2006.*

I hereby appoint the Honorable THELMA D. DRAKE to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
*Speaker of the House of Representatives.*

## MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from California (Mr. DANIEL E. LUNGREN) for 5 minutes.

## IMMIGRATION

Mr. DANIEL E. LUNGREN of California. Madam Speaker, in assessing the effectiveness of immigration policy, it is helpful to look at both the push factors and the pull factors which contribute to the phenomenon of illegal immigration.

In assessing the push factors, we must not overlook the role of the government of Mexico. On a human level, it is a sad fact that people are motivated to make what is often a dangerous trek north to the United States because of the absence of economic opportunity in Mexico itself. Yet this flow of illegal immigration into the United States acts as a pressure relief valve by allowing the Mexican government to escape political accountability to those it has failed.

Ironically, the Mexican government's laissez fare attitude towards immigration out of Mexico is not reflected in its policy concerning its own southern border. When you hear the President of Mexico or other Mexican politicians rail against the House-passed border control bill, please keep in mind that when it comes to their own border policies, all of the rhetoric concerning the right to migration is suddenly nowhere to be found. In the end, the Mexican government's policy will prove to be shortsighted and will ultimately cause serious damage to their own country. Imagine the long-term effects of a nation losing millions of its hardest working younger people. The future of Mexico is sending its government a clear and unmistakable message of adios as they vote with their feet.

Furthermore, when one factors Mexico's demographic future into the equation, a dire picture emerges. According to an article by Philip Longman in the May/June issue of Foreign Affairs, ''Mexican fertility rates have dropped so dramatically, the country is now aging five times faster than is the United States. It took 50 years for the American median age to rise just five years, from 30 to 35. By contrast, between 2000 and 2050, Mexico's median age, according to U.N. projections, will increase by 20 years, leaving half the population over 42. Meanwhile, the median American age in the year 2050 is expected to be 39.7.'' Thus, ultimately illegal immigration from Mexico into the U.S. is not good for either Mexico or the United States.

According to the Associated Press, President Fox has characterized the House immigration bill as, quote, stupid. To his credit, the same AP story quoted President Fox as acknowledging that his government must ''generate opportunities here in Mexico.'' However, it is the responsibility of the United States Government to control our own borders and to take action to reduce the pull factors which draw people to the United States. We must demagnetize the attraction of illegal employment in the U.S. Unfortunately, our track record here reflects a failure of government policy on our side of the border.

The Immigration Reform and Control Act of 1986, IRCA, or Simpson-Mazzoli, for the first time imposed sanctions on employers for the hiring of those ineligible to work in the United States. Yet since the passage of that bill, administrations of both political parties have failed to enforce the law. The fact that there were only three cases last year, three, of a notice to file a prosecution for the unlawful hiring of illegal aliens is utterly indefensible. There must be a will to enforce the law.

I wish to recount what in retrospect was the death knell to an effective regime of employer sanctions. An amendment to Simpson-Mazzoli was accepted which completely undermined the employment verification system. In its place, a series of documents required to be submitted with the I–9 employment eligibility verification form was substituted. The end result was the creation of a new cottage industry for the production of false documentation. I would like to emphasize once again that it was the negation of an effective employer verification system, which in combination with the lack of enforcement, undermined the usefulness of employer sanctions as an immigration enforcement tool.

It was for this reason that the basic pilot project was created in 1996 by this Congress. The system allows employers to voluntarily check the names and Social Security numbers of its employees



Printed on recycled paper.

against the records maintained by the Social Security Administration and the Department of Homeland Security. Building on this project, H.R. 4437, the House-passed bill, would create a nationwide mandatory program. Unlike the watered-down language in the 1986 bill, the employment verification provisions in the House-passed bill offers a genuine prospect for effective employer sanctions necessary to demagnetize the attraction of unlawful employment in the U.S.

An effective employer sanctions regime, coupled with the need to fully fund the additional 2,000 Border Patrol positions authorized this year and in the out years, is essential if we are going to control illegal immigration. At the same time if we are to maximize the cooperation of employers with the implementation of an effective system of employer sanctions, it is necessary to ensure that in those cases where U.S. workers are unavailable, employers have the option of employing temporary foreign workers. Let me suggest that regulating the stream of workers which have crossed back and forth our southern border since the 1870s will facilitate the job of a larger Border Patrol and the implementation of an effective system of employer sanctions.

By definition however, in a temporary worker program, the workers should be temporary. Along the lines of an amendment I offered unsuccessfully in 1986, workers could work in the United States for up to 10 months of the year. During that time a portion of their wages could be withheld. The money would be placed in an escrow account and would only be returned to the workers upon their return to their home country—in most cases—Mexico. The proposal has a built in incentive for the temporary workers to return home to work their own small farms and to reunite with their families. In fact, Mexico and Canada have entered into a temporary agricultural worker program along these lines, which by all accounts has operated quite successfully.

Finally, we cannot avoid the issue of what we will do with those who have entered our country illegally and have settled in our communities. I certainly do not favor an amnesty. But the use of the word "amnesty" does not excuse anyone on this side of the argument from explaining exactly what they propose to do with as many as 11 million people.

By the same token, those who have violated our laws should not be allowed to cut in line in front of those who have obeyed them. A middle ground solution would allow those undocumented persons with sufficient equities in our society to remain. They could continue to work and travel back and forth between the United States and their home country. They would be legal residents, "blue card" holders if you will. However, they would not be afforded the legal equivalent of a diamond lane to citizenship. If they wish to become citizens, they would be required to return home, file an application and get in line like everyone else.

Such requirements are necessary to reassure Americans who have been turned off by the ideologically driven multicultural agenda of those groups promoting identification with the Mexican flag, an alternative national anthem, and celebration of May Day in solidarity with leftist Mexican trade unions. It is hard for me to conceive of anything which could do more damage to the case one might make on behalf of those who demand acceptance by us to be equal partners in our society. For the common element of all immigrants who have come to this land has been a deep and burning desire to become Americans. The welcome mat extended to previous generations of immigrants was predicated upon a commitment to a common patrimony. Nothing less should be expected of those who currently seek to become a part of the tapestry of a larger tradition and history of American immigration.

## ENERGY

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from California (Mr. GEORGE MILLER) is recognized during morning hour debates for 5 minutes.

Mr. GEORGE MILLER of California. Madam Speaker, Members of the House, as Americans are paying over $3 a gallon for gasoline and have been doing so for a couple of months, we see the Bush administration and Congressional Republicans running away from their record of supporting the oil and gas industry and trying to convince the public that they are deeply concerned and on the side of consumers. They even went so far as to insult the public by suggesting that they would increase the deficit and give them back a $100 check at the end of the summer. Fortunately, the Republican leadership in the House called the idea stupid and it seems to have waned.

What the American public really wants is a comprehensive energy policy that gives them choices about their transportation, gives them choices in the heating of their homes and the cooling of their homes, gives them choices in energy conservation. That is what they are looking for, but that is not what the Republicans have delivered over the last 6 years.

Why? Because 6 years ago, Vice President CHENEY sat down with the executives of the oil companies and made a decision that they would put the oil companies in charge of America's energy policy. They would put the oil companies in charge of whether or not we would have innovation, whether or not we would have new technologies, whether or not we would have alternative energies such as solar, biofuels and all the rest of that. And the oil companies basically decided we would keep doing business on our energy policy as we have since the 1950s and 1960s, that is, we would just let the oil companies continue to drill.

That meeting with Mr. CHENEY made it very, very profitable for the oil companies because since that time the Congress has done nothing but lavish tax breaks on the oil and gas industry. The policy seems to have worked because when you look at the profits, they have gone through the roof. Chevron netted $4 billion in 3 months. That is a profit of $44 million a day. But they look like a small business alongside of ExxonMobil which reported a profit of $8.4 billion, and that is after they gave the CEO of ExxonMobil a $400 million pay package. And they were still able to get a profit into the billions. I bet they loved being in that meeting with Mr. CHENEY where they got the rights to do all this.

So Congress has continued to lavish tens of billions of dollars of tax breaks on the industry, income tax deductions for Humvee purchases, opening the California coast and other protected places for oil exploration, liability protection for the oil industry against MTBE contamination of cities' drinking waters that is occurring all over the country, and, finally, a royalty holiday, treating the oil companies like royalty. They won't have to pay the United States taxpayers for the right to drill oil on those lands that are owned by the taxpayer. They will get a royalty holiday. But, of course, today, now the Republican leadership is running around and the President has said that a royalty holiday makes no sense when oil is at $70 a barrel. He actually said it when it was at $50 a barrel. It makes no sense at $50 a barrel, it makes no sense at $60 a barrel, and it makes no sense at $70 a barrel. But the fact of the matter is we don't see one step being taken in this Congress to end that royalty holiday and end it today and give that money back to the taxpayers and reduce the deficit.

No, what the Republicans ought to do is they ought to check their voting record and see how voted this last year when our colleague from Arizona (Mr. GRIJALVA) offered that amendment in April, 2005, to make sure that we would get rid of the royalty holiday. But it didn't pass. It didn't pass because that is not on the oil companies' agenda. And as we now know, the oil companies are running the agenda for this Congress.

The Democrats have a better idea. We believe that working together across all of the talents of America, that we can provide energy independence within 10 years. But to do so you would have to dramatically encourage new technologies, alternative forms of transportation, of mass transportation, the use of solar, the use of biofuels, the use of these kinds of conservation efforts combined with new fuels and new technologies to let America be independent, to make choices about its energy future.

Today, the President of the United States walks hand in hand with the Sheik from Saudi Arabia and that is our energy policy: Don't do anything to upset the Saudis.

The fact of the matter is we have to take control of our energy policy. But we will only do that when we break the link between the Republican Party and the oil and gas industry in this country. We will only have the chance to bring new forms of transportation online, to bring solar energy at a much more affordable price for American

consumers, to bring alternative fuel sources online at a more affordable price, to break our dependency on Middle East oil. As our leader said over the weekend on Meet the Press, we want to send our money to the middle west to develop biofuels, to develop switch fuels, to develop syn fuels, to develop ethanol. That is what we want to do, instead of sending our money to the Middle East where it is being used for very dubious purposes in terms of the interests of this country.

But this administration to date has not broken its alliance with the oil sheiks in the Middle East and has not broken its alliance with the oil industry in this country. And Americans today continue to drive to work paying over $3 a gallon for gas with no respite in the future because of the absence, the abandonment of this country by this administration for an energy policy that works to the benefit of America's consumers.

## WORKING TOGETHER TO ADDRESS RISING ENERGY PRICES

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Virginia (Mr. WOLF) is recognized during morning hour debates for 5 minutes.

Mr. WOLF. Madam Speaker, I rise today because we must find ways to effectively address the rising gas prices the citizens of the Nation are paying at the pump.

Last week the House passed new legislation to address price gouging at the pump and set Federal penalties for price manipulation. The major oil companies say there are many factors in gas pricing, including basic economics of supply and demand, the switch to ethanol from MTBE as a clean fuel additive, and lack of refining capacity, among others, and that they have no control over the spiking gas prices.

But my constituents, especially working people raising families and those on fixed incomes whose wallets are being pinched tighter and tighter, tell me they are not satisfied with those answers.

Madam Speaker, it is time for the President to use the bully pulpit to get to the bottom of this issue the way that Teddy Roosevelt did. He should call to the Oval Office every chief executive of the major oil companies and let them explain to the American people why the average price for a gallon of unleaded gasoline in the United States today is nearly $3, and in some areas at least a dime over that.

There is another area of the energy market that also needs attention. Recent news accounts have theorized that the commodity futures trading market could be partly responsible for the rapid jumps in gasoline prices over the past couple of months. This past weekend, television investigative reports pointed to the energy trading industry as an area in need of investigation to see if fraud or manipulation is occurring. I learned yesterday that bipartisan legislation was introduced in the Senate on this matter. Senators FEINSTEIN and SNOWE have a bill that would increase transparency and accountability in the energy markets.

Madam Speaker, according to our colleagues, energy trades are often made using an electronic trading platform where no records are kept, so there is no audit trail for the Government to monitor. Currently, most energy exchanges occur on the New York Mercantile Exchange or on electronic exchanges such as the InterContinental Exchange. I was surprised to learn that while the New York Mercantile Exchange is regulated by the Commodity Futures Trading Commission, the electronic exchanges like the InterContinental Exchange are largely unregulated, even though it is estimated that up to 80 percent of our energy commodities are traded on the InterContinental Exchange. Under CFTC regulations, traders using the New York Mercantile Exchange must keep records for 5 years and report large trading positions to the commission. But traders using the InterContinental Exchange keep no records. Additionally, traders using the New York exchange are subject to other Federal regulations, like limits on how much of a given commodity can be traded in one day. Traders using the InterContinental Exchange are not.

Where is the transparency? Where is the accountability? Who are these speculators? The American people need to know their government is leaving no stone unturned in investigating this issue. After Hurricane Katrina, we saw prices jump. Many Americans certainly understood Katrina's wrath, but there were questions raised then about the almost overnight jump of gasoline prices. To find out if indeed there was gouging at the pump, this Congress ordered an investigation in last year's commerce spending bill. The FTC will report on May 22.

Can markets really be manipulated? Think back to the electricity market manipulation by Enron. As a result, last year's energy bill gave more authority to the Federal Energy Regulatory Commission in the regulation of natural gas and electricity markets including more transparency.

In closing, there is no similar process for the Commodity Futures Trading Commission in the unregulated energy markets. Who is to say whether investment firms, commercial bankers or hedge funds could actually be driving up oil prices through futures trading?

Madam Speaker, as I mentioned at the beginning, a good place to start would be for the President to have an Oval Office chat with the big oil executives. It would also be important to have the heads of the Securities and Exchange Commission, Chris Cox, our former colleague who is running the SEC; and the Commodity Futures Trading Commission in that meeting.

We owe it to our constituents to find the answers, to bring everybody together. And so I urge the administration to do exactly what Teddy Roosevelt would have done, bring all the parties together to hammer this out, look at all of the trading to show and demonstrate we are doing everything we can to get to the bottom of this to begin to reduce these prices.

## ON NATURAL DISASTERS AND GLOBAL WARMING

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Oregon (Mr. BLUMENAUER) is recognized during morning hour debates for 5 minutes.

Mr. BLUMENAUER. Madam Speaker, beyond the day's headlines of crimes, scandal and foreign affairs, there are still stories of flooding, fire, hurricanes, tornadoes and mudslides still in the news. They are much on the minds of the American public. After years in local government and in Congress, I share their concerns about these threats that we face from natural disasters, how we make these threats worse by what we do, and how we learn little from our experience. Mostly I wonder what it will take to provoke a coordinated, thoughtful response from the Federal Government to the challenges posed by natural disasters.

For years before Katrina, I had been discussing on this floor what was likely to happen in New Orleans when the ''big one'' hit. My concerns became more urgent as I witnessed firsthand the devastation in Asia from the tsunami.

It is not like we don't know what to do to protect our constituents. After the floods in the upper Mississippi River, FEMA in the Clinton Adminisration, under the leadership of James Lee Witt, took a coordinated approach with the natural environment, forming partnerships with private companies, landowners and local governments to dramatically reduce the damage in subsequent floods. We took similar actions in Portland, Oregon. We know what works.

After years of struggle, Congress is finally reforming the flood insurance program to stop encouraging people to live in harm's way, to reduce the damage by building smarter, or moving families to safer, higher ground. For years we have been sponsoring round table discussions with experts on coordinated policy response in all of these elements, from fire and earthquake to flooding. People are ready to support legislation introduced before Katrina, to provide resources for communities to plan to avoid disaster.

There are national and local visionaries ready to develop a comprehensive response to Katrina throughout the gulf region so that we are ready for the next inevitable round of hurricanes. But what will it take for people to act on the discussion, the plans, the legislation, to get real action?

What about the Federal Government? Will it take the next disaster season to

force Congress and the administration to respond thoughtfully with simple changes? After 25 years, will we update the hopelessly outdated operating principles and guidelines of the Corps of Engineers? Can we eliminate the perverse budget rules that make it actually cheaper for Congress to spend billions of dollars on emergency flood relief than a few million on prevention? Can we see past the next sensational headlines so that the Federal Government can exercise its responsibility on its own land in order to prevent development from sprawling into forested areas near cities, putting more people at risk and sending the costs of firefighting spiraling upward exponentially? Can we avoid another example like Los Alamos, where the Federal Government incredibly put sensitive, dangerous and expensive nuclear facilities in the middle of an area that has burned repeatedly from wildfires every few years for centuries?

Will the next round of disasters prompt the Federal Government to finally show leadership on global warming, which will make all of these problems more intense? With global warming, it is not just the damage to New Orleans from hurricanes but risks to coastal communities from New York's Long Island to the Rio Grande Valley in Texas. Rising temperatures have already defrosted and eroded ever larger portions of Alaska. Will scientists at NASA and NOAA at last be able to speak freely about global warming?

These questions are not beyond our capacity. Simple, cost-effective solutions are at hand that can be understood by the public who will end up paying the bill. I think progress is possible because this is not a Red State or a Blue State issue, not liberal or conservative, not big government versus small government. Exercising common sense, bipartisan cooperation and a tiny bit of leadership will save lives and money.

I had hoped that the devastation caused by Hurricane Katrina would have already spurred us toward some meaningful, comprehensive action. Instead, our response to Katrina has stalled and people are trickling back into harm's way without a real plan or a vision, and the protections against the next hurricane are not in place.

I do think there is hope. With the evidence so clear and the Katrina memories so vivid, we begin another predicted serious hurricane season. Maybe this will be the time that we learn from what has happened and finally act to make our communities safer, healthier, and more economically secure.

## SECURING OUR BORDERS, SECURING OUR NATION

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Florida (Mr. STEARNS) is recognized during morning hour debates for 5 minutes.

Mr. STEARNS. La Ladrillera, a brickyard in Sasabe, Mexico, is the last gathering place where coyotes deliver final words of advice before smuggling their human cargo across the border into the United States. Each illegal immigrant pays anywhere from $1,500 to $2,000 to these opportunists to be guided on their 3-day journey across the desert into their ideal of a promised land, the United States.

My colleagues, let us be clear on the nature of these smugglers. They are not generous humanitarians aiding their fellow man. Many of these illegal immigrants are beaten, robbed and even raped before they even reach the Mexico-U.S. border. Yet they keep paying the coyotes enough money so that these smugglers have access to sophisticated arms, weapons, GPS equipment and high quality mobile radios. Many of them have better equipment than our own Border Patrol agents.

In today's Washington Times, Gilbert Reyes, one of these smugglers, or successful local businessmen, describes the situation of these immigrants: ''They want to get into the United States, and they are willing to do almost anything, even walk for mile after mile in the desert. They think they can go into America and get a pay to stay permanently. Maybe they can. Maybe they can't.''

His assertion about the immigrants' belief rings true as we look at the facts on immigration. In 1986, the Immigration Reform and Control Act granted amnesty to 2.7 million illegal immigrants, and now today we have 11 to 12 million illegal immigrants seeking amnesty. Two years ago, President Bush first announced his guest worker program, and illegal immigrant numbers have risen steadily since. A survey conducted by the Border Patrol in 2004 revealed that of those illegal aliens in custody of the Border Patrol, 45 percent were influenced to come to the U.S. by the promise of amnesty. The immigration bill we passed in the House directly strengthened legal recourse against these coyotes and focused on securing our borders, increasing the number of Border Patrol agents, and enforcing the immigration laws that we currently have. These are essential steps that must be taken before any form of immigration reform has a hope of succeeding. And the American people agree. In a recent Zogby poll, 64 percent of respondents preferred the House bill's approach of enforcement first and only 30 percent preferred the Senate's approach of amnesty. Additionally, 73 percent of respondents had little or no confidence in the ability of our government to screen out terrorists or criminals if there is a mass amnesty for those 12 million illegals already in this country.

And yet the pressure is mounting in favor of this unpopular and impractical proposal. There are some journalistic groups that have even begun to object to the use of the word ''illegal'' when referring to these immigrants. We are supposed to refer to these individuals as, quote, undocumented or even the other extreme proposal, to call them economic refugees. But calling breaking the law by any other name does not make it less of a crime. According to the Immigration and Nationality Act, it is illegal to enter the United States illegally. It is illegal to smuggle human beings into the United States for a price. And it is illegal to knowingly hire and aid a person you know entered our country illegally.

Another central issue with immigration reform is to ensure that those waiting and hoping to enter this country will be treated fairly. Many of them have undergone grueling ordeals to be able to enter the United States. I have heard from one couple in my district that had to undergo multiple in-depth interviews at the embassy before getting their permits. The embassy was a 3-hour commute away for them. As they had no transportation, they had to walk. But they told me they were happy to do so for the simple chance to come into the United States. Many legal immigrants have to wait 5, 10, sometimes 15 years before they get their final approval to immigrate. To allow those who bypassed all the rules and snuck into the U.S. amnesty and a path to citizenship is an egregious slap in the face to all those immigrants who sacrificed to respect our laws and enter legally.

My colleagues, we are a nation of immigrants. Immigrants have vitalized our society, brought new life to our democracy and strengthened our communities simply by their contributions. However, we are also a nation of laws, and those whose first action is to willfully break them should be held accountable, not given preferential treatment.

## THE DEBT AND THE DEFICIT

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Oregon (Mr. DEFAZIO) is recognized during morning hour debates for 5 minutes.

Mr. DEFAZIO. Well, it is going to be a big week for America and a big week for Republicans in the House. The long-delayed budget is going to be adopted. It is estimated that if this budget is adopted, the deficit will be about $500 billion next year. That means they are going to borrow more than $1.4 billion a day to run the government. But don't worry, some of it is off the books. They are borrowing all of the Social Security surplus, $193 billion, which is supposed to go to pay for future benefits in the trust fund but they are going to borrow and spend that. So they are going to really say, oh, the deficit is only $300 billion, that's all we're borrowing from China and Japan and other foreign investors. But we are also borrowing and spending all the Social Security trust fund. So a $500 billion, half a trillion dollar deficit, borrowing

$1.4 billion a day, the party of fiscal responsibility and small government.

In the meantime, they are cutting programs important to the middle class. Student financial aid. Hey, those kids have got to pay higher interest on their loans and their parents, too, because we're in trouble financially. At the same time, this week they are going to pass a $70 billion extension of tax cuts which favor investors over workers.

Why do the Republicans hate people who work for wages and salaries so much? That is a question that begs answering around here. Because investors who can clip coupons off their stocks pay a lower rate of taxes to the Federal Government than a policeman, a fireman or a teacher. And that is the way the Republicans say it should be. Those who are lucky enough to inherit or otherwise able to invest for a living, they shouldn't pay taxes like those suckers who work for salary and wages.

What contempt they are showing for the people of America. They are not only cutting the programs essential to them, borrowing in their name, handing them the bill, now they are borrowing money to give to rich investors which the middle class will have to pay for, because in the Republicans' world only the middle class pays taxes.

The tax cuts they are proposing this week to extend will give an average cut of $20 to the middle fifth of taxpayers, those who average $36,000 a year. But for the lucky winners, the top 1 percent, average income $5.3 million, they will save $82,415. Or if you could put it another way, the person who earns $36,000 will be obligated and their kids will be obligated to borrow $82,415 to give to that wealthy investor because we don't have a surplus to give taxes away to those folks. They say, Oh, don't worry. These tax cuts pay for themselves.

Oh, okay. If that is true, why on page 121, buried almost indecipherably in their budget, 151 pages long, page 121, the Republicans for the fifth time in 5 years are increasing the debt limit of the United States without discussion on the floor of the House or a vote? They are going to increase it by $653 billion.

Let's see. If the tax cuts pay for themselves, why would they have to increase the debt limit of the United States for the fifth time in 5 years in a stealth fashion like this? That is underhanded.

When President Bush took office, we had a borrowing limit of $5.95 trillion, $6 trillion. When their budget passes this week, it is going to be $9.62 trillion. Not bad. Up 60 percent in 5 years. The party of small government and fiscal responsibility has indebted the United States, increased the debt by more than 60 percent in 5 short years. They have amassed more foreign debt than all of the administrations that preceded them since the beginning of the Republic. So we are not only borrowing against our future, borrowing against Social Security, handing a bill to the middle class, we are also indebting the country to foreign holders of debt, particularly China, Japan and others.

What a great vision they have for America. The wealthy will live on their estates behind big walls with private security. They will send their kids to private schools in private limousines, they will ride their private jets to private resorts, and then the rest of us can mow their lawns and carry their golf clubs and wait on their tables. And there won't be much left for the rest of us.

They can't afford a decent bill for homeland security. They can't afford money for cops, police, fire, public education, but we can afford more tax cuts for the wealthiest among us because the investors are the important people to the Republicans. They are also their big contributors.

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 1 o'clock and 6 minutes p.m.), the House stood in recess until 2 p.m.

□ 1400

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. BISHOP of Utah) at 2 p.m.

## PRAYER

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

Lord God, we invite the Nation to pray for the Members of Congress today with heartfelt compassion. They are in need of Your wisdom and our understanding.

The making of law is never an easy task. It requires dedicated attention, artful skills of language, personal integrity and responsibility to be truly effective. Because of the multiple issues facing the Nation and the complexity of every problem, intelligent minds and enlightened convictions are necessary for each Member of this legislative body to supply answers, to seek healing and build peaceful unity.

In a democracy as ours, laws can be crafted by diverse minds representing a variety of interests. But in the end, every law and every policy of government must seek the consent of the governed and ultimately Your almighty judgment of justice.

In You alone, Lord God, do we find the fulfillment of the law both now and forever. Amen.

## THE JOURNAL

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

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

## PLEDGE OF ALLEGIANCE

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

Mr. WILSON of South Carolina 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.

## MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

> H.R. 4939. An act making emergency supplemental appropriations for the fiscal year ending September 30, 2006, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4939) ''An Act making emergency supplemental appropriations for the fiscal year ending September 30, 2006, and for other purposes,'' requests a conference with the House on the disagreeing votes of the two Houses, thereon, and appoints Mr. COCHRAN, Mr. STEVENS, Mr. SPECTER, Mr. DOMENICI, Mr. BOND, Mr. MCCONNELL, Mr. BURNS, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CRAIG, Mrs. HUTCHISON, Mr. DEWINE, Mr. BROWNBACK, Mr. ALLARD, Mr. BYRD, Mr. INOUYE, Mr. LEAHY, Mr. HARKIN, Ms. MIKULSKI, Mr. REID, Mr. KOHL, Mrs. MURRAY, Mr. DORGAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. JOHNSON, and Ms. LANDREIU, to be the conferees on the part of the Senate.

## ASSOCIATION HEALTH PLANS

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

Mr. KELLER. Mr. Speaker, I rise today to urge the Senate to help small business people with the skyrocketing costs of health insurance by passing Association Health Plans.

Of the 45 million Americans without health insurance, 60 percent are small business employees and their families. By joining together, small businesses in central Florida will have the same bargaining power to negotiate lower health insurance rates as big companies, like Disney World and Darden. This will help lower their health insurance premiums by up to 30 percent, and expand access to millions of people without health insurance.

On April 27, 2005, the House of Representatives passed my Small Business Bill of Rights which created a blueprint for this Congress to follow to help

small business create additional jobs. On the top of the list was passage of Association Health Plans.

Three months later, on July 26, 2005, the House passed Association Health Plans with a wide margin of 263–153.

I applaud the Senate for taking up this important debate today, and I urge them to act now to pass Association Health Plans.

## MEDICARE PART D ENROLLMENT DEADLINE

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

Mrs. CAPPS. Mr. Speaker, the May 15 Medicare part D enrollment deadline is now 6 days away; but a significant number of eligible beneficiaries do not even know that. The enrollment deadline is 6 days away, and eligible beneficiaries don't know about the penalty fee they would incur for the rest of their lives.

Mr. Speaker, the enrollment deadline is 6 days away, but call centers are still giving eligible beneficiaries inaccurate or incomplete information. This Sunday, sons and daughters should be spending time with their mothers taking them to brunch or showering them with gifts, not trying to navigate a complex Web site or holding onto the phone.

The administration's insistence on this deadline is offensive to millions of Medicare beneficiaries. Many of them are telling me just that, and many are the most vulnerable in our society.

I urge my colleagues to press for extending the deadline for part D enrollment. We owe it to the unenrolled seniors and seniors who are disabled, who need more time to figure out this complex program. We owe it to all beneficiaries so that we can continue fixing the many flaws of the Medicare prescription drug plan.

## THE HERO ACT

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

Ms. FOXX. Mr. Speaker, I rise today in strong support of H.R. 1499, the Heroes Earned Retirement Opportunities Act. I introduced this bill after learning our current Tax Code prohibits many of our men and women serving in combat zones from taking advantage of individual retirement accounts.

Most of our troops serving in these combat zones are paid in wages designated as military hazard pay. These wages are not taxed, nor should they be. However, since this compensation is nontaxable, the wages are not eligible for IRA contributions. IRAs are an excellent tool for responsible retirement savings.

Our troops defending America in harm's way should not be excluded from full participation in this important investment opportunity because of a glitch in our Tax Code.

The HERO Act will correct this glitch by designating combat hazard pay earned by members of the Armed Forces as eligible for contribution to retirement accounts. This bill has been endorsed by the Reserve Officers Association and the MOAA.

I encourage my colleagues to support this important bill this afternoon and give our troops the opportunity they deserve to save for their future.

## MEDICARE PART D DEADLINE

(Ms. EDDIE BERNICE JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I want to call attention to the May 15 deadline for seniors to enroll in the Medicare part D prescription drug plan. The fact is, seniors who are eligible for Medicare part D who do not sign up by May 15 will face a higher monthly premium if they enroll at a later time. This puts a lot of pressure on the seniors.

I had a town hall meeting and lots of seniors came. Most of them knew nothing about how to do it or did not understand it.

But, seniors, as hard as we have tried, we cannot extend this deadline beyond May 15. There are nearly 48,000 residents aged 65 and older in Dallas, Texas. Not that many came to the town hall, but quite a few. I am concerned that they are not getting the message.

Missing May 15 may have expensive consequences. We would like to have a bit more compassion. America's health is about more than just numbers on an insurance company's roll book.

## SIX DAYS AWAY

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

Mr. PRICE of Georgia. Mr. Speaker, 6 days. In just 6 days, that is when the deadline for the Medicare prescription drug program is: May 15.

Thirty million Americans have already signed up. However, there remain other seniors who would benefit from this voluntary program, and they should take these next few days to see if Medicare part D is right for them.

To help facilitate the enrollment process in my district, I have held Medicare seminars to educate seniors on the options available, including two just last Friday. Many have said they are happy with the choices they have, and they are grateful for the time we took to sit down and explain this new program.

Yesterday I also had the chance to visit two pharmacies in my district and speak with the pharmacists and their staffs. This offered a great, behind-the-scenes look at the process these pharmacists have used to help local seniors understand and utilize this new prescription drug plan.

The general sense is that the kinks have been worked out and most seniors are truly gaining great benefit, better health.

Over the next 6 days, I urge all of my colleagues in Congress to do all that we can to provide seniors whatever assistance they may require to sign up for and navigate their new plan.

## MEDICARE PART D AND THE LATINO COMMUNITY

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

Ms. SOLIS. Mr. Speaker, I rise today because the Medicare part D plan, as written, in my opinion is bad for Latino seniors. Latinos are less likely to have worked at firms with employer-provided pension plans, tend to work at a lower-paying job resulting in less accumulated savings and smaller Social Security checks. And 62 percent have incomes below 150 percent of the Federal poverty level.

Yet more than 1 million Latino seniors have not yet even enrolled in this program because of cultural, language and economic barriers. That is more than 30 percent of all eligible Latino seniors who lack coverage.

The lack of detailed, easy-to-understand culturally competent information makes it even more difficult for community organizations to focus resources on this vulnerable population. Our Latino seniors and all seniors need our help.

I urge my colleagues to pass legislation to extend the enrollment deadline, take away the fear of penalty, and give Medicare beneficiaries more time to check their facts, know their options, and make informed decisions about part D.

## EMERGENCY SUPPLEMENTAL RESTRAINT

(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. Mr. Speaker, Webster's dictionary defines emergencies as serious situations or occurrences that happen unexpectedly and demand immediate attention.

As Congress considers this year's emergency supplemental spending bill, I hope all of my colleagues will remember the definition of an emergency and support Majority Leader BOEHNER's strong efforts to ensure that we spend taxpayer money on America's most urgent needs.

Last week I was proud when he clearly articulated that the House will not take up an emergency supplemental bill that spends $1 more than the President's budget request. By declaring that Congress will use this funding for

troops' efforts in the global war on terrorism and rebuilding communities throughout the gulf coast, Majority Leader BOEHNER is leading House Republicans to rein in the Federal budget and spend taxpayer dollars wisely.

As the budget process continues, I am confident that Majority Leader BOEHNER will continue to define the difference between irresponsible wishes and American emergencies.

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

## DARFUR PEACE AGREEMENT

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

Mr. WOLF. Mr. Speaker, I rise to welcome the news of the signing of the Darfur peace agreement. It is important to recognize the hard work that our international partners and the administration have done on this issue. Specifically, President Bush has done an outstanding job, as have Secretary Rice, Deputy Secretary Zoellick and Roger Winter; and there should be special gratitude expressed to Secretary Zoellick who went out there and spent 5 days to bring this to fruition.

Their efforts have moved the parties to an agreement, and the United States now must remain steadfast in this effort. It is my hope this agreement will be a stepping stone toward achieving lasting peace and security for the people of Darfur.

The international community and the American people now have an opportunity to take meaningful steps to improve the lives of the people of Darfur.

Most of the food in Darfur where I visited is coming from the United States Government and from the American people as a result of what the Bush administration has done. However, we must remember that women and children are still dying in the camps. Men are still being killed, and the genocide is still taking place. We must build on that momentum.

But the efforts of the administration are to be commended. And although the road ahead is long, this administration and Bob Zoellick have done an outstanding job. And the people who rallied on the Mall last week ought to be congratulated, too.

## STAR-SPANGLED BANNER SUNG IN ENGLISH

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

Mr. DREIER. Mr. Speaker, Americans hail from many different backgrounds, but we are united by our freedoms, our democratic government, and our language. It goes without saying that the Star-Spangled Banner should be sung in English. This Spanish-language anthem is nothing but a cynical attempt to divide our country during the debate on this most vigorous and divisive issue of immigration and illegal immigration.

It will not distract from the critical tasks at hand, securing our borders. I am committed to enforcing our immigration laws and effectively reforming our immigration system without providing amnesty, and I believe that all of our colleagues should join in cosponsoring the legislation offered by our colleague from Kansas (Mr. RYUN) H. Res. 793, which will underscore the fact that the Star Spangled Banner should be sung in English.

□ 1415

## URGING A CONFERENCE ON CHILDREN'S SAFETY ACT

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

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, despite the fact of having a bit of laryngitis, I rise today on a very important issue. I want to commend the Senate for passing Senate 1086, the Sex Offender Registration and Notification Act.

Now that the Senate has joined the House in passing legislation to protect our children, I urge the appointment of a conference committee so that we can see this actually enacted into law this year.

Nine-year-old Jessica Lunsford lost her life at the hands of a convicted sex offender more than a year ago. This monster assaulted her, buried her in a plastic garbage bag, and killed her just across the street from her home and her family.

We cannot let one more minute go by without closing the loophole in the law that her tragic death revealed. I can't go back to my district and tell Jessica's father that Congress's schedule was too busy and that we will pass something into law next year. The time to act is now.

## MEDICARE PART D

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

Mr. GINGREY. Mr. Speaker, this Sunday is Mother's Day. I know there must be people out there, who, like me, are looking for a last minute gift for their mothers, and I have a great suggestion.

If your mother or father, and Father's Day is coming up soon too, if either of them is a senior, you can give them the gift of health by helping them enroll in a Medicare prescription drug plan.

The initial enrollment period for Medicare part D ends next Monday, May 15, the day after Mother's Day. That means seniors have less than a week remaining to enroll in a plan and be guaranteed the lowest premiums and the most savings.

Already, more than 30 million seniors have enrolled, and those seniors are saving an average of $1,100 a year on their medications. A recent survey showed that 90 percent of seniors say their plan is convenient to use, and 85 percent say their plan is affordable and covers the medicines that they need.

As a physician, I know if seniors can't afford their medication, they will go without to the detriment of their health.

After years of promises, Mr. Speaker, President Bush and this Republican Congress have finally delivered on prescription drug coverage under Medicare. Now, in this final week, I encourage all seniors to sign up and start saving.

## RESPECT FOR AMERICA'S FALLEN HEROES ACT

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

Mrs. BLACKBURN. Mr. Speaker, today I rise to draw to the attention of the House H.R. 5037. This is the Respect For America's Fallen Heroes Act, and I would like to encourage each Member of this body to join me and my colleagues in this act. What it is going to do is to put in place criteria that will prohibit a person from carrying out demonstrations at the funeral of one of our fallen heroes.

We are going to have a press conference, Mr. Speaker, at 2:30 today to talk more about this, and I want to commend my colleagues, Representative ROGERS from Michigan, our Veterans Affairs' Committee Chairman, Mr. BUYER of Indiana, Mr. CHABOT of Ohio, Mr. WILSON of South Carolina, Mr. CARTER of Texas, and Mr. GARRETT of New Jersey for joining with me on this piece of legislation and for joining to honor the members of the Patriot Guard Riders, who stand with our families to honor our fallen heroes.

## COMMUNICATION FROM HON. NANCY PELOSI, DEMOCRATIC LEADER

The SPEAKER pro tempore laid before the House the following communication from NANCY PELOSI, Democratic Leader:

HOUSE OF REPRESENTATIVES,
OFFICE OF THE DEMOCRATIC LEADER,
*Washington, DC, May 9, 2006.*

Hon. J. DENNIS HASTERT,
*Speaker, United States House of Representatives Washington, DC.*

DEAR MR. SPEAKER: Pursuant to clause 5(a)(4)(A) of rule X of the Rules of the House of Representatives, I designate the following Members to be available for service on an investigative subcommittee of the Committee on Standards of Official Conduct: Mr. Becerra of California, Mr. Capuano of Massachusetts, Mr. Chandler of Kentucky, Mr. Delahunt of Massachusetts, Mr. Schiff of California, Mr. Scott of Virginia, Ms. Solis of California, Mr. Stupak of Michigan, Ms.

Tauscher of California, and Mr. Van Hollen of Maryland.

Sincerely,

NANCY PELOSI,
*Democratic Leader.*

## COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
U.S. HOUSE OF REPRESENTATIVES,
*Washington, DC, May 9, 2006.*

HON. J. DENNIS HASTERT,
*Speaker, U.S. House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on May 8, 2006, at 4:43 p.m. and said to contain a message from the President whereby he notifies the Congress he has extended the national emergency with respect to Syria.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
*Clerk of the House.*

## CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO SYRIA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–109)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

*To the Congress of the United States:*

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice, stating that the national emergency declared in Executive Order 13338 of May 11, 2004, and expanded in scope in Executive Order 13399 of April 25, 2006, authorizing the blocking of property of certain persons and prohibiting the exportation and reexportation of certain goods to Syria, is to continue in effect beyond May 11, 2006. The most recent notice continuing this emergency was published in the *Federal Register* on May 10, 2005 (70 FR 24697).

The actions of the Government of Syria in supporting terrorism, interfering in Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq, pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue in effect the national emergency authorizing the blocking of property of certain persons and prohibiting the exportation and reexportation of certain goods to Syria and to maintain in force the sanctions to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *May 8, 2006.*

## COMMUNICATION FROM DEPUTY CHIEF OF STAFF OF HON. WILLIAM J. JEFFERSON, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Roberta Y. Hopkins, Deputy Chief of Staff of the Honorable WILLIAM J. JEFFERSON, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, DC, May 9, 2006.*

Hon. J. DENNIS HASTERT,
*Speaker, U.S. House of Representatives, Washington, DC.*

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a grand jury subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ROBERTA Y. HOPKINS,
*Deputy Chief of Staff.*

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

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

Record votes on postponed questions will be taken after 6:30 p.m. today.

## AMERICAN RIVER PUMP STATION PROJECT TRANSFER ACT OF 2006

Mr. RADANOVICH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4204) to direct the Secretary of the Interior to transfer ownership of the American River Pump Station Project, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4204

*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 ''American River Pump Station Project Transfer Act of 2006''.

**SEC. 2. AUTHORITY TO TRANSFER.**

The Secretary of the Interior (hereafter in this Act referred to as the ''Secretary'') shall transfer ownership of the American River Pump Station Project located at Auburn, California, which includes the Pumping Plant, associated facilities, and easements necessary for permanent operation of the facilities, to the Placer County Water Agency, in accordance with the terms of Contract No. 02–LC–20–7790 between the United States and Placer County Water Agency and the terms and conditions established in this Act.

**SEC. 3. FEDERAL COSTS NONREIMBURSABLE.**

Federal costs associated with construction of the American River Pump Station Project located at Auburn, California, are nonreimbursable.

**SEC. 4. GRANT OF REAL PROPERTY INTEREST.**

The Secretary is authorized to grant title to Placer County Water Agency as provided in section 2 in full satisfaction of the United States' obligations under Land Purchase Contract 14–06–859–308 to provide a water supply to the Placer County Water Agency.

**SEC. 5. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

(a) IN GENERAL.—Before conveying land and facilities pursuant to this Act, the Secretary shall comply with all applicable requirements under—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(3) any other law applicable to the land and facilities.

(b) EFFECT.—Nothing in this Act modifies or alters any obligations under—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**SEC. 6. RELEASE FROM LIABILITY.**

Effective on the date of transfer to the Placer County Water Agency of any land or facility under this Act, the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the land and facilities, consistent with Article 9 of Contract No. 02–LC–20–7790 between the United States and Placer County Water Agency.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. RADANOVICH) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. RADANOVICH. Mr. Speaker, I ask unanimous consent that all Members may be given 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

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

There was no objection.

Mr. RADANOVICH. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, H.R. 4204, introduced by our distinguished colleague, JOHN DOOLITTLE, directs the Secretary of the Interior to transfer ownership of the American River Pump Station Project to the Placer County Water Agency in northern California.

To facilitate construction of the Auburn Dam nearly 40 years ago, the Federal Government removed a locally

owned pump station located at the dam site. The dam was never built, and now the Federal Government is building a permanent pump station to replace the one it removed years earlier. Under an agreement, the Federal Government must transfer the pump station to the local water users once construction is complete. Before transfer can take place, congressional authorization is needed, and this legislation achieves that objective. I urge my colleagues to support this commonsense bill.

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

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

We on this side of the aisle have reviewed the legislation and have no objection to the passage of H.R. 4204. The bill would fulfill the legal commitment of the United States Government to replace the water supply for the Placer County Water Agency.

The majority has already correctly characterized and explained the bill.

Mr. Speaker, I yield back the balance of my time.

Mr. RADANOVICH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. RADANOVICH) that the House suspend the rules and pass the bill, H.R. 4204, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

## UPPER HOUSATONIC VALLEY NATIONAL HERITAGE AREA ACT

Mr. RADANOVICH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5311) to establish the Upper Housatonic Valley National Heritage Area.

The Clerk read as follows:

H.R. 5311

*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 ''Upper Housatonic Valley National Heritage Area Act''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds the following:

(1) The upper Housatonic Valley, encompassing 29 towns in the hilly terrain of western Massachusetts and northwestern Connecticut, is a singular geographical and cultural region that has made significant national contributions through its literary, artistic, musical, and architectural achievements, its iron, paper, and electrical equipment industries, and its scenic beautification and environmental conservation efforts.

(2) The upper Housatonic Valley has 139 properties and historic districts listed on the National Register of Historic Places, including—

(A) five National Historic Landmarks—

(i) Edith Wharton's home, The Mount, Lenox, Massachusetts;

(ii) Herman Melville's home, Arrowhead, Pittsfield, Massachusetts;

(iii) W.E.B. DuBois' Boyhood Homesite, Great Barrington, Massachusetts;

(iv) Mission House, Stockbridge, Massachusetts; and

(v) Crane and Company Old Stone Mill Rag Room, Dalton, Massachusetts; and

(B) four National Natural Landmarks—

(i) Bartholomew's Cobble, Sheffield, Massachusetts, and Salisbury, Connecticut;

(ii) Beckley Bog, Norfolk, Connecticut;

(iii) Bingham Bog, Salisbury, Connecticut; and

(iv) Cathedral Pines, Cornwall, Connecticut.

(3) Writers, artists, musicians, and vacationers have visited the region for more than 150 years to enjoy its scenic wonders, making it one of the country's leading cultural resorts.

(4) The upper Housatonic Valley has made significant national cultural contributions through such writers as Herman Melville, Nathaniel Hawthorne, Edith Wharton, and W.E.B. DuBois, artists Daniel Chester French and Norman Rockwell, and the performing arts centers of Tanglewood, Music Mountain, Norfolk (Connecticut) Chamber Music Festival, Jacob's Pillow, and Shakespeare & Company.

(5) The upper Housatonic Valley is noted for its pioneering achievements in the iron, paper, and electrical generation industries and has cultural resources to interpret those industries.

(6) The region became a national leader in scenic beautification and environmental conservation efforts following the era of industrialization and deforestation and maintains a fabric of significant conservation areas including the meandering Housatonic River.

(7) Important historical events related to the American Revolution, Shays' Rebellion, and early civil rights took place in the upper Housatonic Valley.

(8) The region had an American Indian presence going back 10,000 years and Mohicans had a formative role in contact with Europeans during the seventeenth and eighteenth centuries.

(9) The Upper Housatonic Valley National Heritage Area has been proposed in order to heighten appreciation of the region, preserve its natural and historical resources, and improve the quality of life and economy of the area.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts.

(2) To implement the national heritage area alternative as described in the document entitled ''Upper Housatonic Valley National Heritage Area Feasibility Study, 2003''.

(3) To provide a management framework to foster a close working relationship with all levels of government, the private sector, and the local communities in the upper Housatonic Valley region to conserve the region's heritage while continuing to pursue compatible economic opportunities.

(4) To assist communities, organizations, and citizens in the State of Connecticut and the Commonwealth of Massachusetts in identifying, preserving, interpreting, and developing the historical, cultural, scenic, and natural resources of the region for the educational and inspirational benefit of current and future generations.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) HERITAGE AREA.—The term ''Heritage Area'' means the Upper Housatonic Valley National Heritage Area, established in section 4.

(2) MANAGEMENT ENTITY.—The term ''Management Entity'' means the management entity for the Heritage Area designated by section 4(d).

(3) MANAGEMENT PLAN.—The term ''Management Plan'' means the management plan for the Heritage Area specified in section 6.

(4) MAP.—The term ''map'' means the map entitled ''Boundary Map Upper Housatonic Valley National Heritage Area'', numbered P17/80,000, and dated February 2003.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of Connecticut and the Commonwealth of Massachusetts.

**SEC. 4. UPPER HOUSATONIC VALLEY NATIONAL HERITAGE AREA.**

(a) ESTABLISHMENT.—There is established the Upper Housatonic Valley National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall be comprised of—

(1) part of the Housatonic River's watershed, which extends 60 miles from Lanesboro, Massachusetts to Kent, Connecticut;

(2) the towns of Canaan, Colebrook, Cornwall, Kent, Norfolk, North Canaan, Salisbury, Sharon, and Warren in Connecticut; and

(3) the towns of Alford, Becket, Dalton, Egremont, Great Barrington, Hancock, Hinsdale, Lanesboro, Lee, Lenox, Monterey, Mount Washington, New Marlboro, Pittsfield, Richmond, Sheffield, Stockbridge, Tyringham, Washington, and West Stockbridge in Massachusetts.

(c) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(d) MANAGEMENT ENTITY.—The Upper Housatonic Valley National Heritage Area, Inc. shall be the management entity for the Heritage Area.

**SEC. 5. AUTHORITIES, PROHIBITIONS, AND DUTIES OF THE MANAGEMENT ENTITY.**

(a) DUTIES OF THE MANAGEMENT ENTITY.—To further the purposes of the Heritage Area, the management entity shall—

(1) prepare and submit a management plan for the Heritage Area to the Secretary in accordance with section 6;

(2) assist units of local government, regional planning organizations, and nonprofit organizations in implementing the approved management plan by—

(A) carrying out programs and projects that recognize, protect and enhance important resource values within the Heritage Area;

(B) establishing and maintaining interpretive exhibits and programs within the Heritage Area;

(C) developing recreational and educational opportunities in the Heritage Area;

(D) increasing public awareness of and appreciation for natural, historical, scenic, and cultural resources of the Heritage Area;

(E) protecting and restoring historic sites and buildings in the Heritage Area that are consistent with heritage area themes;

(F) ensuring that signs identifying points of public access and sites of interest are posted throughout the Heritage Area; and

(G) promoting a wide range of partnerships among governments, organizations and individuals to further the purposes of the Heritage Area;

(3) consider the interests of diverse units of government, businesses, organizations and individuals in the Heritage Area in the preparation and implementation of the management plan;

(4) conduct meetings open to the public at least semi-annually regarding the development and implementation of the management plan;

(5) submit an annual report to the Secretary for any fiscal year in which the management entity receives Federal funds under this Act, setting forth its accomplishments, expenses, and income, including grants to any other entities during the year for which the report is made;

(6) make available for audit for any fiscal year in which it receives Federal funds under this Act, all information pertaining to the expenditure of such funds and any matching funds, and require in all agreements authorizing expenditures of Federal funds by other organizations, that the receiving organizations make available for such audit all records and other information pertaining to the expenditure of such funds; and

(7) encourage by appropriate means economic development that is consistent with the purposes of the Heritage Area.

(b) AUTHORITIES.—The management entity may, for the purposes of preparing and implementing the management plan for the Heritage Area, use Federal funds made available through this Act to—

(1) make grants to the State of Connecticut and the Commonwealth of Massachusetts, their political subdivisions, nonprofit organizations and other persons;

(2) enter into cooperative agreements with or provide technical assistance to the State of Connecticut and the Commonwealth of Massachusetts, their subdivisions, nonprofit organizations, and other interested parties;

(3) hire and compensate staff, which shall include individuals with expertise in natural, cultural, and historical resources protection, and heritage programming;

(4) obtain money or services from any source including any that are provided under any other Federal law or program;

(5) contract for goods or services; and

(6) undertake to be a catalyst for any other activity that furthers the purposes of the Heritage Area and is consistent with the approved management plan.

(c) PROHIBITIONS ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this Act to acquire real property, but may use any other source of funding, including other Federal funding outside this authority, intended for the acquisition of real property.

**SEC. 6. MANAGEMENT PLAN.**

(a) IN GENERAL.—The management plan for the Heritage Area shall—

(1) include comprehensive policies, strategies and recommendations for conservation, funding, management and development of the Heritage Area;

(2) take into consideration existing State, county, and local plans in the development of the management plan and its implementation;

(3) include a description of actions that governments, private organizations, and individuals have agreed to take to protect the natural, historical and cultural resources of the Heritage Area;

(4) specify the existing and potential sources of funding to protect, manage, and develop the Heritage Area in the first 5 years of implementation;

(5) include an inventory of the natural, historical, cultural, educational, scenic, and recreational resources of the Heritage Area related to the themes of the Heritage Area that should be preserved, restored, managed, developed, or maintained;

(6) describe a program of implementation for the management plan including plans for resource protection, restoration, construction, and specific commitments for implementation that have been made by the management entity or any government, organization, or individual for the first 5 years of implementation; and

(7) include an interpretive plan for the Heritage Area.

(b) DEADLINE AND TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary for approval within 3 years after funds are made available for this Act.

(2) TERMINATION OF FUNDING.—If the management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal funding under this Act until such time as the management plan is submitted to the Secretary.

**SEC. 7. DUTIES AND AUTHORITIES OF THE SECRETARY.**

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may, upon the request of the management entity, provide technical assistance on a reimbursable or non-reimbursable basis and financial assistance to the Heritage Area to develop and implement the approved management plan. The Secretary is authorized to enter into cooperative agreements with the management entity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historical, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—The Secretary shall approve or disapprove the management plan not later than 90 days after receiving the management plan.

(2) CRITERIA FOR APPROVAL.—In determining the approval of the management plan, the Secretary shall consider whether—

(A) the management entity is representative of the diverse interests of the Heritage Area, including governments, natural and historic resource protection organizations, educational institutions, businesses, and recreational organizations;

(B) the management entity has afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the management plan;

(C) the resource protection and interpretation strategies contained in the management plan, if implemented, would adequately protect the natural, historical, and cultural resources of the Heritage Area; and

(D) the management plan is supported by the appropriate State and local officials whose cooperation is needed to ensure the effective implementation of the State and local aspects of the management plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan, the Secretary shall advise the management entity in writing of the reasons therefore and shall make recommendations for revisions to the management plan. The Secretary shall approve or disapprove a proposed revision within 60 days after the date it is submitted.

(4) APPROVAL OF AMENDMENTS.—Substantial amendments to the management plan shall be reviewed by the Secretary and approved in the same manner as provided for the original management plan. The management entity shall not use Federal funds authorized by this Act to implement any amendments until the Secretary has approved the amendments.

**SEC. 8. DUTIES OF OTHER FEDERAL AGENCIES.**

Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

**SEC. 9. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.**

(a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) LANDOWNER WITHDRAW.—Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

**SEC. 10. PRIVATE PROPERTY PROTECTION.**

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) LIABILITY.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA.—Nothing in this Act shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) EFFECT OF ESTABLISHMENT.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this Act may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

**SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There is authorized to be appropriated for the purposes of this Act not more than $1,000,000 for any fiscal year. Not more than a total of $10,000,000 may be appropriated for the Heritage Area under this Act.

(b) MATCHING FUNDS.—Federal funding provided under this Act may not exceed 50 percent of the total cost of any assistance or grant provided or authorized under this Act.

**SEC. 12. SUNSET.**

The authority of the Secretary to provide assistance under this Act shall terminate on

the day occurring 15 years after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. RADANOVICH) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

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

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

There was no objection.

Mr. RADANOVICH. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, H.R. 5311 is introduced by Mrs. JOHNSON of Connecticut and would establish the Upper Housatonic Valley National Heritage Area in Connecticut and Massachusetts. The valley is recognized for its cultural achievements through such authors as Herman Melville, Nathaniel Hawthorne and W.E.B. DuBois, and was the site of countless significant events in American history. Proponents of the bill hope to preserve, recognize, and enhance the area's contributions in literature, art, music, architecture, iron, paper, and its electrical equipment industries.

I would note that the text of the bill passed this House in the 108th Congress and in the previous session of the 109th Congress. I urge adoption of the bill.

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

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

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. The majority has described the variety of historic and natural resources that will be preserved and interpreted in the proposed National Heritage Area, and we do not oppose this legislation.

We would note, however, that the majority's approach to heritage area legislation has been widely inconsistent. The Republican leadership has gone from opposing heritage areas to approving them in large packages to now approving some of the same ones over again as stand-alone bills.

This inconsistency is particularly frustrating to those of us, like myself, with heritage area proposals of our own which have been caught up in this needless legislative red tape and sometimes for several years and several Congresses. It is my hope that once we have approved H.R. 5311, the majority will provide all remaining meritorious heritage area proposals similar consideration.

Mr. Speaker, I yield back the balance of my time.

Mr. RADANOVICH. Mr. Speaker, I yield 4 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the gentleman from California for recognizing me on this bill to designate the Upper Housatonic Valley National Heritage Area. This area encompasses 29 towns in the hilly terrain of western Massachusetts and northwestern Connecticut which is a singular and important geographic and cultural area. And my colleague, Mr. OLVER, while he may be here before we finish debate, has worked closely with me on this as it links our two districts together.

Its residents, over hundreds of years, have made significant national contributions to American literature, art, music and architecture, founded the iron industry in America, and host unique minerals and environmental treasures. This area has been awaiting designation for several years, and I am thrilled to have it on the floor today.

I would like to thank Chairman POMBO and the Resources Committee for recognizing that through this locally led initiative, the States of Connecticut and Massachusetts will be able to make real progress in protecting the river and the river valley, its heritage and also collaborating regionally to develop the economy in harmony with its history, environmental resources, and unique cultural heritage.

□ 1430

The Heritage designation enjoys overwhelming support throughout the region from individuals. Historic and civic organizations, local businesses, and local and State elected officials all have expressed strong support for the establishment of the National Heritage Area, and are enthusiastic about the potential that designation creates for the small towns of the area to work together to celebrate and preserve our heritage.

It has inspired the development of a local organization that has already begun hosting hiking events, historic visits and numerous educational programs, laying a new foundation for regional action for both preservation and economic development.

Congress established criteria in 2000 clarifying that designation requires a cultural, natural and historical heritage of national significance and must have broad public support and a qualified organization to manage the area. The National Park Service agreed that the Upper Housatonic Valley meets the Department's 10 criteria for designation and even cite it as a national model of how to become a National Heritage Area.

The Upper Housatonic Valley National Heritage Area will extend from Lanesboro, Massachusetts, 60 miles south to Kent, Connecticut. This region of New England is home to the Nation's first industrial iron sites from 1730 to the 1920s. The first blast furnace was built here in 1762 by Ethan Allen and supplied the iron for the cannons that helped George Washington's Army defeat the British in Boston and to make other weapons for the soldiers of the Revolutionary War.

While many of the furnaces, mine sites and charcoal pits have been lost to development and time, those that remain are in need of refurbishment. The Beckley Furnace in Canaan, Connecticut, was designated as an official project by the Millennium Committee to Save America's Treasures and now has been well restored.

The valley's history as a cultural retreat from Boston and New York provides both past and current riches for the country. Since the 1930s, visitors from all over have come to hear music at Tanglewood, Massachusetts and Music Mountain in Falls Village, Connecticut; to see paintings at the Norman Rockwell Museum and at the Eric Sloane Museum and to watch serious theater at Stockbridge, Massachusetts, and Norfolk, Connecticut. Today's local authors have drawn on a long tradition going back to the 19th century when Herman Melville, Nathaniel Hawthorne and Edith Wharton lived and wrote in these hills.

The Housatonic Valley is also rich with environmental and recreational treasures. On the Housatonic River just below Falls Village, Connecticut, is one of the prize fly fishing centers in the northeast and is enjoyed by fishermen not only from Connecticut and Massachusetts, but the entire eastern seaboard.

Olympic rowers have trained on this river as our children have learned to swim, boat, fish and value its ecosystem. The Appalachian Trail winds through this area, as do the trails on Canaan Mountain and in the Great Mountain Forest.

The Upper Housatonic Valley with its remoteness from, but ties to, large cities occupies a special niche in our national culture, and I encourage my colleagues to support this legislation. I thank the gentleman from California.

Mr. RADANOVICH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BISHOP of Utah). The question is on the motion offered by the gentleman from California (Mr. RADANOVICH) that the House suspend the rules and pass the bill, H.R. 5311.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## PUYALLUP INDIAN TRIBE LAND CLAIMS SETTLEMENT

Mr. RADANOVICH. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1382) to require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe.

The Clerk read as follows:

S. 1382

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

**SECTION 1. PUYALLUP INDIAN TRIBE LAND CLAIMS SETTLEMENT.**

(a) IN GENERAL.—The Secretary of the Interior shall—

(1) accept the conveyance of the parcels of land within the Puyallup Reservation described in subsection (b); and

(2) hold the land in trust for the benefit of the Puyallup Indian tribe.

(b) LAND DESCRIPTION.—The parcels of land referred to in subsection (a) are as follows:

(1) PARCEL A.—Lot B, boundary line adjustment 9508150496, as depicted on the map dated August 15, 1995, held in the records of the Pierce County Auditor, situated in the city of Fife, county of Pierce, State of Washington.

(2) PARCEL B.—

(A) IN GENERAL.—Parcel B shall be comprised of land situated in the city of Fife, county of Pierce, State of Washington, more particularly described as follows:

(i) Lots 3 and 4, Pierce County Short Plat No. 8908020412, as depicted on the map dated August 2, 1989, held in the records of the Pierce County Auditor, together with portion of SR 5 abutting lot 4, conveyed by the deed recorded under Recording No. 9309070433, described as follows:

(I) That portion of Government lot 1, sec. 07, T. 20 N., R. 4 E., of the Willamette Meridian, described as commencing at Highway Engineer's Station AL 26 6+38.0 P.O.T. on the AL26 line survey of SR 5, Tacoma to King County line.

(II) Thence S88°54′30″ E., along the north line of said lot 1 a distance of 95 feet to the true point of beginning.

(III) Thence S01°05′30″ W87.4′ feet.

(IV) Thence westerly to a point opposite Highway Engineer's Station AL26 5+50.6 P.O.T. on said AL26 line survey and 75 feet easterly therefrom.

(V) Thence northwesterly to a point opposite AL26 5+80.6 on said AL26 line survey and 55 feet easterly therefrom.

(VI) Thence northerly parallel with said line survey to the north line of said lot 1.

(VII) Thence N88°54′30″ E., to the true point of beginning.

(ii) Chicago Title Insurance Company Order No. 4293514 lot A boundary line adjustment recorded under Recording No. 9508150496, as depicted on the map dated August 15, 1995, held in the records of the Pierce County Auditor.

(B) EXCLUSION.—Excluded from Parcel B shall be that portion of lot 4 conveyed to the State of Washington by deed recorded under recording number 9308100165 and more particularly described as follows:

(i) Commencing at the northeast corner of said lot 4.

(ii) Thence N89°53′30″ W., along the north line of said lot 4 a distance of 147.44 feet to the true point of beginning and a point of curvature.

(iii) Thence southwesterly along a curve to the left, the center of which bears S0°06′30″ W., 55.00 feet distance, through a central angle of 89°01′00″, an arc distance of 85.45 feet.

(iv) Thence S01°05′30″ W., 59.43 feet.

(v) Thence N88°54′30″ W., 20.00 feet to a point on the westerly line of said lot 4.

(vi) Thence N0°57′10″ E., along said westerly line 113.15 feet to the northwest corner of said lot 4.

(vii) Thence S89°53′30″ east along said north line, a distance of 74.34 feet to the true point of beginning.

(3) ADDITIONAL LOTS.—Any lots acquired by the Puyallup Indian tribe located in block 7846, 7850, 7945, 7946, 7949, 7950, 8045, or 8049 in the Indian Addition to the city of Tacoma, State of Washington.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. RADANOVICH) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

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

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

There was no objection.

Mr. RADANOVICH. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, S. 1382 will expedite the approval process for relocating a casino owned by the Puyallup Indian tribe of Washington State. This business is affected by the planned expansion of the Port of Tacoma. On November 16, 2004 the Port of Tacoma, State of Washington, the tribe and the cities of Fife and Tacoma signed an agreement to pursue a major expansion of terminal facilities at that time Port of Tacoma.

The agreement allows the tribe to move its Emerald Queen Casino, which is impacted by the construction of the new Port of Tacoma terminal facility, to a new location within the boundaries of the tribe's reservation. The agreement will create nearly 4,000 jobs for the local area and increase the cargo capacity of the Port of Tacoma, already the seventh busiest waterborne freight gateway in the United States.

S. 1382 has the full support of the Washington State delegation, and I look forward to the support of this House.

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

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

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. I rise in strong support of this legislation and to congratulate the gentleman from Washington, NORM DICKS, who is the author of the House companion bill.

Mr. DICKS has worked tirelessly over the last several months to bring this bill before us today. This provision would enable the Puyallup Indian tribe to continue its ability to provide needed services to its members and to preserve a significant number of jobs held by both Indians and non-Indians.

The port and other State and local entities support the tribe's effort to have this land placed into trust. Once enacted, this legislation will assist the tribe in its business ventures.

I would again pay tribute to Congressman DICKS for his tenacity in getting this bill moved through the House. This provision has already passed the Senate and has the support of State and local government.

I urge all of our colleagues to support the passage of S. 1382.

Mr. Speaker, I would like to yield such time as he might consume to the sponsor of the bill, Mr. DICKS.

Mr. DICKS. Mr. Speaker, I appreciate the distinguished gentlewoman from the Virgin Islands for recognizing me. I want to thank the chairman and the others who presented the bill.

I rise in strong support of this bill, S. 1382, which would require that reservation land be put into trust on behalf of the Puyallup Indians. I introduced similar legislation in the House, which was approved by the Resources Committee in March.

Passage of the Senate bill today will clear the legislation for the President's signature. I want to thank Resources Chairman POMBO for his support of this legislation and the action of the Resources Committee took to move the bill forward. I also want to extend my gratitude toward ranking Democratic Member RAHALL for his assistance. The staff of both of these Members have been very helpful.

The legislation is consistent with previous actions that Congress has taken on behalf of the Puyallup tribe. After many years of negotiations, the tribe and the local community came together to settle the serious and longstanding land claims that affected a large portion of what is now the Port of Tacoma.

When the settlement agreement was reached in 1989, Congress approved specific legislation authorizing the terms of this landmark settlement, which has now led to robust development in the Port of Tacoma. The creation of a substantial number of new jobs in shipping and trade-related businesses and to the development of many new tribal enterprises that will sustain the current and next generation of Puyallup tribe members really was a win-win situation for the tribe, the Port of Tacoma, the city of Tacoma, the city of Fife and for Pierce County.

With the support of Congress, it has resulted in a very productive working relationship between all of those parties. A prime example of this improved relationship is the mutually beneficial situation that led to the legislation we are considering today.

A few years ago, the Port of Tacoma was presented with the opportunity to build a large new container terminal that would lead to the creation of many new family wage jobs if it could build on tribal-owned land in the port. After some negotiation, the tribe agreed to relocate a casino that was situated on this land in order to allow for the type of cargo-handling development to occur at the waterfront, consistent with the goals of the settlement agreement.

This is another case in which everyone wins. The State of Washington and

all local governments have recognized the tribe's cooperative spirit and have actively supported this relocation. Thus, this legislation would simply allow for the alternate parcel of reservation land in Fife to be put into trust status in order to meet the requirements of the State of Washington.

Again, I want to thank the chairman, the ranking member and the Resources Committee for their assistance in moving this piece of legislation that will result in further job creation and economic development in the Port of Tacoma, not only helping the tribe in the local community, but positively affecting our Nation's balance of trade.

Mrs. CHRISTENSEN. I yield back the balance of my time.

Mr. RADANOVICH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. RADANOVICH) that the House suspend the rules and pass the Senate bill, S. 1382.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

## PROVIDING FOR CONCURRENCE BY HOUSE WITH AMENDMENT IN SENATE AMENDMENT TO H.R. 1499, HEROES EARNED RETIREMENT OPPORTUNITIES ACT

Mr. SAM JOHNSON of Texas. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 803) providing for the concurrence by the House with amendment in the amendment of the Senate to H.R. 1499.

The Clerk read as follows:

H. RES. 803

*Resolved*, That upon the adoption of this resolution the bill (H.R. 1499) entitled ''An Act to amend the Internal Revenue Code of 1986 to allow members of the Armed Forces serving in a combat zone to make contributions to their individual retirement plans even if the compensation on which such contribution is based is excluded from gross income, and for other purposes'', with the Senate amendment thereto, shall be considered to have been taken from the Speaker's table to the end that the Senate amendment thereto be, and the same is hereby, agreed to with an amendment as follows:

Add at the end of the Senate amendment the following:

Page 3, after line 3, insert the following new subsection:

(c) CONTRIBUTIONS FOR TAXABLE YEARS ENDING BEFORE ENACTMENT.—

(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act, any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be treated, for purposes of such Code, as having been made on the last day of such taxable year.

(2) WAIVER OF LIMITATIONS.—

(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

(B) ASSESSMENT OF DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''individual retirement plan'' has the meaning given such term by section 7701(a)(37) of such Code.

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

The Chair recognizes the gentleman from Texas.

Mr. SAM JOHNSON of Texas. Mr. Speaker, this is an important bill that will allow our troops serving in combat zones to contribute some of their tax-exempt combat pay to retirement savings. Because combat pay is exempt from tax, it does not qualify as earned income that is normally allowed in an individual retirement account.

Mr. Speaker, I would now like to yield as much time as she may consume to the Representative from North Carolina (Ms. FOXX).

□ 1445

Ms. FOXX. Mr. Speaker, I am truly honored to be here today. I am honored because the mere consideration of this bill represents the greatness of our Republican democracy. At this time 2 years ago, I dreamed of coming before this House and working for the people of the Fifth Congressional District of North Carolina. Here I am today promoting a bill I wrote to help those very constituents who deserve it the most.

Just over a year ago, the family of Army Specialist Michael Hensley from my district in Clemmons, North Carolina, contacted me with a problem that his son and many of our other brave soldiers are facing.

Specialist Hensley wanted to do the responsible thing by making the maximum allowable contribution to his individual retirement account, but found out that because of the nature of his wages, he would not be able to contribute to his nest egg this year. Thanks to the Republican leadership of this House, we stand here this afternoon to solve this problem.

Mr. Speaker, our current Tax Code wrongfully prohibits many of our brave men and women serving in combat zones from taking advantage of individual retirement accounts, or IRAs. Most soldiers serving in these combat zones are paid in wages designated as military hazard pay. As deployment times have grown longer and longer, many soldiers now serve entire calendar years overseas, making their yearly compensation consist of hazard pay exclusively. These wages are not taxed, nor should they be. However, since this compensation is nontaxable, the wages are not eligible for IRA contributions. That is entirely unfair.

As we all know, IRAs are an excellent tool for responsible retirement savings, and responsible retirement savings should be encouraged for everyone, but especially for those who take up arms in war zones and fight for our freedom.

The men and women defending America in harm's way overseas should not be excluded from fully participating in the important retirement investment opportunity that IRAs provide because of a glitch in our Tax Code.

H.R. 1499, the Heroes Earned Retirement Opportunities, or HERO Act, will correct this serious injustice. The HERO Act simply designates combat hazard pay earned by a member of the Armed Forces as eligible for contribution to retirement accounts. The legislation, which is endorsed by the Reserve Officers Association and the Military Officers Association of America, would not actually tax these wages. It would merely allow them to be invested in the same retirement accounts available to all Americans.

To quote the Military Officers Association of America in their letter of support for the bill: ''This change makes perfect sense in view of all we are asking our servicemembers to do in the war on terror in Iraq, Afghanistan and elsewhere.'' I could not have said it better myself.

Mr. Speaker, our heroes defending America overseas certainly deserve the same access to retirement savings that we receive. In fact, we should be encouraging and even facilitating retirement savings whenever possible. Americans need to take responsibility for and control of their retirement. Those responsible enough to save their hard-earned wages should be rewarded, not burdened with taxes and regulations.

I would like to thank our Republican majority leader, JOHN BOEHNER, as well as Chairman BILL THOMAS, for recognizing the importance of this bill and for expeditiously bringing it to the floor of this House. I would also like to thank Chairman DUNCAN HUNTER for his service to our Nation in Vietnam, for his excellent leadership on the House Armed Services Committee and for cosponsoring and supporting this great bill. His commitment to our troops is to be applauded.

Lastly, I would like to thank Congressman SAM JOHNSON for his 29 years of service to our Nation and for his cosponsorship of this bill and his assistance in the Ways and Means Committee to bring the bill to the floor of the House. Congressman JOHNSON is a

true hero, having served as a prisoner of war. It is an honor to have him as a cosponsor and to have had his strong support throughout the effort to get this bill passed.

I urge all my colleagues to help right this fundamental wrong by voting for this straightforward, commonsense legislation.

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

Mr. Speaker, I stand today in support of H.R. 1499. This bill is actively supported by my Democratic colleagues. On May 23, 2005, this bill passed the House under suspension of the rules by voice vote. The bill was referred to the Senate and was approved with an amendment to change the effective date. Because of the later effective date as passed by the Senate, the bill is before us again today merely to incorporate a technical change. This change would indeed ensure that our service men and women can make eligible contributions for previous tax years, 2004 and 2005, for which the deadline has passed, but years for which they were eligible to make these contributions.

We acknowledge fully the work of our military personnel who continue to perform so ably for our Nation. We honor their bravery and their sacrifice. Therefore, it goes without saying that we endorse this effort by the Congress to make it possible for these men and women to take advantage of every tax benefit that is available to them, including saving for their retirement.

H.R. 1499, as my colleague and friend, the gentleman from Texas, Mr. JOHNSON, has said, would allow our service men and women to treat their compensation received while serving in combat as taxable income in order to help them meet the income eligibility requirement for making contributions to an individual retirement account.

At a recent hearing of our committee, two of our five witnesses highlighted the large shortfall in retirement savings many of our workers in this country face. I am sure that many members of the military fall within this group. This bill is a small step in the right direction of closing that gap.

Other larger steps need to be taken. For example, Democratic Members of this Congress are hopeful that we can work with our Republican colleagues to preserve another tax benefit that may be of even greater help to many military families. A provision in current law would permit military families to treat combat pay as taxable compensation for purposes of claiming the Earned Income Tax Credit. This provision, though, is set to expire at the end of this year.

The EITC is a refundable credit many low- and middle-income taxpayers can claim when they file their Federal tax returns. Eligible families may claim a portion of their credit ratably during the year. The EITC helps to relieve the Federal tax burden on many families who are working full-time, yet find themselves at or below the poverty level.

We had hoped that this provision could be included as part of the bill before us today to further help military families. However, we were assured that this provision will be taken up later in the year, and we will continue to press for the extension of this provision before it expires.

Also let me finish by expressing my hope and the hope of so many on my side of the aisle that this Congress and the administration will meet their responsibilities to our veterans on health, on re-employment, and on so many other major needs of those in the military and the veterans of this country.

Mr. Speaker, I would say to my friend, Mr. JOHNSON, therefore anticipating your remarks, and your remarks indeed reflect your service to this country, I yield back the balance of my time.

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

Mr. Speaker, as Mr. LEVIN pointed out, we passed this legislation before. Our colleagues in the Senate then passed the bill by unanimous consent back in October, but made a change regarding the effective date.

The HERO Act will help our combat troops save for their retirement, as Mr. LEVIN pointed out, or for first-time home purchases or for education by saving in a Roth IRA.

Currently, all Americans can save up to $4,000 this year in an IRA or a Roth IRA. This cap on annual contributions will increase to $5,000 in 2008. Right now our combat troops are not able to contribute to IRAs because that combat pay does not fit the definition of taxable earned income.

As Mr. LEVIN pointed out, our combat troops are putting their lives on the line in a very dangerous situation, and to recognize this service, their pay is not subject to tax. This bill is a way for Congress and the American people to say thank you every payday.

There are a lot of young servicemembers who are single who come home at the end of a tour in a combat zone with a nice little nest egg. Once we get this bill signed into law, it will be great for these young men and women to put some of that money into a Roth IRA for the purchase of a home, to spend on school, or just for long-term retirement. While there are plenty of other tantalizing things for these young people to spend their money on, we need to at least give them the opportunity to save some of it in the same way that all other Americans can save.

I am one of the conferees working out the differences between the House and Senate on the pension bill. I look forward to getting that bill completed soon so we can increase the opportunity of all Americans to save and to make their pension plans safer. However, our troops are prohibited from even contributing combat pay to an IRA, and we need to remedy this situation right now.

According to the Joint Committee on Taxation, the bill would provide $70 million of tax benefits to military families over the next decade. We will pass the HERO Act with no controversy, and I hope our colleagues in the other body follow suit in the near future.

Mr. Speaker, I thank Mr. LEVIN for his comments, and I appreciate Ms. FOXX introducing the bill. It is the right thing to do.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM JOHNSON) that the House suspend the rules and agree to the resolution, H. Res. 803.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. LEVIN. 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.

## RURAL HEALTH CARE CAPITAL ACCESS ACT OF 2006

Mr. RENZI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4912) to amend section 242 of the National Housing Act to extend the exemption for critical access hospitals under the FHA program for mortgage insurance for hospitals.

The Clerk read as follows:

H.R. 4912

*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 ''Rural Health Care Capital Access Act of 2006''.

**SEC. 2. EXTENSION.**

Paragraph (1) of section 242(i) of the National Housing Act (12 U.S.C. 1715z–7(i)(1)) is amended by striking ''July 31, 2006'' and inserting ''July 31, 2011''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. RENZI) and the gentleman from California (Mr. BACA) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona.

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

Mr. Speaker, I rise in support of H.R. 4912, the Rural Health Care Capital Access Act of 2006. This piece of legislation would extend the exemption of the current law that allows small rural hospitals to remain eligible for Federal Housing Administration mortgage insurance.

Recent health care statistics show a huge backlog of capital improvement needs for the majority of hospitals in the United States, and rural hospitals face even fewer opportunities to make

such needed repairs, achieve reasonable terms for refinancing or build replacement facilities. The FHA Section 242 Hospital Mortgage Insurance Program has been a valuable tool for many hospitals seeking to rebuild or make improvements.

Recently the program became available to critical access hospitals. Critical access hospitals are facilities certified to receive cost-based reimbursement for Medicare. This cost-based reimbursement is intended to improve their financial performance and thereby reduce hospital closures.

Despite the efforts of FHA, some challenges have remained for these rural hospitals to gain access to the critical access program. One of these was a statutory requirement in section 242 that at least 50 percent of the hospital's adjusted net patient days must be used for acute medical care. While this requirement may be useful in urban areas, rural isolated communities such as those served by critical access hospitals often cannot sustain separate independent hospitals which provide acute care and nursing facilities.

□ 1500

It is common for rural hospitals and nursing homes to operate as a single unit in order to take advantage of savings related to cost-sharing of some services and staff.

To deny critical-access hospitals access to FHA mortgage insurance on these grounds unfairly disadvantages these facilities that are desperately in need of capital improvements.

H.R. 659, the Hospital Mortgage Insurance Act of 2003 amended section 242 of the National Housing Act and included an exemption that eliminated the so-called Patient Day Test for critical-access hospitals, which allowed these rural hospitals to be eligible for FHA mortgage insurance. The exemption expires on July 31, 2006. H.R. 4912 would simply extend this vital exemption for 5 years, which would give FHA and the Department of Housing and Urban Development time to review the exemption's impact and recommend to the Congress whether it should be made permanent.

I am a proud cosponsor of this important legislation, which will benefit 11 critical-access hospitals in my home State of Arizona and three hospitals in my district: Page Memorial Hospital in Page, Arizona, Sage Memorial Hospital in Ganado, located on the Navajo Nation, and Winslow Memorial Hospital located in the town of Winslow, Arizona.

I would like to thank the Housing Subcommittee chairman, Congressman NEY, Ranking Member WATERS, full committee Chairman OXLEY, Ranking Member FRANK and all of those who worked hard to pull this together for their support of this legislation.

Mr. Speaker, I urge my colleagues to support this bipartisan piece of legislation that would allow more opportunities for critical-access hospitals to improve the quality of health care in rural America.

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

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

Mr. Speaker, I rise today to express my strong support for H.R. 4912, the Rural Health Care Capital Access Act of 2006, along with Mr. FRANK who is one of the cosponsors of this important legislation.

This bill extends and exempts under the Hospital Mortgage Insurance Act of 2003 small, rural critical-access hospitals. This allows them to qualify for the Department of Housing and Urban Development section 242 mortgage insurance program.

This section 242 program is an important program which provides mortgage insurance for loans made for construction, renovation and equipment of acute-care hospitals. To be eligible for section 242 requires that at least half of the hospital's net patient days qualify as acute care, which is referred to as a Patient's Day Test.

Small, rural hospitals sometimes have a hard time meeting these requirements. This is because rural communities often have hospitals and nursing homes combined in order to achieve savings by sharing facilities and services such as pharmacy and food services.

The Hospital Mortgage Insurance Act of 2003 eliminated the so-called Patient Day Test for critical-access hospital, but limited the exemption to 3 years. The exemption expires on July 31, 2006.

Today only one hospital sought approval under this exemption. This is not surprising considering the length of time required for applying to the program, particularly for small hospitals with limited staff and resources to devote to such complicated processes.

As we all know, there are many small hospitals throughout the Nation that need this kind of help. It is very complicated, applying for this kind of a process. Nevertheless, this exemption is necessary for small hospitals to have access, and I state, to have access to section 242 programs. And it is important that they do have the access.

H.R. 4912, the Rural Health Care Capital Access Act of 2006, would extend the exemption for an additional 5 years. During this time, HUD and FHA can review the impact and recommend to Congress whether the exemption should be made permanent.

Again, Mr. Speaker, I express my strong support for this bill.

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

Mr. RENZI. Mr. Speaker, I have no additional speakers, and reserve the balance of my time.

Ms. WATERS. Mr. Speaker, I rise in strong support of H.R. 4912, the "Rural Health Care Capital Access Act of 2006", of which I am an original sponsor. The Committee on Financial Services marked-up H.R. 4912 on March 13, 2006, so I am delighted that this important measure has reached the floor today. Mr. NEY, the Chairman of the Subcommittee on Housing and Community Affairs, is to be applauded for his efforts on behalf of rural communities.

The bill would allow hospitals located in rural areas access to the Federal Housing Administration (FHA) mortgage insurance program for hospitals, under Section 242 of the National Housing Act. These hospitals are located in rural areas of the country, and are not always able to meet the bed capacity requirements for critical care facilities. Thus, the bill would extend the exemption for another 5 years, enabling rural hospitals to be exempted from critical bed requirements.

The bill addresses the mortgage insurance needs of Critical Access Hospitals. These hospitals are rural hospitals with a maximum of 25 beds and must be 35 miles from the nearest hospital. Another requirement is related to the so-called "patient day" requirement. Under Section 242, not more than 50 percent of a hospital's adjusted net patient days could be "assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis . . ." These are onerous requirements for small rural hospitals to meet. When we passed the Hospital Insurance Mortgage Act of 2003, it eliminated the patient day requirement, but it expires on July 31, 2006.

By supporting H.R. 4912 to extend the exemption for another 5 years, we will be addressing an issue of major concern in rural areas. Hospitals are far and few apart. Within many of our rural communities hospitals double up with nursing homes to meet these bed requirements, as well as to share in cost savings, to qualify for Section 242 mortgage insurance. H.R. 4912 removes another barrier to health care in rural communities, and therefore, I urge support of the measure.

Mr. BACA. Mr. Speaker, I have no additional speakers. I appreciate the gentleman from Arizona's leadership in taking up this legislation along with the cosponsor, Mr. FRANK, who feels this is important for a lot of the hospitals in rural communities, and I yield back the balance of my time.

Mr. RENZI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PRICE of Georgia). The question is on the motion offered by the gentleman from Arizona (Mr. RENZI) that the House suspend the rules and pass the bill, H.R. 4912.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## BYRON NELSON CONGRESSIONAL GOLD MEDAL ACT

Mr. RENZI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4902) to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

The Clerk read as follows:

H.R. 4902

*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 ''Byron Nelson Congressional Gold Medal Act''.

**SEC. 2. FINDINGS.**

The Congress finds as follows:

(1) Byron Nelson was a top player in the sport of golf during the World War II era and his accomplishments as a player, a teacher, and commentator are renowned.

(2) Byron Nelson won 54 career victories, including a record 11 in a row in 1945, during his short 13-year career.

(3) Byron Nelson won 5 majors, including 2 Masters (1937 and 1942), two Professional Golf Association (PGA) Championships (1940 and 1945) and the U.S. Open (1939).

(4) Sports journalist Bill Nichols recently ranked the greatest seasons on the PGA tour for The Dallas Morning News and picked Roanoke, Texas-resident Byron Nelson's 1945 tour as the greatest season of golf in American history.

(5) In 1945, Byron Nelson accumulated 18 total victories, 11 of which were consecutive, while averaging 68.33 strokes per round for 30 tournaments.

(6) At the Seattle Open in 1945, Byron Nelson shot a record 62 for 18 holes and the world record 259, 29 shots under par for 72 holes.

(7) Byron Nelson is one of only two golfers to be named ''Male Athlete of the Year'' twice by the Associated Press: in 1944, when he won 7 tournaments and averaged 69.67 strokes for 85 rounds, and again after his 1945 season.

(8) The World Golf Hall of Fame honored Byron Nelson in 2004 by featuring an exhibit entitled ''Byron Nelson: A Champion . . . A Gentleman''.

(9) Byron Nelson was selected for the Ryder Cup 4 times—in 1937, 1939, 1947 and 1965, and on that last occasion he led the United States Ryder Cup team as team captain to victory over Great Britain.

(10) Byron Nelson was also a pioneer in the golf business, helping to develop the golf shoes and umbrellas used today.

(11) In 1966, True Temper created the ''Iron Byron'' robot to replicate Byron Nelson's swing in order to test the company's equipment, but the robot was eventually used for club and ball testing by the United States Golf Association (USGA) and many other manufacturing companies.

(12) Byron Nelson mentored many golf hopefuls, including 1964 Player of the Year Ken Venturi and 6-time PGA Player of the Year Tom Watson.

(13) Byron Nelson was one of the first golf analysts on network television where his understanding of the game in general, and the golf swing in particular, was demonstrably profound.

(14) Byron Nelson received the United States Golf Association's Bob Jones Award for distinguished sportsmanship in golf in 1974.

(15) In 1974, the Golf Writers Association of America presented Byron Nelson with the Richardson Award for consistently outstanding contributions to golf.

(16) Since 1983, the Byron and Louise Nelson Golf Endowment Fund has provided over $1,500,000 in endowment funds to Abilene Christian University in Abilene, Texas.

(17) Byron Nelson received the PGA Distinguished Service Award in 1993. This award is presented to an individual who has helped perpetuate the ideals and values of the PGA.

(18) Byron Nelson has served as an honorary chairperson for the Metroport Meals on Wheels since 1992.

(19) In 1994, the Golf Course Superintendents Association of America presented Byron Nelson with the Old Tom Morris Award for outstanding contributions to the game.

(20) Byron Nelson helped to develop the Tournament Players Course (TPC) Four Seasons at Los Colinas, Texas, site of the EDS Byron Nelson Championship and the Byron Nelson Golf School, into a world-class facility.

(21) The EDS Byron Nelson Championship is the only PGA tour event named in honor of a professional golfer and traditionally attracts the strongest players in the sport.

(22) Since its inception, the EDS Byron Nelson Championship has raised $88,000,000 for Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services for more than 2,700 children and their families in the greater Dallas area.

(23) In 2002, Byron Nelson received the prestigious Donald Ross Award from the American Society of Golf Course Architects (ASGCA) for his significant contribution to the game of golf and the profession of golf course architecture.

(24) The United States Golf Association presented Byron Nelson the Ike Grainger Award for volunteer service to the game of golf in 2002.

(25) In 2002, the National Golf Foundation presented Byron Nelson with the Graffis Award for outstanding lifelong contributions to the game of golf.

**SEC. 3. CONGRESSIONAL GOLD MEDAL.**

(a) PRESENTATION AUTHORIZED.—The Speaker of the House of Representatives and the President pro tempore of the Senate shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

**SEC. 4. DUPLICATE MEDALS.**

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 3 under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

**SEC. 5. STATUS OF MEDALS.**

(a) NATIONAL MEDALS.—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

**SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.**

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund, such amounts as may be necessary to pay for the costs of the medals struck pursuant to this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals authorized under section 4 shall be deposited into the United States Mint Public Enterprise Fund.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. RENZI) and the gentleman from California (Mr. BACA) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona.

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

Mr. Speaker, I rise today in support of H.R. 4902, the Byron Nelson Congressional Gold Medal Act, sponsored by my friend from Texas (Mr. BURGESS).

Mr. Speaker, while most people know Byron Nelson's significant contributions to the game of golf, it is his humanitarian and philanthropic activities that make him worthy of receiving this medal. The highest civilian honor Congress can bestow is this gold medal.

Mr. Nelson is a golf champion, but he is also a champion for the underprivileged. He has given his time, his talent and his treasure to make this world a better place. Through the EDS Byron Nelson Championship, Mr. Nelson has helped raise more than $88 million for the Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services to more than 2,700 children and their families throughout our Nation.

Additional, the Byron and Louise Nelson Golf Endowment Fund has provided more than $1.5 million in endowment funding to Abilene Christian University in Abilene, Texas.

Further, since 1992, Mr. Nelson has been the honorary chairman of the Metroport Meals on Wheels which provides daily home delivery of hot lunches for the frail, elderly and chronically ill residents of Texas.

Mr. Speaker, Byron Nelson is a legend in the game of golf, much noted for his unprecedented 11 consecutive wins in 1945, his five victories at major tournaments, and his overall 54 career victories.

Byron Nelson is one of the greatest players the game of golf has ever seen. Through his outstanding accomplishments as a golfer and a humanitarian, Byron Nelson has provided and shown us what it is to be a United States citizen.

The time has come for Congress to bestow on this gentleman an honor worthy of his lifelong accomplishments and what he has put forth to improve the lives of those who are less privileged.

Therefore, Mr. Speaker, I urge my colleagues to support this legislation.

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

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

Mr. Speaker, I stand in strong support of H.R. 4902, the Byron Nelson Congressional Gold Medal Act. We are honoring Byron Nelson for his accomplishments in golf. He truly has set a legacy, not only for those of us who have watched golf, but have participated in golf and have seen him during this period of time.

He is a true champion. He is a teacher, he is a course designer, and he is a commentator. But most of all, he

brought integrity to the game of golf. For those of us that play the game, we aspire to be like him. Some of us would love to shoot the rounds that he has. And some of us will probably never do that. But at least we have those dreams and the hopes that one day we can achieve what he has achieved.

I know that for many youth he has been a positive role model and he has set a good example. In addition, he has given back to the community by supporting nonprofit agencies in the greater Dallas area.

Byron Nelson was also a top player in the sport of golf during the World War II era. He grew up near Ft. Worth, Texas, and first got involved in golf as a caddy. And that is inspiration when we see many of the movies that have occurred where caddies ultimately became, then, professional golfers.

And when you see someone, and someone is caddying, you also learn how to hit the ball, pick up the club, give directions and learn just the course management and the integrity of the game itself.

He did this at a local club at Glen Garden Country Club. In fact, among the other caddies that were there was Ben Hogan, another individual that we admire very much, who also became a champion golfer. But in 1927, Byron Nelson competed against Ben Hogan in the club's caddy championship, and he, Byron Nelson, won that match.

In 1944, he won seven tournaments, averaging 69.67 strokes for 85 rounds. Can you imagine what that is like? And the average is 72 per course. That means three strokes under, that he accomplished during that period of time.

And like I said, I only shoot a round once in a while of 68, but never on a consistent basis, and for someone to do it on a consistent basis for 85 rounds is very difficult. He was named Male Athlete of the Year, but he would be even better than that.

In 1945 Byron Nelson had what is still considered today the best season ever by a male golfer. He won 18 different tournaments that year, including a remarkable 11 in a row at one point. And that is something that you do not even see in a lot of the eras that are here today.

That season he averaged 68.33 strokes per round for 31 tournaments. Again, imagine, 31 tournaments going under 72.

At the Seattle Open in 1945, he shot a record of 62, and that is something that I dream about. I probably will never accomplish in my life, but one day, in my dreams I will shoot a 62 and under for 18 holes, and a 259 and a 29 shots under for 72 holes.

In 1945, the AP again named him Male Athlete of the Year. Only two golfers have received that honor twice. He was selected for the Ryder Cup four times, in 1937, 1939, 1947, and again in 1965, when he led the American team to victory over the Britons.

Byron Nelson won five majors, including the Masters twice, 1937 and 1942; the Professional Golf Association PGA, that really stands for posture, grip and alignment, Championship twice, in 1940 and 1945; and the U.S. Open once in 1939.

He won a total of 54 victories during his short 13-year career. He retired from full-time competition in golf at the age of 34 to buy a ranch in his native Texas. Can you imagine what he would have done on the Senior Tour if he would have continued to golf, and if it was available for him to have participated? He would have probably added additional tournaments on the Senior Tour, as well, but he decided to retire at the young age of 34.

After his playing days were over, Byron Nelson continued to contribute to golf. He served as a coach, as a mentor to other players, including Tom Watson, and as a role model for many individuals. He has also shared his knowledge of the sport as a television analyst.

Byron Nelson also was a pioneer in the golf business, helping to develop golf shoes and umbrellas used today. Of course, I bought a couple of his golf shoes, a couple of his umbrellas that I still use on rainy days.

He has helped design world class golf courses. Byron Nelson also helped to develop the Tournament Players Course, TPC, Four Seasons at Las Colinas in Texas into a world-class facility. That course is the home of the Byron Nelson Classic, and Byron Nelson's Golf School.

The Byron Nelson Classic is the only PGA tour event named in honor of a professional golfer, and traditionally attracts the strongest players in sports.

The Byron Nelson Classic has raised a total of $82 million for the Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services for almost 3,000 children and their families in the greater Dallas area.

So we are honored, not only to have a great golfer but a good man and a man whose legacy will live on because he has contributed an awful lot to the sport of golf and contributed as a role model, too.

In the spirit of celebration, I have also introduced a separate piece of legislation that will honor the achievements of Arnold Palmer and Tiger Woods, each of whom has excelled in golf and has contributed to the public through significant charitable work, and both have served as role models and inspiration to many others.

Arnold Palmer once commented, ''Byron Nelson's accomplishment is a thing on the pro tour that will never be seen and will never be approached again''. So it is with pride that we stand in honor of one of the true great heroes of golf. And his legacy will live on forever; that is Byron Nelson.

Again, Mr. Speaker, I express my strong support for this bill.

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

Mr. RENZI. Mr. Speaker, I thank the gentleman from California for that tribute, and I yield to the author of the bill for as much time as he may consume, the gentleman from Texas (Mr. BURGESS).

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

Mr. BURGESS. Mr. Speaker, I thank the gentleman from Arizona for bringing this bill to the floor. I thank the gentleman from California for his recollection of the deeds and the triumphs of Byron Nelson.

Back in Texas, we know Byron Nelson by many terms: gifted athlete, philanthropist, and today, thanks to their efforts, we are going to know him by what he really is, a national treasure.

□ 1515

He is a philanthropist. He is a gentleman who just happens to be an excellent golfer. In fact, it is Byron Nelson who provided the marriage between unparalleled athleticism and unparalleled philanthropy.

I first became aware of Byron Nelson as a child growing up in north Texas. I am not a golfer nor have I ever pretended to be, but my mother was. My mother was a fan of ''Lord Byron'' back in the 1950s. And so much of it was not because he was a famous golfer, but because of the gentleman that Mr. Nelson was.

As I grew older, I continued to hear of the wonderful giving nature of Mr. Nelson. He continually seeks to help his fellow man. Over the decades, he did not promote the game of golf; he embodied a life of service. He was and is today the most humble of men. Some of you may not know of all the great humanitarian efforts he has championed, but that is because the man himself shuns recognition for his generosity. And the school that the gentleman from California and the gentleman from Arizona referenced that the Salesmanship Club sponsors down in Texas, I have visited that school. It not only serves the children there, but it serves as a template, a model for other schools around the Nation. It is a living research laboratory for the right way to teach children.

Mr. Nelson has never limited giving of himself and encouraging others to do the same when it comes to helping others. His charitable work with the Salesmanship Club of Dallas, the Metroport Meals on Wheels, and the creation of an endowment scholarship fund are but a few of his leadership roles.

Thrust into the national scene in the 1930s and 1940s for his golf prowess, Mr. Nelson took a sport and helped to move it into the philanthropic giant that it is today. Since 1938, the PGA tour tournaments have provided over $1 billion for their local charities.

The Byron Nelson Championship, which is played this week in Irving, Texas, is the only PGA tour that is named for a specific player. The EDS

Byron Nelson Championship has raised over $88 million for the Salesmanship Club of Dallas since 1968, and I believe with the ticket sales this year are going to be very close to the $100 million mark.

So why is Byron Nelson the only golfer to have a tournament named after him? Because Mr. Nelson represents the adage, ''sportsmanship then victory.'' He understood that helping others was the only way to true victory in life.

Mr. Speaker, we lost my mother a couple of years ago; but in her library I found a book, a book that Mr. Nelson wrote and published in 1995. In it he describes many different facets and philosophies that have influenced him over the years, and I would like to take a moment to highlight a passage that I believe depicts the true character of Byron Nelson, a character that is infused with his kindness, generosity and his humility. He borrows a philosophy from his days playing golf and applies it to life.

Under the chapter called ''Sportsmanship'' from the golf tournament in 1941 says: ''Perhaps more than any other sport, golf remains a game of etiquette and sportsmanship. Golfers are expected to abide by a traditional set of rules and that sometimes means either accepting a strange ruling that works against you or calling a penalty on yourself, even when no one else has witnessed the indiscretion. That's why they say golf is truly a game of character.''

Byron understands that it is not what people see you do that truly matters, but that you know your worth and you have done what you can do to help others in this world. You are worth what you give back to the world.

Most Members of Congress come here not to be show horses, but to make a difference in society. Byron was not a leader in humanitarian causes that raised millions for families for the glory. Far from it. He shied away from acknowledgment of his work; but I believe, and so do over 300 Members of this House, that the time has come to recognize the true giving nature of Byron Nelson by nominating him for the Congressional Gold Medal.

This generous man has been giving back to America for over 90 years; and in recognition of these efforts, I am honored to bring forth H.R. 4902, to award Byron Nelson, my constituent, the Congressional Gold Medal.

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

Mr. Speaker, I would like to add that not only did he touch the lives of many individuals, as I stated before as a positive role model, but he gave of himself and he gave of himself to the community; and that is important when someone plays the game with integrity and character that sets positive examples for many of our youth. And if you look at Byron Nelson's contribution on the golf course and off the golf course, he truly is an example that all of us should follow. His integrity and his legacy will live forever. I urge everyone to support this bill.

Mr. Speaker, I yield back the balance of my time.

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

Mr. Speaker, I thank the gentleman from California. Mr. Speaker, I have a good friend in Flagstaff, Arizona, a guy named Joe Galli who is a terrific golfer himself and he was kind enough just to inform me that my neighbor in Flagstaff is PGA pro Ted Purdy. He was the 2005 Byron Nelson Classic champion last year. He defends that title this year. So from Flagstaff, Arizona, I want to thank you for allowing me to manage this bill today.

It is certainly exemplary of the fine spirit, that generosity, that philanthropic endeavor that this gentleman has given to our Nation. So I congratulate the Nelson family.

Mr. OXLEY. Mr. Speaker, I rise in strong support of this legislation, authored by the gentleman from Texas.

It's no secret that I enjoy the game of golf, and it's no secret that I admire the achievements of the greats of the game, and Byron Nelson certainly is one of those greats. In fact, he's something of a legend of the game.

Much noted for his unprecedented winning streak in 1945, for his five victories at major tournaments, and for his overall 54 career victories, it is not an overstatement to call Byron Nelson one of the greatest players the game has ever seen. He was twice named ''Male Athlete of the Year'' by the Associated Press, a feat only accomplished by one other golfer, Tiger Woods. Additionally, Byron Nelson was selected for the Ryder Cup four times, leading the United States team as Captain to victory over Great Britain in 1965.

He is also the only PGA professional golfer to have a PGA tour named in his honor: the EDS Byron Nelson Championship. The World Golf Hall of Fame honored Byron Nelson in 2004 by featuring an exhibit entitled ''Byron Nelson: A Champion . . . A Gentleman.'' Byron Nelson's accomplishments as a professional golfer are as impressive as his golf swing, and an inspiration to us all.

Just as impressive are his achievements off the links. They already have been well-detailed here, but suffice it to say that Byron Nelson is the perfect example of the unselfish sports hero, the sort of hero that I and a lot of others wish there were more of, in every sport.

With that, Mr. Speaker, let me just say that I support this legislation, and that I urge its immediate passage.

Mr. GENE GREEN of Texas. Mr. Speaker, I rise today to honor a man who is a living legend to golf, Byron Nelson.

Throughout his career, this Native Texan has exhibited sportsmanship and a competitive drive unparalleled by most athletes.

In 1945, Byron Nelson achieved 11 simultaneous wins—a record that stands today.

He has won the Masters twice, the U.S. Open and the PGA Championship. He was also the first winner of the Shell Houston Open in 1946.

He has been named ''Male Athlete of the Year'' twice by the Associate Press, and led the U.S. to defeat Great Britain to win the Ryder Cup in 1965.

While these accomplishments are impressive, Byron Nelson is also known as a great philanthropist.

The Byron Nelson golf tournament has raised well over $88 million to provide educational and mental health services to thousands of children and their families.

In addition, he has been involved as an honorary chairperson of Meals on Wheels for the Dallas Metroplex area.

I believe Byron Nelson exhibits the qualities worthy of a Congressional Gold Medal.

His accomplishments on the golf course are impressive, but his commitment to improving and helping his community over several decades speaks to his character.

I urge my colleagues to support this resolution and grant Byron Nelson the Congressional Gold Medal.

Mr. RENZI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. RENZI) that the House suspend the rules and pass the bill, H.R. 4902.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. RENZI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on H.R. 4902 and H.R. 4912 and to insert extraneous material thereon.

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

There was no objection.

## CONGRATULATING CHRIS CARPENTER ON BEING NAMED THE CY YOUNG AWARD WINNER FOR THE NATIONAL LEAGUE FOR THE 2005 MAJOR LEAGUE BASEBALL SEASON

Mrs. MILLER of Michigan. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 627) congratulating Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season.

The Clerk read as follows:

H. Res. 627

Whereas Chris Carpenter of the St. Louis Cardinals was named the Cy Young Award winner for being the best pitcher in the National League during the 2005 Major League Baseball season;

Whereas during the 2005 season Chris Carpenter posted a record of 21 wins and 5 losses and an outstanding winning percentage of .808;

Whereas in 2005 Chris Carpenter had an earned run average of 2.83, one of the best in Major League Baseball; and

Whereas Chris Carpenter has demonstrated an outstanding ability to overcome injury and adversity and won the Player's Choice National League Comeback Player of the Year award in 2004: Now, therefore, be it

*Resolved*, That the House of Representatives congratulates Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Missouri (Mr. CARNAHAN) each will control 20 minutes.

The Chair recognizes the gentlewoman from Michigan.

GENERAL LEAVE

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the resolution under consideration.

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

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 627 offered by the distinguished gentleman from Missouri (Mr. CARNAHAN).

This resolution would congratulate Chris Carpenter on being named the Cy Young Award winner for the National League in 2005.

After missing the 2003 season while rehabilitating his injured shoulder, Chris Carpenter made a miraculous recovery to win the 2005 Cy Young Award. He went 21–5 with a 2.83 ERA for the St. Louis Cardinals, receiving 19 of 32 first place votes and finishing with 132 points in balloting by the Baseball Writers Association of America.

Carpenter began his career with Toronto. After compiling a 49–50 record in his first six seasons, Carpenter had surgery in September of 2002 to repair a tear in his pitching shoulder and the Blue Jays contemplated sending him back to the minors. He refused the assignment and chose to become a free agent before signing with St. Louis.

Finally healthy in 2004, Carpenter went 15–5 with a 3.45 ERA to earn National League's comeback player of the year honors from his peers. In 2005, Carpenter won 13 straight decisions from June 14 through September 8, helping the Cardinals to the best record in baseball at 100 wins and 62 losses. He struck out 213 batters and got the best of several aces around the league.

I would urge all Members to come together and honor the perseverance and dedication of Chris Carpenter, the winner of one of Major League Baseball's most prestigious awards, by adopting House Resolution 627.

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

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

Mr. Speaker, this has been a real pleasure to cosponsor this with several Members from around the country and on both sides of the aisle. I want to offer House Resolution 627, congratulating Chris Carpenter of the St. Louis Cardinals on winning the Cy Young Award for the 2005 Major League Baseball season.

Chris is a 1992 graduate from Trinity High School in Manchester, New Hampshire, where he earned the athlete of the year honors as a senior. He was elected to the All State Team for 3 years in both baseball and hockey, and as a member of the Globe All Scholastic Team as a senior, captured the State championship in baseball in 1992.

He played American Legion, Babe Ruth, and Little League Baseball. Chris and his wife have two children, and they make their off-season home in Bedford, Massachusetts. We are proud that he is one of the star players, not just in the league but for the St. Louis Cardinals.

After missing the 2003 season recovering from shoulder surgery, many wondered how Chris Carpenter would respond. He responded in 2004 with a 15-win season and with an earned run average of 3.46. Through his hard work, perseverance and skill, he improved upon those lofty numbers and turned in a spectacular 21-win season with a 2.83 earned run average in the 2005 season.

He was a major factor in the Cardinals' 100 wins last year and earned a place among the most elite pitchers in baseball. For his feats, Carpenter was recognized with the Cy Young Award as the best pitcher in the National League.

As a lifelong Cardinals fan, it is an absolute joy to watch a thrilling player like Chris Carpenter. I look forward to watching his continued success.

In addition, I would like to mention Chris's teammate, Albert Pujols, who won the National League MVP last year. This marks the first time since 1968 that the Cardinals have had both the MVP and the Cy Young Award winner the same year.

I have cosponsored a companion resolution with many others in this House congratulating Albert Pujols, and I hope the House will have an opportunity to take that up in the near future.

Once again, I wish my heartiest congratulations to Chris Carpenter and all that he has accomplished and wish him the best in the future.

Mr. Speaker, I yield back the balance of my time.

Mrs. MILLER of Michigan. Mr. Speaker, I would urge all Members to support the adoption of House Resolution 627. I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and agree to the resolution, H. Res. 627.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

## RESPECT FOR AMERICA'S FALLEN HEROES ACT

Mr. BUYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5037) to amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, and for other purposes.

The Clerk read as follows:

H.R. 5037

*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 ''Respect for America's Fallen Heroes Act''.

**SEC. 2. PROHIBITION ON CERTAIN DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.**

(a) PROHIBITION.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

**''§ 2413. Prohibition on certain demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery**

''(a) PROHIBITION.—No person may carry out—

''(1) a demonstration on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located; or

''(2) with respect to such a cemetery at which a funeral or memorial service or ceremony is to be held, a demonstration within 500 feet of that cemetery that—

''(A) is conducted during the period beginning 60 minutes before and ending 60 minutes after the funeral or memorial service or ceremony is held; and

''(B) includes, as a part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.

''(b) DEMONSTRATION.—For purposes of this section, the term 'demonstration' includes the following:

''(1) Any picketing or similar conduct.

''(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony.

''(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral or memorial service or ceremony.

''(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral or memorial service or ceremony.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2413. Prohibition on demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery.''.

**SEC. 3. PENALTY FOR VIOLATION OF PROHIBITION ON UNAPPROVED DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.**

(a) PENALTY.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following new section:

**"§ 1387. Demonstrations at cemeteries under the control of National Cemetery Administration and at Arlington National Cemetery**

''Whoever violates section 2413 of title 38 shall be fined under this title, imprisoned for not more than one year, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''1387. Demonstrations at cemeteries under the control of National Cemetery Administration and at Arlington National Cemetery.''.

**SEC. 4. SENSE OF CONGRESS ON STATE RESTRICTION OF DEMONSTRATIONS NEAR MILITARY FUNERALS.**

It is the sense of Congress that each State should enact legislation to restrict demonstrations near any military funeral.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. BUYER) and the gentleman from Texas (Mr. REYES) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana.

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

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

□ 1530

Mr. BUYER. Mr. Speaker, I rise today in support of well-considered legislation that will protect the sanctity of military funerals at national cemeteries and will protect the privacy of grieving families as they bury their precious loved ones who died in the service of our country.

The first to rise, however, were the principal individuals in an organization called the Patriot Guard Riders, members of which are in Washington today. The Patriot Riders have two goals: to show respect for fallen heroes, their families and their communities; and to protect the mourning family and friends from interruptions created by any protestor or group of protestors. We owe them our deep sense of thanks and gratitude.

Mr. Speaker, this bill was jointly referred to the Committee on Judiciary, who waived consideration of the bill, and I will insert my letter requesting the waiver and Chairman SENSENBRENNER's letter in the CONGRESSIONAL RECORD at this point.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC, April 25, 2006.*

Hon. F. JAMES SENSENBRENNER, Jr.
*Chairman, Committee on Judiciary, House of Representatives, Washington, DC.*

DEAR CHAIRMAN SENSENBRENNER: In order to expedite consideration of H.R. 5037, the ''Respect for America's Fallen Heroes Act,'' the Committee on Veterans' Affairs requests that the Committee on the Judiciary waive consideration of the bill. As you know, H.R. 5037 was referred to the Committee on the Judiciary in addition to the Committee on Veterans' Affairs. The Committee on Veterans' Affairs acknowledges the jurisdiction of the Committee on the Judiciary over portions of this legislation, particularly section 3, which provides for criminal penalties under title 18 of the United States Code.

The Committee on Veterans' Affairs would not construe a waiver of consideration as a waiver of jurisdiction by the Committee on Judiciary over the subject matter contained in this or similar legislation, and the Committee on Veterans' Affairs would fully support any request by you seeking an appointment to any House-Senate conference on this legislation. I will place a copy of your reply letter in the Congressional Record during consideration of the bill on the House floor.

I very much appreciate the cooperation by you and your staff in this matter.

Sincerely,

STEVE BUYER,
*Chairman.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
*Washington, DC, April 25, 2006.*

Hon. STEVE BUYER,
*Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.*

DEAR CHAIRMAN BUYER: In recognition of the desire to expedite consideration of H.R. 5037, the ''Respect for America's Fallen Heroes Act,'' the Committee on the Judiciary hereby waives consideration of the bill. There are provisions contained in H.R. 5037 that implicate the rule X jurisdiction of the Committee on the Judiciary. Specifically, section 3 provides for an additional penalty under title 18 of the United States Code. This provision implicates the rule X(I)(1)(7) jurisdiction of the Committee over ''criminal law enforcement.''

The Committee takes this action with the understanding that by forgoing consideration of H.R. 5037, the Committee on the Judiciary does not waive any jurisdiction over subject matter contained in this or similar legislation. The Committee also reserves the right to seek appointment to any House-Senate conference on this legislation and requests your support if such a request is made. Finally, I would appreciate your including this letter in the Congressional Record during consideration of H.R. 5037 on the House floor. Thank you for your attention to these matters.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
*Chairman.*

Mr. Speaker, I would like to thank Chairman SENSENBRENNER and his staff for working closely with us to craft this important legislation.

We have all seen the stories right now of the extremist protestors in their demonstrations, placards that read, ''Thank God for IEDs'' and ''Thank God our Soldiers are Dead,'' and individuals such as Sergeant Ricky Jones in Indiana whose home had been egged twice and somebody put trash all over their yard and called his mother on the phone to tell them that they were thankful that their son had died.

On March 2, I stood here and described to my colleagues the perversions committed by this individual who claimed a first amendment right to disrupt the solemn ritual of a military funeral. They would manipulate the Constitution to justify harassing families who are mourning a lost family member. By the stunned silence in this Chamber and the gasp that ensued that moment, I knew that most all my colleagues shared a deep abhorrence to these outrageous acts and that we share equally a deep desire to prevent them.

Today, we bring for a vote a bill that will do just that. H.R. 5037, the Respect for America's Fallen Heroes Act, will prohibit demonstrations within 500 feet of a national cemetery and Arlington National Cemetery 60 minutes before and after a funeral. This is a bipartisan effort with over 174 cosponsors.

We have worked closely with the Judiciary Committee. We have examined the issues of both constitutionality and the proportionality with regard to sentencing. The Federal circuit court of appeals in Griffin v. Secretary of Veterans Affairs upheld the constitutional existing Department of Veterans Affairs regulations setting requirements for the decorum and decency while on VA property. H.R. 5037 essentially codifies the regulation.

The United States Supreme Court had addressed the ''time, place or manner'' standard in several cases, including Grayned v. City of Rockford. In that decision, the Court upheld an anti-noise ordinance that prohibited activities adjacent to a school that ''disturbs or tends to disturb the peace or good order of such school session or class thereof.''

H.R. 5037's restrictions on ''willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony,'' closely tracked the language approved in the Supreme Court opinion. Additional cases that address the time, place and manner standard include Ward v. Rock against Racism and Renton v. Playtime Theaters, Inc.

Mr. Speaker, H.R. 5037 does not unconstitutionally draw distinction on what demonstrations are or are not allowed based on the content of the speech. It would not prevent the Secretary of Veterans Affairs from promulgating or enforcing regulations that prohibit or restrict the VA property or other conduct that is not specifically referenced in this legislation.

Penalties associated with the violations of this legislation are fair and appropriate. Violating the prohibition on demonstrations would be a class A misdemeanor under title 18, United States Code, resulting in fines up to $100,000 and imprisonment of not more than 1 year or both. The penalty balances the need for deterrence with the equally important requirement for proportionality.

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

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

Mr. Speaker, I would like to thank Congressman MIKE ROGERS specifically for his leadership in introducing H.R. 5037, the Respect for America's Fallen

Heroes Act. I would also like to thank House Veterans' Affairs Committee Chairman BUYER and Ranking Member LANE EVANS for their strong support and for helping bring this legislation to the House floor.

Today, I was scheduled to be in my congressional district in El Paso, Texas, to participate in a Medicare prescription drug conference, which I helped to organize, so that our seniors would be provided the latest information on Medicare part D.

Mr. Speaker, while I would have liked to have been able to attend that conference, this issue is just as important, and I am proud to be here today and serve as the lead Democrat cosponsor of this bill, which has gained, by the way, Mr. Speaker, very strong bipartisan support, including the entire House Democratic leadership.

I know that all of us agree that our servicemembers who have made the ultimate sacrifice while serving their country deserve to be laid to rest with respect and dignity. The families of these courageous men and women also deserve funerals that allow them to say good-bye to their loved ones and mourn their loss in that same peace and dignity. Organized protests have disrupted the sanctity of these funerals that have been conducted throughout the United States for servicemembers who have been killed while serving in our current military operations. Some protestors have disrupted these funerals with shouts and signs that read, ''Thank God for IEDs'' and ''Thank God for Dead Soldiers.''

In my congressional district of El Paso, our community has mourned the loss of 20 servicemembers who have made this ultimate sacrifice while serving our country in Iraq and Afghanistan.

As a Vietnam combat veteran and member of the House Veterans' Affairs and House Armed Services Committees, I knew I had to do my part to ensure that our Nation's heroes are given the burial that they deserve.

To that end, the respect for America's Fallen Heroes Act would, first, prohibit all demonstrations during the 60 minutes prior to and after funerals taking place at Department of Veterans Affairs national cemeteries or the Department of the Army's Arlington National Cemetery.

Second, impose 500-foot restriction on demonstrations near national cemeteries and Arlington National Cemetery during the funeral and for a brief period before and after the funeral to allow mourners to enter and leave that cemetery in peace and dignity.

Third, allow for civil infraction for violations, including monetary fines and/or jail time of 6 months to a year, as consistent with authority granted to the Secretary of Veterans Affairs to maintain order in national cemeteries under current regulations.

Fourth, express the sense of Congress that all States should enact similar restrictions for State and private cemeteries, as well as funeral homes.

Mr. Speaker, this bill is narrowly tailored to protect military families at the sacred time from verbal attacks, while protecting our freedom of speech at the same time. Furthermore, provisions in this legislation are in line with judicial precedents specific to time, place and manner of demonstration.

In Griffin v. Secretary of Veterans Affairs, the United States Supreme Court upheld the constitutionality of existing regulations that prohibit demonstrations on property under the control of the National Cemetery Administration. The Supreme Court held: ''All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration except as authorized by the head of the facility or his designee, is prohibited.''

As mentioned earlier, our bill is limited to Federal land under the control of the Department of Veterans Affairs and the Department of the Army's Arlington National Cemetery.

Furthermore, Mr. Speaker, in Grayned v. City of Rockford, the Supreme Court held that the Secretary of Veterans Affairs maintains very broad discretion to implement regulations to prohibit demonstrations. The Court stated: ''Because the judgment necessary to ensure that cemeteries remain 'sacred to honor and memory of those interred or memorialized there' may defy objective description and may vary with individual circumstances, we conclude that the discretion vested in VA administrators is reasonable in light of the characteristic nature and function of our national cemeteries.''

Mr. Speaker, this legislation is narrowly drawn to allow the families and friends of our fallen heroes to lay their loved ones to rest in peace and dignity. The restriction on freedom of speech is content neutral.

The restriction is limited in time, manner and place to balance the constitutionally protected rights of law-abiding speakers against the legitimate competing interests of unwilling listeners who would otherwise be distracted from an important social objective, the dignified burial of our honored dead.

So with that, Mr. Speaker, in a few weeks, our Nation will come together to remember and honor our servicemembers who have made the ultimate sacrifice while in service to our country. I ask all my colleagues to join me, to join us, in honoring our fallen servicemembers by voting in favor of H.R. 5037.

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

Mr. BUYER. Mr. Speaker, I would like to inform the body that the Congressional Budget Office has determined that implementing H.R. 5037 would have no significant cost to the Federal Government, and it has no intergovernmental mandate as defined by Federal law.

Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. ROGERS), a former captain in the United States Army and former FBI agent, who has worked closely with this legislation.

Mr. ROGERS of Michigan. Mr. Speaker, I want to thank Chairman BUYER for his counsel and his leadership working through this bill. I greatly appreciate it. I know certainly the families do as well.

To my good friend and colleague, SILVESTRE REYES, thank you for lending your leadership and your voice and assistance and counsel on this very important piece of legislation. Thank you for your service, not only for the military but the Border Patrol and now to the people of your district back home. I certainly appreciate it.

Mr. Chairman, this started for me when I attended the funeral of Sergeant Joshua Youmans, a very brave and great American who gave his life defending freedom in Iraq; and as I arrived to the funeral to the chants and the taunting and some of the most vile things I had ever heard, it was almost staggering to me that someone would take the time and energy to show up and preach that kind of hateful speech upon some very vulnerable individuals as they went into the church to mourn the loss of a great American patriot.

What struck me that day is this very young widow who got before a very packed church service to lay her honored husband to rest and told the story about how this soldier, before he passed away, had the privilege of holding his daughter for the first and only time. She talked about how proud she was of her husband and what he had done for his country, how proud she was to be an Army wife and how she could not wait to tell her young daughter, McKenzie, the courage and sacrifice of a great American, her husband, Joshua Youmans.

You juxtapose that with what they had to go through, this gauntlet of terror, people taunting and jeering and saying the most hateful things you possibly can imagine, and I walked out of that church that day knowing that we as Americans can and must do better by these families. This is their chance to stand up and mourn the loss of a family member.

A father once told me that at a service of his son he knew that this was the moment between sanity and insanity for him, and you can imagine that when people stop by and grieve and support and love and comfort these families, when America steps up to put their arms around these families to say that we love you, we support you and we respect you and we appreciate your sacrifice, it means the difference in that father returning to sanity after the burial of his son or, in this case, the burial of the husband.

It is so important that we stand by the men and women who sacrifice so much, and this bill does that. It protects the first amendment. They can

still preach their vile hatred, if they want to do that an hour before and an hour after; but, again, it also creates a bubble. It creates a hub of American people around these families to give them the right, which they so richly deserve, to grieve in peace and have the dignity and the honor to lay their loved ones to rest in peace.

I can say it no better, Mr. Speaker, than so many people who e-mailed me, almost 30,000 people from Baghdad Iraq to Brighton, Michigan, my hometown and told stories of why this was so important, some of them very moving.

I will read you one now: ''Over the last 6 months my unit has taken over 30 casualties in some of the most vicious areas south of Baghdad. The thought of their families having to face protestors after their memorials incites a rage I have never known before. These protestors mock all that we have accomplished here, the lives that have been forever changed, and the lives that have been lost, using our most valued doctrines of faith and freedom as their defense. I cannot thank you, and Congress, enough for your dedication to this effort. I can only hope that your colleagues will join you in this battle. Mr. Speaker, so many have. Signed, Sergeant Ashley A. Voss, Baghdad, Iraq.''

□ 1545

I will share another letter from a grieving mother.

''Thank you for creating and seeking to help grieving families of our American heroes. My husband and I support this act 100 percent. Our son, Sergeant Trevor Blumberg, was killed in action in Iraq on September 14, 2003. We know the pain and horror in losing a heroic son; no less than to have to face cruel, inhumane people who cannot dignify your time of grief. Please continue to place these families in America's hearts and minds. Nothing less is deserved.''

That was from Janet M. Blumberg, a proud parent of an American hero.

Thanks to all who support the act.

Mr. REYES. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. BACA) who knows the pride of wearing America's military uniform, an Army veteran.

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

Mr. BACA. Mr. Speaker, I rise today in support of H.R. 5037, which I am a proud cosponsor of as a veteran, the Respect for America's Fallen Heroes Act.

These are individuals who have sacrificed their lives for this country, men and women who have served us, and we must remember those who have sacrificed their lives because we are enjoying our lives, because they gave ultimately so we would enjoy the freedom and peace we have today.

So we have the same responsibility, and that is what this bill does to honor those individuals. As we commemorate Military Appreciation Month in May as well as Memorial Day on May 29, I urge my colleagues to support this bill. It seeks to provide every fallen soldier with a private and dignified burial for those who have given to this country, the men and women who have sacrificed a lot.

All around the country, grieving families of soldiers who were killed in service to our Nation are being harassed at funeral sites. These protesters show us with hurtful signs and messages, adding undue stress to military families seeking to bury their loved ones with pride and dignity.

While we respect the right of free speech in this country, military families have a right to mourn the loss of their husbands, wives, and children in peace. H.R. 5037 would enforce the right by banning protests at VA national cemeteries, as well as Arlington National Cemetery, 60 minutes before and after a funeral takes place.

This bill would also impose a 500-foot restriction on demonstrations at the site to give families privacy. Additionally, this bill would create a class A misdemeanor for violations with penalties up to $100,000 in fines or 1 year in prison.

Finally, H.R. 5037 expresses a sense of Congress that all States should enact similar bans for both State-run and privately owned cemeteries and funeral homes.

Mr. Speaker, this bill is consistent with the Supreme Court ruling. It is consistent with the Supreme Court ruling and it is constitutional. This bill provides additional rights to free speech while giving the Armed Forces and their families the due respect and the dignity that they deserve because their families have given so much to this country, and we deserve to give it back to them.

I ask Members to support this important bill.

Mr. BUYER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America's Fallen Heroes Act, and I am very pleased to have been an original cosponsor and to have helped to author the bill, along with Chairman BUYER, Chairman MILLER and Representative ROGERS.

We are all painfully aware of the recent trend of demonstrations and protests occurring near military funerals and national cemeteries. These protests have included signs saying ''God Hates America'' and ''Thank God for IEDs,'' which are those improvised explosive devices which are responsible for so many of the deaths of our honorable military soldiers in Iraq and Afghanistan. Such demonstrations are not compatible with respect due to our Nation's fallen heroes and they should not be consistent with our Nation's laws.

This act prohibits such demonstrations in a manner that is fully consistent with the Constitution while fully protecting the respect and dignity of funerals held on and near national cemeteries.

The first provision of H.R. 5037 prohibits demonstrations on national cemetery grounds unless such demonstrations are approved by the cemetery director. It is common sense.

This provision is clearly constitutional under judicial precedents, most recently Griffin v. Secretary of Veterans Affairs. In that case, the Federal Circuit Court of Appeals, just a few years ago, upheld as constitutional an existing Federal regulation providing ''any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited'' on Veterans Affairs property. The first provision of H.R. 5037 simply codifies that principle in statute.

The second provision of H.R. 5037 prohibits any demonstration within 500 feet of national cemeteries within 60 minutes before or after the service, if the demonstration includes ''any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.'' This exact language has been upheld as constitutional by the Supreme Court in the case of Grayned v. City of Rockford.

At the same time, this language does not unconstitutionally draw distinctions regarding what demonstrations are allowed and are not allowed, based on the content of the speech. The Supreme Court, again in the Grayned case, upheld this precise language as constitutional because the language ''contains no broad invitation to subjective or discriminatory enforcement.''

This is clearly important legislation, and I strongly urge its passing.

Let me say that all supporters of H.R. 5037 are asking is that the families and friends of our Nation's fallen heroes be given a few hours of peace during which to honor their loved one's greatest sacrifice, a few hours to pay respect to a selfless life devoted to protecting others. That is not unconstitutional. That is not even an imposition. That is the least we can do for those who fight to uphold the Constitution.

I urge all my colleagues to join in supporting this bill, which will give the families of those who died for us the comfort of knowing they will be able to pray in peace and thank the fallen on and near the sacred ground where they will rest forever so we can live free today.

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

Mr. BUYER. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. KENNEDY).

Mr. KENNEDY of Minnesota. Mr. Speaker, just over 2 months ago, during the funeral of Corporal Andrew Kemple, a Minnesotan who was killed while fighting for freedom, vile slogans like ''God Hates America'' and ''God

Loves IEDs'' were chanted by protesters, and I use that term loosely, with a radical, hateful agenda.

Words like ''reprehensible'' and ''disgusting'' simply do not adequately describe the slogans or this stunt on such a solemn occasion. The men and women who have given what Lincoln called ''the last full measure of devotion'' deserve better than this.

I urge my colleagues to support the Respect for America's Fallen Heroes Act. Our men and women in uniform never fail us when the Nation calls upon them. We owe them nothing less than the same commitment to duty.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume to read into the RECORD a statement from our minority leader, Ms. PELOSI.

''I urge all of my colleagues to vote today for H.R. 5037, the Respect for America's Fallen Heroes Act. I am proud to be a cosponsor of this bipartisan legislation that will ensure grieving military families are protected from protesters spewing a message of hatred. For our men and women in uniform who have made the ultimate sacrifice for our country, and for their families, we must act today to ensure that they receive the respect and the moments of solemnity that they have earned and deserve.

''No Americans have stood stronger and braver for our Nation than those who have served in our Armed Forces. Our soldiers have courageously answered when called, gone when ordered, and defended our Nation with great honor. Their noble service reminds us of our mission as a nation, to build a future worthy of their courage and sacrifice.

''Americans may debate and disagree about foreign and domestic policy. This is the essence of our democracy. But when it comes to our military men and women, America must stand united and honor them as the heroes that they are.''

Minority Leader NANCY PELOSI.

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

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Speaker, during this time of conflict, we have seen so many examples of heroism exhibited by the men and women of our armed services.

Every day these great heroes are on the front line of the war in Iraq and Afghanistan and throughout the entire world, defending our liberty and freedom and democracy. And most Americans, thank goodness, support their efforts and their mission; and the vast majority honor their service and sacrifice.

But some do not and have expressed their objections in a variety of ways that have been articulated on this floor today. Some are protesting the Congress or the President, and that is fine because we are the policy-makers and we are the correct targets for indicating support or opposition to the war.

But some have taken their objections to places where they simply do not belong. Many have begun to protest our fallen heroes as they are being laid to rest by their loved ones. Groups like the Patriot Guard, God bless them, have stood up and shielded families from this obscene type of protest, but we need to do more.

No fallen soldier, sailor, airman or marine's family should ever be subjected to such trauma at a time of such great grief. Instead, our fallen heroes should be afforded the honor and dignity befitting their sacrifice.

I urge my colleagues to support this important piece of legislation.

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

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Speaker, when the unbridled expression of one right infringes on another, we appropriately limit that right, and that is what we do today.

On March 3 of this year, 20-year-old Lance Corporal Matthew Snyder of Westminster, Maryland, was killed when his Humvee overturned on assignment in Iraq.

Before his deployment, Matthew explained that he volunteered for convoy escort security because, ''There was a position that needs to be filled, and I am a Marine.''

Outside the church where Matthew's family and friends gathered for his funeral, a group of six out-of-State protesters loudly chanted and carried signs, including, ''Thank God for Dead Soldiers.''

I stand today joined in spirit by members of the American Legion and the For Our Troops Club of Hereford High School in support of this bill that will honor America's fallen soldiers and respect the privacy of their families by protecting the dignity of their funerals.

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

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank Chairman BUYER, Chairman CHABOT, Chairman MILLER, Mr. REYES, and all of the Members that have brought forth this bill, the Respect for America's Fallen Heroes Act.

Mr. Speaker, it is unbelievable that we would need this kind of a bill, but we do know what is going on. You have heard that from the other Members that have spoken. It is unbelievable that people would trample on the families of these fallen soldiers during such a sensitive time.

In my district, Mr. Speaker, had they showed up at the funeral of Justin Johnston or Paul Saylors or Lieutenant Tyler Brown, who was buried at Arlington, I am sure those families would have had a lot of difficulty restraining themselves, as would this Member.

I think we need to pay tribute, of course, to the Patriot Guard riders who have been keeping these people away from the funeral sites until this legislation has its intended effect.

This bill to pass today is going to require 66 percent vote of this body. I think it will get 100 percent.

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

Mr. BUYER. Mr. Speaker, I yield 1½ minutes to the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Speaker, I rise in strong support of H.R. 5037, the Respect for America's Fallen Heroes Act. I am a proud cosponsor of this act which will ban protests at military funerals at national cemeteries, including Arlington National Cemetery.

Burying a child, father, husband or wife is hard enough without having to see signs that say things like ''God Hates You'' or hearing hateful language shouted at your family during a funeral procession or graveside ceremony.

□ 1600

On February 23, 2006, the funeral of Army Corporal Andrew Kemple from Anoka, Minnesota, was disrupted by protestors who claimed that U.S. military deaths are divine retribution for the Nation's tolerance for homosexuality. The protestors even went so far as to taunt Andrew's mother as she entered the church for her son's funeral service.

It is hard to think of a more shameful act than taunting a woman who just gave her son in service to our Nation.

All Americans are proud of the sacrifices made by our Nation's brave Americans in uniform. We have seen their skill and their courage in the armored charges and midnight raids and in their lonely hours of faithful watch. We have seen the joy when they return home and felt the pain when one is lost.

No matter what one's position may be on U.S. policy matters, we should all agree that demonstrating at the funeral of one of our fallen heroes is disgraceful and unacceptable. We must stand behind our Nation's military families, especially on the day when caskets draped with the American flag are carried that last mile.

The Minnesota State legislature passed a bill on Monday, May 1, to ban all protests at military funerals, burials, and memorial services. I encourage other States to follow Minnesota's lead, and I urge the House of Representatives to pass the Respect For America's Fallen Heroes Act today. Our Nation's heroes deserve no less.

Mr. REYES. Mr. Speaker, I have no further requests for time, so I will now close and then yield back the time.

Mr. Speaker, this afternoon, all around the country they have seen Members of Congress come together to stand up for our men and women in uniform and for their families. I think

the message is clear that we want those that have made the ultimate sacrifice, and those that are laying them to rest, to have the opportunity to do so with peace and dignity. So I am proud to be here, and I am proud to work with my colleagues and thank them for their support in bringing this to the floor this afternoon.

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

Mr. REYES. I yield to the gentleman from Indiana.

Mr. BUYER. Mr. Speaker, and my colleagues, I want to thank the gentleman from Texas. It is a pleasure to have worked with you. We are colleagues on the Veterans' Affairs Committee, and I appreciate your service over the years. But you and I haven't had a chance specifically to work on a bill. And I have enjoyed my associations with you. And the cause is right. The spirit of the country is right. They want us to set the standards of dignity, and you recognized that early on and championed this cause in a bipartisan fashion. And it says a lot about who you are. I think it is because you know who you are, and that makes this is a pretty easy process. For that I want to thank the gentleman.

Mr. REYES. Thank you, Mr. Chairman. I really equally appreciate the opportunity to work with you because we know, as veterans, the sacrifices that men and women make on behalf of this country and their families, and so it has been a privilege to be able to work with you and my colleague, MIKE ROGERS, who also has been a leader on this very important issue for our country and for our country's military.

Mr. BUYER. Mr. REYES, you probably share the very same sense I do when you see the Patriot Guard Riders. And you know, one thing I want to comment to you, that I am proud about them, not only for taking an individual initiative, but also for their restraint.

I do recall what it was like when I came back from the first gulf war, and we buried a friend, and we stood there in our military uniforms, so proud of our service. At the same time we were grieving, and we were also moved that one of the finest of our unit was killed, and it was so powerful to all of us. And it was also yet so private and personal to all of us, given what we had just gone through on behalf of a country.

And as I reflect upon that moment, I could not imagine someone from the outside, based on some other reason or rationale and their own image, would interrupt that moment in time for us. And I think a lot of these Patriot Guard Riders also share that very same feeling I have. And I just want to compliment their restraint; because I could tell you, it would be hard, it would be really hard, if I were in the family, if I were one of the family members and this was happening, I would want to go over there and take matters into my own hands. But you know what? People haven't done that. And I am really proud of some of the families and the Patriot Guard Riders themselves.

So we are not only setting the standards of decency. We are also setting the standards for criminal conduct so everybody is well behaved. But I just want to thank the gentleman.

Mr. REYES. Absolutely. And I also would make two observations. First, the great restraint that they are showing shows the great respect that we have as a Nation of laws because while we may disagree with the message, we don't disagree that they have a right to deliver it. It is just not appropriate. And somewhere along the line they didn't learn the lesson that they should not intrude on somebody's private time to grieve and to be at peace, especially for their loved ones who have just sacrificed everything for their country.

Yesterday morning I had the opportunity to be with some of our military troops at Fort Bliss in my district. And I had several of them come to me and very privately, because, you know, our men and women in uniform are that way. They are courageous, they are professional. They are top-notch, but they are also very private. And in a private way they thanked me and said, please convey to all your colleagues in Congress our deep appreciation that we know that if something happens to us, our families will be taken care of, and specifically referred to this legislation and the peace of mind that they have, and they wanted us to convey that message.

Mr. BUYER. I am glad and pleased that you and Mr. ROGERS took this initiative. But at the same time it is a sad commentary that we actually have to come to the House floor and create a law in title XVIII to do this. We shouldn't have to be doing this. So when people say you are regulating speech again, well, nobody really wants to do that. We have such respect for the first amendment. But at the same time there is a significant government interest here and that deals with our decency that you spoke of in setting those standards.

And also the case law that you cited. The Supreme Court has been very clear to give us that ability to do just that, as Mr. CHABOT had also testified to before our committee.

But it is unfortunate we have to be here to do that. But we cannot permit the repugnant acts of a few to define the character of America.

Mr. REYES. I agree with you, Mr. Chairman.

Mr. Speaker, I yield back the balance of my time.

Mr. BUYER. Mr. Speaker, when I rose in March to tell this body of the outrageous acts committed against one grieving family in Indiana, I said that the great virtue of the American character is our compassion. It is our compassion and human decency that represents the very best of our Nation.

I had a task to perform and that was very similar to many of my colleagues in this body, and that is, when we get the word that someone from our congressional districts has died in the service of our country. So it is an easy call to make, but it is a difficult conversation to have.

And I remember calling the mother of Sergeant Ricky Jones in Kokomo, Indiana, and when I spoke with her and said, Ma'am, is there anything that I can do for you or the family, she said, You can't believe what this has been like. And I said, Well, I have two children. You are right. I can't believe that. She said, No, no, you don't understand, and then began to convey to me that, When I had heard that Ricky had died, I began receiving family and friends to the home. They would also call on the telephone. The phone rang. I thought it was going to be either family or friend, and she picked up the phone and the voice on the other end said, I am glad your son is dead. He deserved to die, and hung up the phone. She was shocked and appalled. And she recovered from that.

About an hour later the phone rings again and it is another voice on the other end of the phone that said, I am glad your son is coming home in a body bag. I am glad he is dead, and hangs up the phone.

Later, someone had egged their family home twice. And then they put trash all over their yard in the middle of the night. And all this was done while the body of Sergeant Ricky Jones was being transported back to Indiana.

I was pleased that the Deputy Secretary of Veterans Affairs, Gordon Mansfield, and the Under Secretary for Memorial Affairs, Bill Turk, came to Indiana to stand with this family, with myself, and also the Governor of Indiana was also present. But for Gordon Mansfield to have made that trip was very meaningful because Gordon Mansfield is a highly decorated combat veteran from Vietnam who is a paraplegic. He is in a wheelchair from his combat wounds. And for him to also have been so disturbed by what happened, for him to travel to Indiana to be with that family says so much about Gordon Mansfield and the leadership that he gives at the Department of Veterans Affairs.

I was pleased. It was the first time I had ever seen the Patriot Guard Riders. Hundreds of them were there. And that is why, Mr. REYES, that I spoke about their restraint, because when you see them, you are not sure what's about to happen here. These are some pretty tough guys.

And one thing that I recall from that experience that was very intriguing was that many of them were also Vietnam veterans. Not all of them were Vietnam veterans, and not all of them were even veterans. Some of them were not. They are patriots.

And Sergeant Ricky Jones is the son of an Air Force Vietnam veteran; so these Vietnam era veterans, they know exactly what it was like when they came home.

Mr. Speaker, I ask unanimous consent for an additional 5 minutes.

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

There was no objection.

Mr. BUYER. They know exactly what it was like when they came home, and they were not going to permit this to occur to their son or daughter; but they were going to set those standards. And so for that reason, and many others, I am so proud of the Patriot Guard Riders.

We have before us an opportunity to make a clear expression of that compassion and decency on behalf of those who are passing their darkest hours and on behalf of all Americans who would give them peace during that difficult journey.

Mr. Speaker, I would like to thank the chief sponsors of this bill, Mr. ROGERS of Michigan, SILVESTRE REYES of Texas, and JEFF MILLER of Florida. Together they have done their due diligence to ensure that the legislation will withstand any judicial scrutiny.

I would like to thank Kingston Smith and Mary Ellen McCarthy, counsel of the Veterans' Affairs Committee; Paige McManus of the Veterans' Affairs Committee for their work on the bill; as well as Andy Kaiser of Congressman ROGERS' staff.

I would also like to thank, of the Judiciary Committee staff: Paul Taylor, Hillary Funk and Mike Volkov.

Mr. Speaker, I urge my colleagues to unanimously support H.R. 5037.

Mr. TIAHRT. Mr. Speaker, every so often a bill comes before this House that I wish was unnecessary. A bill that is so intrinsically rooted in basic human decency that no one could imagine a legislative remedy would be needed. H.R. 5037, Respect for America's Fallen Heroes Act, is such a bill.

H.R. 5037 would prohibit protests at the funerals of our fallen military men and women. A small group of people are hurling insult onto tragedy for the family and friends of fallen heroes. For me and my constituents, this blight on human decency is personal.

On November 29, 2005, Kansans Sergeant Jerry Mills and Sergeant Donald Hasse were patrolling Taji, Iraq their vehicle was hit by an improvised explosive device—tragically cutting their lives short. Their bodies were returned to Kansas for burial and everlasting respect of their grateful countrymen.

Sergeants Mills and Hasse were heroes. They gave their lives for this country. Both of these heroes deserved funerals befitting of their patriotism and sacrifice. Regrettably, some wanted to turn a solemn event into a political statement.

Protesters arrived at Sergeant Hasse's funeral in Wichita, Kansas. Fortunately, so did the Patriot Guard Riders, a group of motorcycle riders dedicated to honoring fallen service men and women and protecting the funeral proceedings from protestors. The Patriot Guard Riders, invited by the Hasse family, kept the protestors at bay and protected Sergeant Hasse's young son from having to witness such inhumanity.

Although the same protesters were due to also demonstrate at the funeral for Sergeant Mills in Arkansas City, Kansas, they never arrived. The Patriot Guard, invited by the Mills family, did attend to honor the memory of Sergeant Mills. An injustice was adverted.

No family should have to endure such a double tragedy of losing a loved one and then being berated by protesters. The Respect for America's Fallen Heroes Act will keep protesters away from grieving families and friends—allowing these heroes to be mourned and honored with dignity and respect. I ask all my colleagues to join me in supporting this important piece of legislation that is unfortunately needed. I ask my fellow Americans to remember and honor these heroes, and their families, who have made the ultimate sacrifice defending freedom.

Mr. BACA. Mr. Speaker, I rise today in support of H.R. 5037, the ''Respect for America's Fallen Heroes Act.''

As we commemorate Military Appreciation Month in May, as well as Memorial Day on the 29th, I urge my colleagues to support a bill that seeks to provide every fallen American soldier with a private, dignified burial.

All around the country, grieving families of soldiers killed in service to our nation are being harassed at funeral sites. These protesters show up with hurtful signs or messages, adding undue stress to military families seeking to bury their loved ones.

While we respect the right to free speech in this country, military families also have a right to mourn the loss of their husbands, wives, and children in peace. H.R. 5037 would enforce that right by banning protests at VA national cemeteries, as well as at Arlington Cemetery, 60 minutes before and after a funeral takes place. This bill would also impose a 500-foot restriction on demonstrations at these sites and create a Class A Misdemeanor for violations with penalties up to $100,000 in fines or 1 year in prison. Finally, H.R. 5037 would express the sense of Congress that all states should enact similar bans for both state-run and privately-owned cemeteries and funeral homes.

Mr. Speaker, this bill is constitutional and preserves the individual's right to free speech, while giving our Armed Forces and their families their due respect. It is the right thing to do and I ask my colleagues vote in support of this important piece of legislation.

Mr. DAVIS of Florida. Mr. Speaker, I rise in strong support of H.R. 5037, the Respect for America's Fallen Heroes Act, which would ban all non-approved demonstrations 60 minutes prior to and after funerals taking place at VA national cemeteries or at Arlington National Cemetery, as well as impose a 500-foot restriction on demonstrations. Furthermore, the bill would allow for a Class A Misdemeanor for violations with penalties up to $100,000 in fines or up to one year in prison.

As we have seen, a troubling public display has been taking place around the country perpetuated by groups who wish to call attention to a cause. This activity is not a case of free speech and should be stopped. There is a time and a place for protest in our Democracy, but it is wholly inappropriate to use a funeral as an opportunity to make statements about a personal belief, a political cause or federal policy. Families and loved ones should be allowed to grieve in peace. For this reason, I am a cosponsor of this legislation along with more than 170 of my colleagues.

Mr. Speaker, more than 2,500 brave men and women have given this country the ultimate sacrifice while serving their country in Iraq and Afghanistan. Their families and loved ones should be proud of their service to their country. The sadness of those left behind is bad enough without having to face screaming protesters with an agenda.

This bipartisan bill is consistent with the Constitution and is not a limitation of the freedom of speech that we enjoy in this country. I strongly support this legislation and stand with my colleagues. I hope that this legislation becomes law as soon as possible.

I urge my colleagues to vote ''yes'' on H.R. 5037.

Mr. PORTER. Mr. Speaker, over 2,400 brave men and women have paid the ultimate sacrifice fighting the War on Terror and the great State of Nevada has lost 19 heroic sons, 9 of which, are in my district. Just last week, on May 5, First Sergeant Carlos N. Saenz of Las Vegas died when an improvised explosive device detonated near his military vehicle.

As we continue to fight the War on Terror, it is imperative that we protect America's fallen heroes by ensuring that they are treated with respect, while being laid to rest.

As a member of Congress, and a parent, I understand the importance of ensuring that families are able to provide a meaningful and proper burial for their loved ones. As we protect the constitutional rights of those who disagree with the war, we must also protect the rights of our fallen heroes and their families.

The Respect for America's Fallen Heroes Act, which bans all demonstrations 60 minutes prior to and after funerals taking place at Department of Veterans Affairs' national cemeteries or the Department of Army's Arlington National Cemetery, seeks to protect the families right to grieve in peace.

The National Cemetery Administration's (NCA) vision is to serve all veterans and their families with the utmost dignity, respect, and compassion and to ensure that every national cemetery will be a place that inspires visitors to understand and appreciate the service and sacrifice of our Nation's veterans. In order to ensure that the NCA and the Department of Veterans Affairs are able to keep their commitment to America's veterans and their families, I am in full support of this important piece of legislation.

Mr. Speaker and my distinguished colleagues, I offer my full support for this important piece of legislation and I support your efforts to protect the rights of America's fallen heroes and their families.

Mr. MILLER of Florida. Mr. Speaker, I rise today to offer my unwavering support for H.R. 5037, the Respect for America's Fallen Heroes Act. I am proud to be an original cosponsor of this bill.

The rights of free speech and expression under the Constitution's First Amendment are not absolute, and there are many U.S. Supreme Court decisions interpreting and explaining the right and its limits. As Chairman BUYER explained, there are several judicial precedents which make clear that H.R. 5037 is constitutional. On April 6, the Subcommittee on Disability Assistance and Memorial Affairs, the subcommittee I chair, took testimony on this bill.

Said David Forte, Professor of Law, Cleveland-Marshall College of Law, Cleveland State University, in written testimony submitted to the Subcommittee:

''There are thus two constitutional issues to be confronted: (1) Does the ban on ''certain'' demonstrations meet the requirement

of First Amendment law as laid down in Supreme Court precedents, and (2) Is the discretion lodged in the cemetery superintendent to permit exceptions fall within an acceptable constitutional range? I conclude that the answer to both questions is in the affirmative and that the bill is well within constitutional limits.

Mr. Speaker, at this time I ask unanimous consent that Mr. Forte's statement be included in the CONGRESSIONAL RECORD.

I have visited the troops in Afghanistan and Iraq several times over the years.

While always moving and inspiring experiences, one time in particular stands out. It was September 2003 and we were preparing to return to the States. After quite a wait, we were told that they were loading onto the plane the casket of Sergeant Trevor Blumberg, and we would be leaving Baghdad with his body. I have had few honors as great as that one. I am pleased to say that Mrs. Blumberg has since contacted Representative ROGERS' office to express her and her husband's support for this bill.

Our Nation's veterans have made the ultimate sacrifice, and it is appalling to see and hear their military service being derided. Unfortunately, throughout the country, that is indeed what is happening and it must stop.

I want to thank Mr. ROGERS, Chairman BUYER, and Mr. REYES for all their work in crafting this legislation and their continued dedication to the men and women of our armed forces.

I would also like to recognize Mr. Paul Taylor and Ms. Hilary Funk, staff on the Judiciary. Committee's Subcommittee on the Constitution, for working so closely with my staff and me.

Mr. Speaker, I urge all my colleagues to support this bill.

TESTIMONY OF DAVID F. FORTE, PROFESSOR OF LAW, CLEVELAND-MARSHALL COLLEGE OF LAW, CLEVELAND STATE UNIVERSITY, IN SUPPORT OF H.R. 5037 BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS, SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS, JEFF MILLER, CHAIRMAN, APRIL 18, 2006

I. INTRODUCTION

H.R. 5037, entitled the ''Respect for America's Fallen Heroes Act,'' seeks to limit ''certain demonstrations'' in cemeteries under the control of the National Cemetery Administration or on the property of Arlington National Cemetery. The bill defines what constitutes a demonstration disruptive of the memorial services or funerals being held in or within 500 feet of such cemeteries, but allows an exception for demonstrations on cemetery grounds if ''approved by the cemetery superintendent.'' There are thus two constitutional issues to be confronted: (1) Does the ban on ''certain'' demonstrations meet the requirements of First Amendment law as laid down in Supreme Court precedents, and (2) Is the discretion lodged in the cemetery superintendent to permit exceptions fall within an acceptable constitutional range? I conclude that the answer to both questions is in the affirmative and that the bill is well within constitutional limits.

II. THE BAN ON DEMONSTRATIONS

Demonstrations are a form of expressive conduct. In all governmental restrictions on expressive conduct, Supreme Court jurisprudence requires application of the O'Brien test, *United States* v. *O'Brien*, 391 U.S. 367 (1968) or of the ''time, place, and manner'' test. *Cox* v. *New Hampshire*, 312 U.S. 569 (1941). The Court has declared that both tests have similar standards. *Clark* v. *Community for Creative Non-Violence*, 468 U.S. 288 (1984).

Under the O'Brien test, ''a governmental regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.'' 391 U.S. at 376. Under the ''time, place, and manner'' test, government regulations of expressive conduct are valid ''provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open alternative channels for communication of the information.'' Clark, 468 U.S. at 293.

It is clear from the text of H.R. 5037 that the purpose of the bill is to assure the dignity of funerals or memorial services held in honor of our fallen dead by preventing demonstrations that are disruptive of those ceremonies. To that end, the bill delineates what kind of demonstrations shall be prohibited, viz, a demonstration within five hundred feet of a cemetery in which a funeral or memorial service is to be held if the demonstration takes place within a time period from 60 minutes before until 60 minutes after the funeral or memorial service. Furthermore, the bill requires that only those demonstrations in which a ''noise or diversion'' is willfully made and ''that disturbs or tends to disturb the peace or good order of the funeral service or memorial service or ceremony'' shall be prohibited.

Maintaining cemeteries for veterans is clearly within the constitutional power of government. It is also clear that, under 38 U.S.C. sect. 2403, the purpose of maintaining cemeteries ''as a tribute to our gallant dead'' is an important or substantial governmental interest. It is similarly evident from the text of the bill that its purpose is to prevent conduct that is intentionally disruptive of a funeral or memorial service without reference to the content of the expressive conduct. The text does not ban accidental noises present in our modern society near to many cemeteries, such as traffic or the sounds of children playing. Nor does it ban only demonstrations with a particular kind of message. A demonstration connected with a labor dispute that is disruptive of a funeral is as violative of the law as would be an anti-war demonstration or a ''support our troops'' march. Finally, ''the incidental restriction on First Amendment freedoms is no greater than is essential to the furtherance'' of the interest of maintaining the dignity of a funeral for our fallen dead. Demonstrations 60 minutes before or 60 minutes after the ceremony are permitted. Even during the period in which a ceremony is being held, a demonstration beyond 500 feet of the cemetery is permitted. This is no blanket ban at all.

The fact that H.R. 5037 prohibits disruptive demonstrations on grounds that are not part of a national cemetery finds support in Supreme Court precedent. The case of *Grayned* v. *City of Rockford*, 408 U.S. 104 (1972) is directly on point. In Grayned, the Supreme Court upheld an antinoise ordinance, which read: ''No person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making on any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof.'' 408 U.S. at 107–08. It is axiomatic in our legal tradition that the state may take reasonable steps to abate a nuisance that may emanate from private property. What H.R. 5037 does is to abate a nuisance that would disturb the good order of a federally mandated activity in our national cemeteries, namely, to provide memorial services and ceremonies that are ''a tribute to our gallant dead.''

It should be noted that in Grayned, the Supreme Court held that the antinoise ordinance was good against claims of overbreadth or vagueness. H.R. 5037's prohibition on ''willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony'' tracks the language approved by the Court in Grayned.

Furthermore, the language of H.R. 5037 finds support in the case of *Boos* v. *Barry*, 485 U.S. 312 (1988). In the case, the Supreme Court reviewed a District of Columbia law that made it unlawful to display any sign that brought a foreign government into ''public odium'' or ''public disrepute'' within 500 feet of an embassy, and which banned ''congregating'' within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was ''directed at a foreign embassy.'' H.R. 5037 bans only those demonstrations within 500 feet of a cemetery that are intentionally disruptive of ceremonies or funerals within national cemeteries. The disruptive requirement does not need judicial construction. It is made in the terms of the statute and is fully supported by the decision in Boos v. Barry.

Under H.R. 5037, a person who displays ''any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony,'' and such a display causes a ''diversion that disturbs or tends to disturb the good order of the funeral or memorial service'' is subject to the law. This prohibition is closely akin to the focused picketing ordinance upheld by the Supreme Court in *Frisby* v. *Schultz*, 484 U.S. 474 (1988). That ordinance banned picketing ''before and about'' any residence. Although in most public areas, people may picket and expostulate even though others may object to the message, in certain areas the functioning of the forum takes precedence, provided there are alternative ways the protestor may express his message. Schools are one forum whose functioning may not be disturbed or diverted. Grayned. The home is another place. Justice O'Connor noted that the picketers could still march through the neighborhood to express their opposition to abortion and abortionists. They simply could not disrupt the ''tranquility'' of a doctor's home. 484 U.S. at 484. Similarly, in H.R. 5037, the bill seeks to protect the tranquility and dignity of a memorial service. It allows the picketer or demonstrator to display whatever kind of sign or device he wishes one hour before or one hour after the ceremony, or at any time if more than 500 feet distant from the cemetery, even if it offends those who may be traveling to the ceremony.

If, however, a person displays ''any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony,'' and the display occurs within a cemetery, there is no requirement in the bill that it be part of a disruptive demonstration. But in that case, the display does not take place in a traditional public forum, such as a public sidewalk, but rather within a non-public forum dedicated to honoring our veterans. In that situation, the ban is a reasonable, and thereby a valid, restriction in a non-public forum designed to preserve the appropriate functioning of the forum, i.e., a national cemetery. I discuss the law applying to non-public forums in Part III below.

Thus, under either the O'Brien test or under the time, place and manner test, the statute is drawn to be within Constitutional standards.

Nonetheless, I find one phrase in the bill puzzling. Under section (b)(2), a demonstration is defined as ''Any oration, speech, use of sound amplification equipment or device, or similar conduct *before an assembled group of people* that is not part of a funeral or memorial service or ceremony.'' (emphasis added) It would see that a single individual with a bullhorn who disrupts a ceremony might not be covered under this section. Thus, I do not see the use of the phrase ''before an assembled group of people.'' In any event, with such a phrase, the restriction on expressive conduct is even less than would be permitted to be under the Constitution.

III. THE DISCRETION OF THE CEMETERY SUPERINTENDENT

It is a central canon of our First Amendment jurisprudence that permission to engage in expressive conduct cannot be left to the unbridled discretion of a governmental official. *City of Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S. 750 (1988). Such a discretion carries with it the dangers of prior restraint, vagueness, overbreadth, and content and viewpoint discrimination. Section (a)(1) of H.R. 5037 prohibits demonstrations in cemeteries under the control of the National Cemetery Administration or in Arlington National Cemetery ''unless the demonstration has been approved by the cemetery superintendent.'' Nonetheless, I do not believe that this section permits unbridled discretion in the cemetery superintendent. Rather, I think that his discretion is well-cabined within and defined by the administrative function the law places upon the cemetery superintendent.

A case directly on point is *Griffin* v. *Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir. 2002). Some veterans were not permitted under federal regulations from placing a Confederate flag at a national cemetery. Placing a flag was interpreted as a forbidden demonstration under 38 C.F.R., sect. 1.218(a)(14). Subsection (i) declares in part, ''[A]ny service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited.'' Petitioners asserted that the section gave unconstitutional discretion to the administrator of the facility.

In Griffin, the Federal Circuit Court pointed out that cemeteries are non-public forums the regulations of which are subject only to a reasonable basis test. However, although the government may limit the content of expression in non-public forums, it may not engage in viewpoint discrimination. The question was whether the discretion given by the law to the cemetery's administrator brought with it the danger of viewpoint discrimination. After all, a Confederate flag carries a different viewpoint from the Stars and Stripes.

The Federal Circuit found that the Supreme Court had applied the viewpoint discrimination doctrine only in traditional public forums or in designated public forums. 288 F.3d at 1321. The court zeroed in on the relevant variable in this kind of case: ''We are obliged to examine the nature of the forum because the restrictions in nonpublic fora may be reasonable if they are aimed at preserving the property for the purpose to which it is dedicated.'' 288 F.3d at 1323. Finding that there was sufficient Supreme Court support, citing *United States* v. *Kokinda*, 497 U.S. 720 (1990), the Federal Circuit upheld the discretion lodged in the cemetery's administrator ''when such discretion is necessary to preserve the function and character of the forum.'' 288 F.3d at 1323.

The purpose of many non-public forums is normative and preserving the function of that forum may entail restricting opposing normative viewpoints. Schools, for example, are nonpublic forums charged with developing students' character for participation as well-informed and well-developed citizens in our system of representative government. To that end, schools may insist that students observe rules of respect and avoid hateful or immoral language. A student with an opposite viewpoint who fails to observe the rules of respect and makes his point with crude language is not protected by the First Amendment. *Hazelwood School District* v. *Kuhlmeier*, 484 U.S. 260 (1968). Accordingly, the superintendent of a national cemetery is charged with maintaining the cemetery and its activities ''as a tribute to our gallant dead.'' Under H.R. 5037 he is granted reasonable discretion to assure that all activities within the cemetery accord with its lawfully stated purpose. He may permit ceremonies or demonstrations or signs or programs that accord with such purpose and forbid those that do not. In doing so, the restriction imposed is ''reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.'' 288 F.3d at 1321, citing, *Cornelius* v. *NAACP Legal Del & Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985).

IV. CONCLUSION

H.R. 5037 is a well-crafted bill that seeks to maintain the decorum necessary to honor our veterans and those who have died for our freedoms and who now rest in national cemeteries. I find that the bill's careful limitations on disruptive demonstrations and the limited discretion it gives to cemetery superintendents to be well with constitutional limits.

Mr. CANTOR. Mr. Speaker, I rise today in strong support of H.R. 5037, the Respect for America's Fallen Heroes Act.

Throughout the history of our country, countless Americans have made the ultimate sacrifice so that we could live freely.

We owe these fallen heroes a debt of gratitude, and we should guarantee the fallen and their families a peaceful journey to their final resting place.

Mr. Speaker, our military cemeteries are hallowed grounds. During the Gettysburg Address, I believe President Abraham Lincoln said it best:

We have come to dedicate a portion of that field, as a final resting place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here.

For these reasons, I am greatly troubled that groups exploit the sacrifice of so many Americans. These groups trespass on the memories and hallowed ground of our heroes.

Demonstrations at cemeteries disrespect those who have fallen and the loved ones they leave behind. As they held their lines—we must do the same. This bill strikes a proper balance between the liberties they defended and the respect earned.

I urge the passage of this bill for we must support their loved ones and honor their sacrifice.

Mr. RYUN of Kansas. Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America's Fallen Heroes Act. This is a much needed piece of legislation to curb the unfortunate actions of a small minority of people.

Although I am glad to have this opportunity to support the servicemembers in my home state of Kansas and around the world, I am disappointed that we even need this bill.

I have a lot of servicemembers in my district who are courageously serving our country in combat. I have talked to many of them and I have seen their desire and passion to serve their country out of a love for freedom, democracy, and for their country.

Unfortunately, some of these servicemembers have lost their lives and their families must now grieve their loss. The families of our fallen servicemembers—our true heroes—should not be subjected to protests, hate-filled phone calls, and other obscenities. No one should experience that, especially not after losing a loved one. That is why I support this bill that will help protect the families of our fallen servicemembers from unwelcome protestors.

Our servicemembers embody the exact opposite of hate by sacrificing their lives so that we can keep ours. I pay tribute to them, and I wholeheartedly support this legislation.

Mr. ORTIZ. Mr. Speaker, I rise today in support of the Respect for America's Fallen Heroes Act—of which I am a proud co-sponsor.

Like so many of my colleagues, I was horrified that members of Topeka, Kansas, based Westboro Baptist Church were verbally abusing—and interrupting—the funerals of service members who gave the last full measure of devotion to this Nation. My constituents and I have been revolted by this offensive activity.

It matters not what your individual position is on either war we are currently prosecuting—in Iraq or Afghanistan—certainly we can all agree protesting at military funerals is a cruel and unnecessary hardship on our military families during their most difficult hour.

I respect the first amendment rights of protesters, and I do not believe this legislation would restrict that right. The restrictions placed in this bill would allow families the privacy to conduct funerals, while still preserving the constitutional right of political protest either before or after family funerals conducted within the National Cemetery System.

We can best respect fallen service members by respecting the principles for which they made the supreme sacrifice. Today's bill respects them by honoring those principles of freedom—even when a callous few ineffectively attempt to demean their dignity—and it allows their families to grieve without being victimized by those who feel the need to denigrate fallen soldiers and their families at a most private moment.

I ask that all our States pass similar legislation at their State cemeteries, and I urge my colleagues to vote yes on this bill.

Mr. ADERHOLT. Mr. Speaker, I rise today in strong support of H.R. 5037, offered by my colleague from Michigan. We owe a tremendous debt of gratitude not only to the fallen soldier, sailor, airman, or Marine, but to their families as well. At their darkest hour, their grief does not need to be exploited by those trying to make a political point. This intentional disruption of a brief period of time meant to honor a fallen hero goes against the very fiber of American decency. Free speech and public protests are a right; however, taunting and tormenting families at the very moment they bury

heir dead is not a right; it is abhorrent. This bill gives the family members of our fallen heroes the respect that they are owed, and the peace that they deserve as they bury their loved ones. I urge my colleagues to vote yes on this bill, and I hope it is then acted on quickly by the Senate and signed into law by the President.

Mr. BUYER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The gentleman from Texas also has another 5 minutes.

Mr. REYES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 5037.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BUYER. 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.

## GENERAL LEAVE

Mr. BUYER. Mr. Speaker, I ask that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on H.R. 5037.

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

There was no objection.

## JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Mr. BUYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3829) to designate the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.

The Clerk read as follows:

H.R. 3829

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

**SECTION 1. JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.**

(a) IN GENERAL.—The Department of Veterans Affairs medical center in Muskogee, Oklahoma, shall after the date of the enactment of this Act be known and designated as the ''Jack C. Montgomery Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the Jack C. Montgomery Department of Veterans Affairs Medical Center.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. BUYER) and the gentleman from Maine (Mr. MICHAUD) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana.

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

(Mr. BUYER asked and was given permission to revise and extend his Remarks.)

□ 1615

Mr. BUYER. Mr. Speaker, Jack C. Montgomery, a Cherokee from Oklahoma, was one of five Native Americans who were awarded the highest military honor in the 20th century, the Medal of Honor, and a first lieutenant with the 45th Infantry Division, the Thunderbirds.

On February 22, 1944, near Padiglione, Italy, Montgomery's rifle platoon was under fire by three echelons of enemy forces when he single-handedly attacked all three positions, taking prisoners in the process. As a result of his valor, Lieutenant Montgomery's actions demoralized the enemy and inspired his men to defeat the enemy forces.

In addition to being awarded the Medal of Honor, Lieutenant Montgomery was also awarded the Silver Star, the Bronze Star Medal and the Purple Heart with an Oak Leaf Cluster. On his release from the Army after World War II, Mr. Montgomery began a career with the Veterans Administration in Muskogee, Oklahoma, where he remained in service for most of his life.

It is appropriate that we name the VA Medical Center in Muskogee for this American hero who not only served his country in wartime, but also continued his service to this Nation through his work in the Veterans Administration.

Mr. Montgomery is survived by his wife, Joyce; and it is our hope to have this legislation passed by the Senate and signed by the President in a timely manner. This legislation is cosponsored and supported by the entire Oklahoma delegation and also has the support of the State's major veterans service organizations.

Mr. Speaker, I particularly would like to thank my colleague, Mr. BOREN, who represents the Second Congressional District of Oklahoma, for introducing this most appropriate legislation.

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

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

Mr. Speaker, I would like to thank Congressman DAN BOREN, who represents the Second Congressional District of Oklahoma, for his leadership in introducing H.R. 3829. I would also like to thank Chairman BUYER and Ranking Member EVANS for helping to bring this legislation to the floor.

H.R. 3829 pays tribute to World War II hero Jack C. Montgomery by designating the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.

Jack Montgomery is a recipient of the Medal of Honor, the highest award for valor and combat bestowed upon an individual serving in the armed services. For his distinguished service, he was also recognized by the Silver Star, the Bronze Star and the Purple Heart with Cluster.

During World War II, Jack Montgomery served as a first lieutenant in the United States Army's 45th Infantry Division. On February 22, 1944, in Italy, he fearlessly risked his life above and beyond the call of duty by single-handedly attacking three strong enemy infantry positions that threatened the rifle platoons under his command. His fearless, aggressive and brave action that morning accounted for a total of 11 enemy dead, 32 prisoners and an unknown number wounded. Late that night, while supporting an adjacent unit, he was seriously wounded by mortar fragments.

The citation accommodating his Medal of Honor recognized that his courage and heroism inspired his men to a degree beyond estimation. Upon his release from the Army, he began a career in the Veterans Administration, Muskogee, Oklahoma.

It is fitting that Congress designate the Muskogee VA Medical Center to Jack C. Montgomery, Department of Veterans Affairs Medical Center. I rise in support of this legislation and urge my colleagues to do the same.

Mr. Speaker, I yield 5 minutes to the gentleman from Oklahoma, a gentleman who cares very dearly about veterans and a fellow Blue Dog, Congressman DAN BOREN.

Mr. BOREN. Mr. Speaker, I rise today in support of H.R. 3829. This bill will designate the Department of Veterans Affairs Medical Center in my hometown of Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center. Mr. Speaker, I think of very few other Americans who deserve to have an honor such as this bestowed upon them, and I am proud to sponsor this bill.

Jack C. Montgomery is a true American hero. His story of service to his country begins while attending Bacone College in Muskogee. During this time, he felt the call to serve his country during World War II, and enlisted in the 45th Division Thunderbirds of the Oklahoma National Guard.

Shortly thereafter, Lieutenant Montgomery found himself with members of the 45th near Padiglione, Italy on February 22, 1944. On this day, Lieutenant Montgomery's rifle platoon came under the fire of three echelons of enemy forces. Under enemy fire, Jack Montgomery single-handedly attacked all three enemy echelons. As a result of his courage, Lieutenant Montgomery's actions demoralized the enemy troops and inspired his men to defeat and capture 32 Axis troops.

Upon returning to the United States, a good Democrat, President Franklin D. Roosevelt, personally awarded Jack Montgomery the Medal of Honor, which is the highest honor for valor awarded to members of the Armed Forces.

Mr. Speaker, Jack Montgomery's distinguished military career goes far beyond the Medal of Honor. He was also awarded the Silver Star, the Bronze Star and the Purple Heart with Cluster, to mention only a few of his distinctions. Following World War II, Jack Montgomery was honorably released from the Army.

However, I am proud to say that he chose to continue his service to his country and his fellow veterans by beginning a career with a VA administration in Muskogee, Oklahoma.

Even following his retirement from the Veterans Administration, Jack Montgomery chose to continue helping his fellow veterans by volunteering at the VA Medical Center, also located in Muskogee, Oklahoma, where he worked for more than 750 hours driving a shuttle to transport veterans from the parking lot to the hospital.

Mr. Speaker, this VA medical center where the Medal of Honor recipient, Lieutenant Jack Montgomery, gave his time helping his fellow veterans is the same facility that this bill seeks to name in his honor. I find it only fitting that we honor an individual like Jack Montgomery for his selflessness, both on the battlefield and here at home in the United States of America.

Mr. Speaker, I encourage my colleagues to join me in supporting H.R. 3829.

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

Mr. MICHAUD. Mr. Speaker, it is appropriate that we in Congress recognize the heroism of the men and women who have served our Nation in the Armed Forces. It is an important and enduring symbolic tribute to name a VA medical center in honor of this World War II hero.

As we near Memorial Day and our thoughts turn to those who made the ultimate sacrifice, we in Congress must continue to pay tribute to our living veterans with both symbols and tangible benefits and services.

We have much work to do, and veterans and their families are counting on us to act. I know that we are united in this commitment to honor our veterans. I appreciate the hard work and look forward, as I have over the last 3½ years, to work with Chairman BUYER to make sure that we do all we can to help our veterans and continue to look forward to working with Chairman BUYER, Chairman BROWN and Ranking Member EVANS and other Veterans Affairs Committee members to pass needed health care and benefit legislation to meet this obligation.

Mr. Speaker, I yield back the balance of my time.

Mr. BUYER. Mr. Speaker, I would like to thank the gentleman from Maine (Mr. MICHAUD). He serves as ranking member of the Subcommittee on Health for the House Veterans Affairs Committee. His heart is right, and he does his homework.

You have got the right demeanor. I appreciate your leadership.

Mr. Speaker, I urge all Members to give favorable consideration to H.R. 3829, a bill to honor a true American hero.

I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 3829.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. BUYER. 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.

## GENERAL LEAVE

Mr. BUYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on H.R. 3829.

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

There was no objection.

## CONFERENCE REPORT ON H.R. 4297, TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

Mr. THOMAS submitted the following conference report and statement on the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006:

CONFERENCE REPORT (H. REPT. 109–455)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4297), to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

***SECTION 1. SHORT TITLE, ETC.***

*(a) SHORT TITLE.—This Act may be cited as the ''Tax Increase Prevention and Reconciliation Act of 2005''.*

*(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.*

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

*Sec. 1. Short title, etc.*

*TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS*

*Sec. 101. Increased expensing for small business.*
*Sec. 102. Capital gains and dividends rates.*
*Sec. 103. Controlled foreign corporations.*

*TITLE II—OTHER PROVISIONS*

*Sec. 201. Clarification of taxation of certain settlement funds.*
*Sec. 202. Modification of active business definition under section 355.*
*Sec. 203. Veterans' mortgage bonds.*
*Sec. 204. Capital gains treatment for certain self-created musical works.*
*Sec. 205. Vessel tonnage limit.*
*Sec. 206. Modification of special arbitrage rule for certain funds.*
*Sec. 207. Amortization of expenses incurred in creating or acquiring music or music copyrights.*
*Sec. 208. Modification of effective date of disregard of certain capital expenditures for purposes of qualified small issue bonds.*
*Sec. 209. Modification of treatment of loans to qualified continuing care facilities.*

*TITLE III—ALTERNATIVE MINIMUM TAX RELIEF*

*Sec. 301. Increase in alternative minimum tax exemption amount for 2006.*
*Sec. 302. Allowance of nonrefundable personal credits against regular and alternative minimum tax liability.*

*TITLE IV—CORPORATE ESTIMATED TAX PROVISIONS*

*Sec. 401. Time for payment of corporate estimated taxes.*

*TITLE V—REVENUE OFFSET PROVISIONS*

*Sec. 501. Application of earnings stripping rules to partners which are corporations.*
*Sec. 502. Reporting of interest on tax-exempt bonds.*
*Sec. 503. 5-year amortization of geological and geophysical expenditures for certain major integrated oil companies.*
*Sec. 504. Application of FIRPTA to regulated investment companies.*
*Sec. 505. Treatment of distributions attributable to FIRPTA gains.*
*Sec. 506. Prevention of avoidance of tax on investments of foreign persons in United States real property through wash sale transactions.*
*Sec. 507. Section 355 not to apply to distributions involving disqualified investment companies.*
*Sec. 508. Loan and redemption requirements on pooled financing requirements.*
*Sec. 509. Partial payments required with submission of offers-in-compromise.*
*Sec. 510. Increase in age of minor children whose unearned income is taxed as if parent's income.*
*Sec. 511. Imposition of withholding on certain payments made by government entities.*
*Sec. 512. Conversions to Roth IRAs.*
*Sec. 513. Repeal of FSC/ETI binding contract relief.*
*Sec. 514. Only wages attributable to domestic production taken into account in determining deduction for domestic production.*
*Sec. 515. Modification of exclusion for citizens living abroad.*

*Sec. 516. Tax involvement of accommodation parties in tax shelter transactions.*

## TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS

### SEC. 101. INCREASED EXPENSING FOR SMALL BUSINESS.

*Subsections (b)(1), (b)(2), (b)(5), (c)(2), and (d)(1)(A)(ii) of section 179 (relating to election to expense certain depreciable business assets) are each amended by striking ''2008'' and inserting ''2010''.*

### SEC. 102. CAPITAL GAINS AND DIVIDENDS RATES.

*Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.*

### SEC. 103. CONTROLLED FOREIGN CORPORATIONS.

*(a) SUBPART F EXCEPTION FOR ACTIVE FINANCING.—*

*(1) EXEMPT INSURANCE INCOME.—Paragraph (10) of section 953(e) (relating to application) is amended—*

*(A) by striking ''January 1, 2007'' and inserting ''January 1, 2009'', and*

*(B) by striking ''December 31, 2006'' and inserting ''December 31, 2008''.*

*(2) EXCEPTION TO TREATMENT AS FOREIGN PERSONAL HOLDING COMPANY INCOME.—Paragraph (9) of section 954(h) (relating to application) is amended by striking ''January 1, 2007'' and inserting ''January 1, 2009''.*

*(b) LOOK-THROUGH TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER THE FOREIGN PERSONAL HOLDING COMPANY RULES.—*

*(1) IN GENERAL.—Subsection (c) of section 954 (relating to foreign personal holding company income) is amended by adding at the end the following new paragraph:*

*''(6) LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.—*

*''(A) IN GENERAL.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.*

*''(B) APPLICATION.—Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''.*

*(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.*

## TITLE II—OTHER PROVISIONS

### SEC. 201. CLARIFICATION OF TAXATION OF CERTAIN SETTLEMENT FUNDS.

*(a) IN GENERAL.—Subsection (g) of section 468B (relating to clarification of taxation of certain funds) is amended to read as follows:*

*''(g) CLARIFICATION OF TAXATION OF CERTAIN FUNDS.—*

*''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.*

*''(2) EXEMPTION FROM TAX FOR CERTAIN SETTLEMENT FUNDS.—An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—*

*''(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,*

*''(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,*

*''(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and*

*''(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.*

*For purposes of this paragraph, the term 'government entity' means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.*

*''(3) TERMINATION.—Paragraph (2) shall not apply to accounts and funds established after December 31, 2010.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to accounts and funds established after the date of the enactment of this Act.*

### SEC. 202. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.

*Subsection (b) of section 355 (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:*

*''(3) SPECIAL RULE RELATING TO ACTIVE BUSINESS REQUIREMENT.—*

*''(A) IN GENERAL.—In the case of any distribution made after the date of the enactment of this paragraph and on or before December 31, 2010, a corporation shall be treated as meeting the requirement of paragraph (2)(A) if and only if such corporation is engaged in the active conduct of a trade or business.*

*''(B) AFFILIATED GROUP RULE.—For purposes of subparagraph (A), all members of such corporation's separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation's separate affiliated group is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.*

*''(C) TRANSITION RULE.—Subparagraph (A) shall not apply to any distribution pursuant to a transaction which is—*

*''(i) made pursuant to an agreement which was binding on the date of the enactment of this paragraph and at all times thereafter,*

*''(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or*

*''(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.*

*The preceding sentence shall not apply if the distributing corporation elects not to have such sentence apply to distributions of such corporation. Any such election, once made, shall be irrevocable.*

*''(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under paragraph (2)(A) of distributions made on or before the date of the enactment of this paragraph as a result of an acquisition, disposition, or other restructuring after such date and on or before December 31, 2010, such distribution shall be treated as made on the date of such acquisition, disposition, or restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph.''.*

### SEC. 203. VETERANS' MORTGAGE BONDS.

*(a) EXPANSION OF DEFINITION OF VETERANS ELIGIBLE FOR STATE HOME LOAN PROGRAMS FUNDED BY QUALIFIED VETERANS' MORTGAGE BONDS.—*

*(1) IN GENERAL.—Paragraph (4) of section 143(l) (defining qualified veteran) is amended to read as follows:*

*''(4) QUALIFIED VETERAN.—For purposes of this subsection, the term 'qualified veteran' means—*

*''(A) in the case of the States of Alaska, Oregon, and Wisconsin, any veteran—*

*''(i) who served on active duty, and*

*''(ii) who applied for the financing before the date 25 years after the last date on which such veteran left active service, and*

*''(B) in the case of any other State, any veteran—*

*''(i) who served on active duty at some time before January 1, 1977, and*

*''(ii) who applied for the financing before the later of—*

*''(I) the date 30 years after the last date on which such veteran left active service, or*

*''(II) January 31, 1985.''.*

*(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to bonds issued on or after the date of the enactment of this Act.*

*(b) REVISION OF STATE VETERANS LIMIT.—*

*(1) IN GENERAL.—Subparagraph (B) of section 143(l)(3) (relating to volume limitation) is amended—*

*(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and moving such clauses 2 ems to the right,*

*(B) by amending the matter preceding subclause (I), as designated by subparagraph (A), to read as follows:*

*''(B) STATE VETERANS LIMIT.—*

*''(i) IN GENERAL.—In the case of any State to which clause (ii) does not apply, the State veterans limit for any calendar year is the amount equal to—'', and*

*(C) by adding at the end the following new clauses:*

*''(ii) ALASKA, OREGON, AND WISCONSIN.—In the case of the following States, the State veterans limit for any calendar year is the amount equal to—*

*''(I) $25,000,000 for the State of Alaska,*

*''(II) $25,000,000 for the State of Oregon, and*

*''(III) $25,000,000 for the State of Wisconsin.*

*''(iii) PHASEIN.—In the case of calendar years beginning before 2010, clause (ii) shall be applied by substituting for each of the dollar amounts therein an amount equal to the applicable percentage of such dollar amount. For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:*

| ''For Calendar Year: | Applicable percentage is: |
|---|---|
| 2006 | 20 percent |
| 2007 | 40 percent |
| 2008 | 60 percent |
| 2009 | 80 percent. |

*''(iv) TERMINATION.—The State veterans limit for the States specified in clause (ii) for any calendar year after 2010 is zero.''.*

*(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to allocations of State volume limit after April 5, 2006.*

### SEC. 204. CAPITAL GAINS TREATMENT FOR CERTAIN SELF-CREATED MUSICAL WORKS.

*(a) IN GENERAL.—Subsection (b) of section 1221 (relating to capital asset defined) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:*

*''(3) SALE OR EXCHANGE OF SELF-CREATED MUSICAL WORKS.—At the election of the taxpayer, paragraphs (1) and (3) of subsection (a) shall not apply to musical compositions or copyrights in musical works sold or exchanged before January 1, 2011, by a taxpayer described in subsection (a)(3).''.*

*(b) LIMITATION ON CHARITABLE CONTRIBUTIONS.—Subparagraph (A) of section 170(e)(1) is amended by inserting ''(determined without regard to section 1221(b)(3))'' after ''long-term capital gain''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act.*

***SEC. 205. VESSEL TONNAGE LIMIT.***

*(a) IN GENERAL.—Paragraph (4) of section 1355(a) (relating to qualifying vessel) is amended by inserting ''(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)'' after ''10,000''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2005.*

***SEC. 206. MODIFICATION OF SPECIAL ARBITRAGE RULE FOR CERTAIN FUNDS.***

*In the case of bonds issued after the date of the enactment of this Act and before August 31, 2009—*

*(1) the requirement of paragraph (1) of section 648 of the Deficit Reduction Act of 1984 (98 Stat. 941) shall be treated as met with respect to the securities or obligations referred to in such section if such securities or obligations are held in a fund the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue, and*

*(2) paragraph (3) of such section shall be applied by substituting ''distributions from'' for ''the investment earnings of'' both places it appears.*

***SEC. 207. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.***

*(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:*

*''(8) SPECIAL RULES FOR CERTAIN MUSICAL WORKS AND COPYRIGHTS.—*

*''(A) IN GENERAL.—If an election is in effect under this paragraph for any taxable year, then, notwithstanding paragraph (1), any expense which—*

*''(i) is paid or incurred by the taxpayer in creating or acquiring any applicable musical property placed in service during the taxable year, and*

*''(ii) is otherwise properly chargeable to capital account,*

*shall be amortized ratably over the 5-year period beginning with the month in which the property was placed in service. The preceding sentence shall not apply to any expense which, without regard to this paragraph, would not be allowable as a deduction.*

*''(B) EXCLUSIVE METHOD.—Except as provided in this paragraph, no depreciation or amortization deduction shall be allowed with respect to any expense to which subparagraph (A) applies.*

*''(C) APPLICABLE MUSICAL PROPERTY.—For purposes of this paragraph—*

*''(i) IN GENERAL.—The term 'applicable musical property' means any musical composition (including any accompanying words), or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.*

*''(ii) EXCEPTIONS.—Such term shall not include any property—*

*''(I) with respect to which expenses are treated as qualified creative expenses to which section 263A(h) applies,*

*''(II) to which a simplified procedure established under section 263A(j)(2) applies, or*

*''(III) which is an amortizable section 197 intangible (as defined in section 197(c)).*

*''(D) ELECTION.—An election under this paragraph shall be made at such time and in such form as the Secretary may prescribe and shall apply to all applicable musical property placed in service during the taxable year for which the election applies.*

*''(E) TERMINATION.—An election may not be made under this paragraph for any taxable year beginning after December 31, 2010.''.*

*(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005.*

***SEC. 208. MODIFICATION OF EFFECTIVE DATE OF DISREGARD OF CERTAIN CAPITAL EXPENDITURES FOR PURPOSES OF QUALIFIED SMALL ISSUE BONDS.***

*(a) IN GENERAL.—Section 144(a)(4)(G) is amended by striking ''September 30, 2009'' and inserting ''December 31, 2006''.*

*(b) CONFORMING AMENDMENT.—Section 144(a)(4)(F) is amended by striking ''September 30, 2009'' and inserting ''December 31, 2006''.*

***SEC. 209. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.***

*(a) IN GENERAL.—Section 7872 is amended by redesignating subsection (h) as subsection (i) and inserting after subsection (g) the following new subsection:*

*''(h) EXCEPTION FOR LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—*

*''(1) IN GENERAL.—This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender's spouse) attains age 62 before the close of such year.*

*''(2) CONTINUING CARE CONTRACT.—For purposes of this section, the term 'continuing care contract' means a written contract between an individual and a qualified continuing care facility under which—*

*''(A) the individual or individual's spouse may use a qualified continuing care facility for their life or lives,*

*''(B) the individual or individual's spouse will be provided with housing, as appropriate for the health of such individual or individual's spouse—*

*''(i) in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), and*

*''(ii) in an assisted living facility or a nursing facility, as is available in the continuing care facility, and*

*''(C) the individual or individual's spouse will be provided assisted living or nursing care as the health of such individual or individual's spouse requires, and as is available in the continuing care facility.*

*The Secretary shall issue guidance which limits such term to contracts which provide only facilities, care, and services described in this paragraph.*

*''(3) QUALIFIED CONTINUING CARE FACILITY.—*

*''(A) IN GENERAL.—For purposes of this section, the term 'qualified continuing care facility' means 1 or more facilities—*

*''(i) which are designed to provide services under continuing care contracts,*

*''(ii) which include an independent living unit, plus an assisted living or nursing facility, or both, and*

*''(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.*

*''(B) NURSING HOMES EXCLUDED.—The term 'qualified continuing care facility' shall not include any facility which is of a type which is traditionally considered a nursing home.*

*''(4) TERMINATION.—This subsection shall not apply to any calendar year after 2010.''.*

*(b) CONFORMING AMENDMENTS.—*

*(1) Section 7872(g) is amended by adding at the end the following new paragraph:*

*''(6) SUSPENSION OF APPLICATION.—Paragraph (1) shall not apply for any calendar year to which subsection (h) applies.''.*

*(2) Section 142(d)(2)(B) is amended by striking ''Section 7872(g)'' and inserting ''Subsections (g) and (h) of section 7872''.*

*(c) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.*

## *TITLE III—ALTERNATIVE MINIMUM TAX RELIEF*

***SEC. 301. INCREASE IN ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT FOR 2006.***

*(a) IN GENERAL.—Section 55(d)(1) (relating to exemption amount for taxpayers other than corporations) is amended—*

*(1) by striking ''$58,000'' and all that follows through ''2005'' in subparagraph (A) and inserting ''$62,550 in the case of taxable years beginning in 2006'', and*

*(2) by striking ''$40,250'' and all that follows through ''2005'' in subparagraph (B) and inserting ''$42,500 in the case of taxable years beginning in 2006''.*

*(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.*

***SEC. 302. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY.***

*(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—*

*(1) by striking ''2005'' in the heading thereof and inserting ''2006'', and*

*(2) by striking ''or 2005'' and inserting ''2005, or 2006''.*

*(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.*

## *TITLE IV—CORPORATE ESTIMATED TAX PROVISIONS*

***SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.***

*Notwithstanding section 6655 of the Internal Revenue Code of 1986—*

*(1) in the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—*

*(A) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2006 shall be 105 percent of such amount,*

*(B) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2012 shall be 106.25 percent of such amount,*

*(C) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2013 shall be 100.75 percent of such amount, and*

*(D) the amount of the next required installment after an installment referred to in subparagraph (A), (B), or (C) shall be appropriately reduced to reflect the amount of the increase by reason of such subparagraph,*

*(2) 20.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2010 shall not be due until October 1, 2010, and*

*(3) 27.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2011 shall not be due until October 1, 2011.*

## *TITLE V—REVENUE OFFSET PROVISIONS*

***SEC. 501. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.***

*(a) IN GENERAL.—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:*

*''(8) TREATMENT OF CORPORATE PARTNERS.—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—*

''(A) such corporation's distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

''(B) such corporation's distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

''(C) such corporation's share of the liabilities of such partnership shall be treated as liabilities of such corporation.''.

(b) ADDITIONAL REGULATORY AUTHORITY.—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by adding at the end the following new subparagraph:

''(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership's interest income or interest expense.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

**SEC. 502. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.**

(a) IN GENERAL.—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) CONFORMING AMENDMENT.—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking ''subparagraph (C)'' and inserting ''subparagraph (B)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest paid after December 31, 2005.

**SEC. 503. 5-YEAR AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR CERTAIN MAJOR INTEGRATED OIL COMPANIES.**

(a) IN GENERAL.—Section 167(h) (relating to amortization of geological and geophysical expenditures) is amended by adding at the end the following new paragraph:

''(5) SPECIAL RULE FOR MAJOR INTEGRATED OIL COMPANIES.—

''(A) IN GENERAL.—In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting '5-year' for '24 month'.

''(B) MAJOR INTEGRATED OIL COMPANY.—For purposes of this paragraph, the term 'major integrated oil company' means, with respect to any taxable year, a producer of crude oil—

''(i) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

''(ii) which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

''(iii) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

''(I) by substituting '15 percent' for '5 percent' each place it occurs in paragraph (3) of section 613A(d), and

''(II) without regard to whether subsection (c) of section 613A does not apply by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person and, in case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

**SEC. 504. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.**

(a) IN GENERAL.—Subclause (II) of section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting ''which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company'' after ''regulated investment company''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 to which it relates.

**SEC. 505. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FIRPTA GAINS.**

(a) QUALIFIED INVESTMENT ENTITY.—

(1) IN GENERAL.—Section 897(h)(1) is amended—

(A) by striking ''a nonresident alien individual or a foreign corporation'' in the first sentence and inserting ''a nonresident alien individual, a foreign corporation, or other qualified investment entity'',

(B) by striking ''such nonresident alien individual or foreign corporation'' in the first sentence and inserting ''such nonresident alien individual, foreign corporation, or other qualified investment entity'', and

(C) by striking the second sentence and inserting the following new sentence: ''Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.''.

(2) EXCEPTION TO TERMINATION OF APPLICATION OF SECTION 897 RULES TO REGULATED INVESTMENT COMPANIES.—Clause (ii) of section 897(h)(4)(A) is amended by adding at the end the following new sentence: ''Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.''.

(b) WITHHOLDING ON DISTRIBUTIONS TREATED AS GAIN FROM UNITED STATES REAL PROPERTY INTERESTS.—Section 1445(e) (relating to special rules for distributions, etc. by corporations, partnerships, trusts, or estates) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

''(6) DISTRIBUTIONS BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)) to a nonresident alien individual or a foreign corporation is treated under section 897(h)(1) as gain realized by such individual or corporation from the sale or exchange of a United States real property interest, the qualified investment entity shall deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 15 percent (20 percent in the case of taxable years beginning after December 31, 2010)) of the amount so treated.''.

(c) TREATMENT OF CERTAIN DISTRIBUTIONS AS DIVIDENDS.—

(1) IN GENERAL.—Section 852(b)(3) (relating to capital gains) is amended by adding at the end the following new subparagraph:

''(E) CERTAIN DISTRIBUTIONS.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

''(i) shall not be included in computing such shareholder's long-term capital gains, and

''(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.''.

(2) CONFORMING AMENDMENT.—Section 871(k)(2) (relating to short-term capital gain dividends) is amended by adding at the end the following new subparagraph:

''(E) CERTAIN DISTRIBUTIONS.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

''(i) shall not be treated as a short-term capital gain dividend, and

''(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.''.

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before the date of the enactment of this Act if such amount was not otherwise required to be withheld under any such section as in effect before such amendments.

**SEC. 506. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.**

(a) IN GENERAL.—Section 897(h) (relating to special rules for certain investment entities) is amended by adding at the end the following new paragraph:

''(5) TREATMENT OF CERTAIN WASH SALE TRANSACTIONS.—

''(A) IN GENERAL.—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

''(B) APPLICABLE WASH SALES TRANSACTION.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable wash sales transaction' means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

''(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

''(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

''(ii) APPLICATION TO SUBSTITUTE DIVIDEND AND SIMILAR PAYMENTS.—Subparagraph (A) shall apply to—

''(I) any substitute dividend payment (within the meaning of section 861), or

''(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

''(iii) EXCEPTION WHERE DISTRIBUTION ACTUALLY RECEIVED.—A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

''(iv) EXCEPTION FOR CERTAIN PUBLICLY TRADED STOCK.—A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).''.

(b) NO WITHHOLDING REQUIRED.—Section 1445(b) (relating to exemptions) is amended by adding at the end the following new paragraph:

''(8) APPLICABLE WASH SALES TRANSACTIONS.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(5).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act.

**SEC. 507. SECTION 355 NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT COMPANIES.**

(a) IN GENERAL.—Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

''(g) SECTION NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT CORPORATIONS.—

''(1) IN GENERAL.—This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

''(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

''(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

''(2) DISQUALIFIED INVESTMENT CORPORATION.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'disqualified investment corporation' means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is—

''(i) in the case of distributions after the end of the 1-year period beginning on the date of the enactment of this subsection, ⅔ or more of the fair market value of all assets of the corporation, and

''(ii) in the case of distributions during such 1-year period, ¾ or more of the fair market value of all assets of the corporation.

''(B) INVESTMENT ASSETS.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'investment assets' means—

''(I) cash,

''(II) any stock or securities in a corporation,

''(III) any interest in a partnership,

''(IV) any debt instrument or other evidence of indebtedness,

''(V) any option, forward or futures contract, notional principal contract, or derivative,

''(VI) foreign currency, or

''(VII) any similar asset.

''(ii) EXCEPTION FOR ASSETS USED IN ACTIVE CONDUCT OF CERTAIN FINANCIAL TRADES OR BUSINESSES.—Such term shall not include any asset which is held for use in the active and regular conduct of—

''(I) a lending or finance business (within the meaning of section 954(h)(4)),

''(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

''(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

''(iii) EXCEPTION FOR SECURITIES MARKED TO MARKET.—Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

''(iv) STOCK OR SECURITIES IN A 20-PERCENT CONTROLLED ENTITY.—

''(I) IN GENERAL.—Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 20-percent controlled entity with respect to the distributing or controlled corporation.

''(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

''(III) 20-PERCENT CONTROLLED ENTITY.—For purposes of this clause, the term '20-percent controlled entity' means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting '20 percent' for '80 percent' and without regard to stock described in section 1504(a)(4).

''(v) INTERESTS IN CERTAIN PARTNERSHIPS.—

''(I) IN GENERAL.—Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

''(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

''(3) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection—

''(A) IN GENERAL.—The term '50-percent or greater interest' has the meaning given such term by subsection (d)(4).

''(B) ATTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

''(4) TRANSACTION.—For purposes of this subsection, the term 'transaction' includes a series of transactions.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

''(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

''(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

''(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

''(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

''(C) which modify the application of the attribution rules applied for purposes of this subsection.''.

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

**SEC. 508. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.**

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

''(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

''(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 30 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

''(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.''.

(b) WRITTEN LOAN COMMITMENT AND REDEMPTION REQUIREMENTS.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

''(4) WRITTEN LOAN COMMITMENT REQUIREMENT.—

''(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 30 percent of the net proceeds of such issue.

''(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which—

''(i) is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State, or

''(ii) is a State-created entity providing financing for water-infrastructure projects

*through the federally-sponsored State revolving fund program.*

*''(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—*

*''(A) the amount required to be used under such clause, over*

*''(B) the amount actually used by the close of such period,*

*to redeem outstanding bonds within 90 days after the end of such period.''.*

*(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.*

*(d) CONFORMING AMENDMENTS.—*

*(1) Section 149(f)(1) is amended by striking ''paragraphs (2) and (3)'' and inserting ''paragraphs (2), (3), (4), and (5)''.*

*(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking ''paragraph (4)(A)'' and inserting ''paragraph (6)(A)''.*

*(3) Section 54(l)(2) is amended by striking ''section 149(f)(4)(A)'' and inserting ''section 149(f)(6)(A)''.*

*(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.*

***SEC. 509. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.***

*(a) IN GENERAL.—Section 7122 (relating to compromises) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:*

*''(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—*

*''(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—*

*''(A) LUMP-SUM OFFERS.—*

*''(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of the amount of such offer.*

*''(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term 'lump-sum offer-in-compromise' means any offer of payments made in 5 or fewer installments.*

*''(B) PERIODIC PAYMENT OFFERS.—*

*''(i) IN GENERAL.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment.*

*''(ii) FAILURE TO MAKE INSTALLMENT DURING PENDENCY OF OFFER.—Any failure to make an installment (other than the first installment) due under such offer-in-compromise during the period such offer is being evaluated by the Secretary may be treated by the Secretary as a withdrawal of such offer-in-compromise.*

*''(2) RULES OF APPLICATION.—*

*''(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.*

*''(B) APPLICATION OF USER FEE.—In the case of any assessed tax or other amounts imposed under this title with respect to such tax which is the subject of an offer-in-compromise to which this subsection applies, such tax or other amounts shall be reduced by any user fee imposed under this title with respect to such offer-in-compromise.*

*''(C) WAIVER AUTHORITY.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).''.*

*(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—*

*(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking ''; and'' at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:*

*''(C) any offer-in-compromise which does not meet the requirements of subparagraph (A)(i) or (B)(i), as the case may be, of subsection (c)(1) may be returned to the taxpayer as unprocessable.''.*

*(2) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:*

*''(f) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period.''.*

*(c) CONFORMING AMENDMENT.—Section 6159(f) is amended by striking ''section 7122(d)'' and inserting ''section 7122(e)''.*

*(d) EFFECTIVE DATE.—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.*

***SEC. 510. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.***

*(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking ''age 14'' and inserting ''age 18''.*

*(b) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:*

*''(C) TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.''.*

*(c) CONFORMING AMENDMENT.—Section 1(g)(2) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by inserting after subparagraph (B) the following new subparagraph:*

*''(C) such child does not file a joint return for the taxable year.''.*

*(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.*

***SEC. 511. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.***

*(a) IN GENERAL.—Section 3402 is amended by adding at the end the following new subsection:*

*''(t) EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.—*

*''(1) GENERAL RULE.—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.*

*''(2) PROPERTY AND SERVICES SUBJECT TO WITHHOLDING.—Paragraph (1) shall not apply to any payment—*

*''(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,*

*''(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,*

*''(C) of interest,*

*''(D) for real property,*

*''(E) to any governmental entity subject to the requirements of paragraph (1), any tax-exempt entity, or any foreign government,*

*''(F) made pursuant to a classified or confidential contract described in section 6050M(e)(3),*

*''(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually,*

*''(H) which is in connection with a public assistance or public welfare program for which eligibility is determined by a needs or income test, and*

*''(I) to any government employee not otherwise excludable with respect to their services as an employee.*

*''(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person for property or services which are subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.''.*

*(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2010.*

***SEC. 512. CONVERSIONS TO ROTH IRAS.***

*(a) REPEAL OF INCOME LIMITATIONS.—*

*(1) IN GENERAL.—Paragraph (3) of section 408A(c) (relating to limits based on modified adjusted gross income) is amended by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.*

*(2) CONFORMING AMENDMENT.—Clause (i) of section 408A(c)(3)(B) (as redesignated by paragraph (1)) is amended by striking ''except that—'' and all that follows and inserting ''except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and''.*

*(b) ROLLOVERS TO A ROTH IRA FROM AN IRA OTHER THAN A ROTH IRA.—*

*(1) IN GENERAL.—Clause (iii) of section 408A(d)(3)(A) (relating to rollovers from an IRA other than a Roth IRA) is amended to read as follows:*

*''(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.''.*

*(2) CONFORMING AMENDMENTS.—*

*(A) Clause (i) of section 408A(d)(3)(E) is amended to read as follows:*

*''(i) ACCELERATION OF INCLUSION.—*

*''(I) IN GENERAL.—The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).*

*''(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included*

*in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.''.*

*(B) The heading for section 408A(d)(3)(E) is amended by striking ''4-YEAR'' and inserting ''2-YEAR''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.*

***SEC. 513. REPEAL OF FSC/ETI BINDING CONTRACT RELIEF.***

*(a) FSC PROVISIONS.—Paragraph (1) of section 5(c) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 is amended by striking ''which occurs—'' and all that follows and inserting ''which occurs before January 1, 2002.''.*

*(b) ETI PROVISIONS.—Section 101 of the American Jobs Creation Act of 2004 is amended by striking subsection (f).*

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

***SEC. 514. ONLY WAGES ATTRIBUTABLE TO DOMESTIC PRODUCTION TAKEN INTO ACCOUNT IN DETERMINING DEDUCTION FOR DOMESTIC PRODUCTION.***

*(a) IN GENERAL.—Paragraph (2) of section 199(b) (relating to W-2 wages) is amended to read as follows:*

*''(2) W-2 WAGES.—For purposes of this section—*

*''(A) IN GENERAL.—The term 'W-2 wages' means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.*

*''(B) LIMITATION TO WAGES ATTRIBUTABLE TO DOMESTIC PRODUCTION.—Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).*

*''(C) RETURN REQUIREMENT.—Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.''.*

*(b) SIMPLIFICATION OF RULES FOR DETERMINING W-2 WAGES OF PARTNERS AND S CORPORATION SHAREHOLDERS.—*

*(1) IN GENERAL.—Clause (iii) of section 199(d)(1)(A) is amended to read as follows:*

*''(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person's allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary).''.*

*(2) CONFORMING AMENDMENT.—Paragraph (2) of section 199(a) is amended by striking ''and subsection (d)(1)''.*

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

***SEC. 515. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD.***

*(a) INFLATION ADJUSTMENT OF FOREIGN EARNED INCOME LIMITATION.—Clause (ii) of section 911(b)(2)(D) (relating to inflation adjustment) is amended—*

*(1) by striking ''2007'' and inserting ''2005'', and*

*(2) by striking ''2006'' in subclause (II) and inserting ''2004''.*

*(b) MODIFICATION OF HOUSING COST AMOUNT.—*

*(1) MODIFICATION OF HOUSING COST FLOOR.—Clause (i) of section 911(c)(1)(B) is amended to read as follows:*

*''(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by''.*

*(2) MAXIMUM AMOUNT OF EXCLUSION.—*

*(A) IN GENERAL.—Subparagraph (A) of section 911(c)(1) is amended by inserting ''to the extent such expenses do not exceed the amount determined under paragraph (2)'' after ''the taxable year''.*

*(B) LIMITATION.—Subsection (c) of section 911 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:*

*''(2) LIMITATION.—*

*''(A) IN GENERAL.—The amount determined under this paragraph is an amount equal to the product of—*

*''(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by*

*''(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).*

*''(B) REGULATIONS.—The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.''.*

*(C) CONFORMING AMENDMENTS.—*

*(i) Section 911(d)(4) is amended by striking ''and (c)(1)(B)(ii)'' and inserting '', (c)(1)(B)(ii), and (c)(2)(A)(ii)''.*

*(ii) Section 911(d)(7) is amended by striking ''subsection (c)(3)'' and inserting ''subsection (c)(4)''.*

*(c) RATES OF TAX APPLICABLE TO NONEXCLUDED INCOME.—Section 911 (relating to exclusion of certain income of citizens and residents of the United States living abroad) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:*

*''(f) DETERMINATION OF TAX LIABILITY ON NONEXCLUDED AMOUNTS.—For purposes of this chapter, if any amount is excluded from the gross income of a taxpayer under subsection (a) for any taxable year, then, notwithstanding section 1 or 55—*

*''(1) the tax imposed by section 1 on the taxpayer for such taxable year shall be equal to the excess (if any) of—*

*''(A) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were increased by the amount excluded under subsection (a) for the taxable year, over*

*''(B) the tax which would be imposed by section 1 for the taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for the taxable year, and*

*''(2) the tentative minimum tax under section 55 for such taxable year shall be equal to the excess (if any) of—*

*''(A) the amount which would be such tentative minimum tax for the taxable year if the taxpayer's taxable excess were increased by the amount excluded under subsection (a) for the taxable year, over*

*''(B) the amount which would be such tentative minimum tax for the taxable year if the taxpayer's taxable excess were equal to the amount excluded under subsection (a) for the taxable year.*

*For purposes of this subsection, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.''.*

*(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.*

***SEC. 516. TAX INVOLVEMENT OF ACCOMMODATION PARTIES IN TAX SHELTER TRANSACTIONS.***

*(a) IMPOSITION OF EXCISE TAX.—*

*(1) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by adding at the end the following new subchapter:*

***"Subchapter F—Tax Shelter Transactions***

*''Sec. 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.*

***"SEC. 4965. EXCISE TAX ON CERTAIN TAX-EXEMPT ENTITIES ENTERING INTO PROHIBITED TAX SHELTER TRANSACTIONS.***

*''(a) BEING A PARTY TO AND APPROVAL OF PROHIBITED TRANSACTIONS.—*

*''(1) TAX-EXEMPT ENTITY.—*

*''(A) IN GENERAL.—If a transaction is a prohibited tax shelter transaction at the time any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) becomes a party to the transaction, such entity shall pay a tax for the taxable year in which the entity becomes such a party and any subsequent taxable year in the amount determined under subsection (b)(1).*

*''(B) POST-TRANSACTION DETERMINATION.—If any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) is a party to a subsequently listed transaction at any time during a taxable year, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1).*

*''(2) ENTITY MANAGER.—If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).*

*''(b) AMOUNT OF TAX.—*

*''(1) ENTITY.—In the case of a tax-exempt entity—*

*''(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of the tax imposed under subsection (a)(1) with respect to any transaction for a taxable year shall be an amount equal to the product of the highest rate of tax under section 11, and the greater of—*

*''(i) the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—*

*''(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), is attributable to such transaction, or*

*''(II) in the case of a subsequently listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or*

*''(ii) 75 percent of the proceeds received by the entity for the taxable year which—*

*''(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), are attributable to such transaction, or*

*''(II) in the case of a subsequently listed transaction, are attributable to such transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.*

*''(B) INCREASE IN TAX FOR CERTAIN KNOWING TRANSACTIONS.—In the case of a tax-exempt entity which knew, or had reason to know, a transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—*

*''(i) 100 percent of the entity's net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or*

*''(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the prohibited tax shelter transaction. This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of the enactment of this section.*

*''(2) ENTITY MANAGER.—In the case of each entity manager, the amount of the tax imposed under subsection (a)(2) shall be $20,000 for each approval (or other act causing participation) described in subsection (a)(2).*

*''(c) TAX-EXEMPT ENTITY.—For purposes of this section, the term 'tax-exempt entity' means an entity which is—*

*''(1) described in section 501(c) or 501(d),*

*''(2) described in section 170(c) (other than the United States),*

*''(3) an Indian tribal government (within the meaning of section 7701(a)(40)),*

*''(4) described in paragraph (1), (2), or (3) of section 4979(e),*

*''(5) a program described in section 529,*

*''(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 4457(e)(1)(A), or*

*''(7) an arrangement described in section 4973(a).*

*''(d) ENTITY MANAGER.—For purposes of this section, the term 'entity manager' means—*

*''(1) in the case of an entity described in paragraph (1), (2), or (3) of subsection (c)—*

*''(A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and*

*''(B) with respect to any act, the person having authority or responsibility with respect to such act, and*

*''(2) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.*

*''(e) PROHIBITED TAX SHELTER TRANSACTION; SUBSEQUENTLY LISTED TRANSACTION.—For purposes of this section—*

*''(1) PROHIBITED TAX SHELTER TRANSACTION.—*

*''(A) IN GENERAL.—The term 'prohibited tax shelter transaction' means—*

*''(i) any listed transaction, and*

*''(ii) any prohibited reportable transaction.*

*''(B) LISTED TRANSACTION.—The term 'listed transaction' has the meaning given such term by section 6707A(c)(2).*

*''(C) PROHIBITED REPORTABLE TRANSACTION.—The term 'prohibited reportable transaction' means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).*

*''(2) SUBSEQUENTLY LISTED TRANSACTION.—The term 'subsequently listed transaction' means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has become a party to the transaction. Such term shall not include a transaction which is a prohibited reportable transaction at the time the entity became a party to the transaction.*

*''(f) REGULATORY AUTHORITY.—The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income or proceeds of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.*

*''(g) COORDINATION WITH OTHER TAXES AND PENALTIES.—The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.''.*

*(2) CONFORMING AMENDMENT.—The table of subchapters for chapter 42 is amended by adding at the end the following new item:*

*''SUBCHAPTER F. TAX SHELTER TRANSACTIONS.''.*

*(b) DISCLOSURE REQUIREMENTS.—*

*(1) DISCLOSURE BY ENTITY TO THE INTERNAL REVENUE SERVICE.—*

*(A) IN GENERAL.—Section 6033(a) (relating to organizations required to file) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:*

*''(2) BEING A PARTY TO CERTAIN REPORTABLE TRANSACTIONS.—Every tax-exempt entity described in section 4965(c) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—*

*''(A) such entity's being a party to any prohibited tax shelter transaction (as defined in section 4965(e)), and*

*''(B) the identity of any other party to such transaction which is known by such tax-exempt entity.''.*

*(B) CONFORMING AMENDMENT.—Section 6033(a)(1) is amended by striking ''paragraph (2)'' and inserting ''paragraph (3)''.*

*(2) DISCLOSURE BY OTHER TAXPAYERS TO THE TAX-EXEMPT ENTITY.—Section 6011 (relating to general requirement of return, statement, or list) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:*

*''(g) DISCLOSURE OF REPORTABLE TRANSACTION TO TAX-EXEMPT ENTITY.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.''.*

*(c) PENALTY FOR NONDISCLOSURE.—*

*(1) IN GENERAL.—Section 6652(c) (relating to returns by exempt organizations and by certain trusts) 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) DISCLOSURE UNDER SECTION 6033(a)(2).—*

*''(A) PENALTY ON ENTITIES.—In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.*

*''(B) WRITTEN DEMAND.—*

*''(i) IN GENERAL.—The Secretary may make a written demand on any entity or manager subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.*

*''(ii) FAILURE TO COMPLY WITH DEMAND.—If any entity or manager fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such entity or manager failing to so comply $100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all entities and managers for failures with respect to any 1 disclosure shall not exceed $10,000.*

*''(C) DEFINITIONS.—Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.''.*

*(2) CONFORMING AMENDMENT.—Paragraph (1) of section 6652(c) is amended by striking ''6033'' each place it appears in the text and heading thereof and inserting ''6033(a)(1)''.*

*(d) EFFECTIVE DATES.—*

*(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act, with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.*

*(2) DISCLOSURE.—The amendments made by subsections (b) and (c) shall apply to disclosures the due date for which are after the date of the enactment of this Act.*

And the Senate agree to the same.

WILLIAM THOMAS,
JIM MCCRERY,
DAVE CAMP,
*Managers on the Part of the House.*

CHUCK GRASSLEY,
JON KYL,
*Managers on the Part of the Senate.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4297), to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

## TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS

### A. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY

(Sec. 101 of the House bill, sec. 107 of the Senate amendment, and sec. 26 of the Code)

PRESENT LAW

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child tax credit, the credit for interest on certain home mortgages, the HOPE Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain nonbusiness energy property, the credit for residential energy efficient property, and the D.C. first-time homebuyer credit). The Energy Tax Incentives Act of 2005 enacted, effective for 2006, nonrefundable tax credits for alternative motor vehicles, and alternative motor vehicle refueling property.[1]

For taxable years beginning in 2005, the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax.

[1] The portion of these credits relating to personal use property is subject to the same tax liability limitation as the nonrefundable personal tax credits (other than the adoption credit, child credit, and saver's credit).

For taxable years beginning after 2005, the nonrefundable personal credits (other than the adoption credit, child credit and saver's credit) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, child credit, and saver's credit are allowed to the full extent of the individual's regular tax and alternative minimum tax.

The alternative minimum tax is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (''AMTI'') as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The exemption amount is: (1) $45,000 ($58,000 for taxable years beginning before 2006) in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 ($40,250 for taxable years beginning before 2006) in the case of other unmarried individuals; (3) $22,500 ($29,000 for taxable years beginning before 2006) in the case of married individuals filing a separate return; and (4) $22,500 in the case of an estate or trust. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns, an estate, or a trust. These amounts are not indexed for inflation.

HOUSE BILL

The House bill extends for one year the present-law provision allowing nonrefundable personal credits to the full extent of the individual's regular tax and alternative minimum tax (through taxable years beginning on or before December 31, 2006).

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

SENATE AMENDMENT

The Senate amendment extends for two years the present-law provision allowing nonrefundable personal credits to the full extent of the individual's regular tax and alternative minimum tax (through taxable years beginning on or before December 31, 2007).

The provision also applies to the personal credits for alternative motor vehicles, and alternative motor vehicle refueling property.

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

B. TAX INCENTIVES FOR BUSINESS ACTIVITIES ON INDIAN RESERVATIONS

1. Indian employment tax credit (Sec. 102(a) of the House bill, sec. 115 of the Senate amendment, and sec. 45A of the Code)

PRESENT LAW

In general, a credit against income tax liability is allowed to employers for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees (sec. 45A).[2] The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.

Qualified wages means wages paid or incurred by an employer for services performed by a qualified employee. A qualified employee means any employee who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. An ''Indian reservation'' is a reservation as defined in section 3(d) of the Indian Financing Act of 1974 or section 4(1) of the Indian Child Welfare Act of 1978. For purposes of the preceding sentence, section 3(d) is applied by treating ''former Indian reservations in Oklahoma'' as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 C.F.R. Part 151 (as in effect on August 5, 1997).

An employee is not treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of $30,000 (which after adjusted for inflation after 1993 is currently $35,000). In addition, an employee will not be treated as a qualified employee under certain specific circumstances, such as where the employee is related to the employer (in the case of an individual employer) or to one of the employer's shareholders, partners, or grantors. Similarly, an employee will not be treated as a qualified employee where the employee has more than a 5 percent ownership interest in the employer. Finally, an employee will not be considered a qualified employee to the extent the employee's services relate to gaming activities or are performed in a building housing such activities.

The wage credit is available for wages paid or incurred on or after January 1, 1994, in taxable years that begin before January 1, 2006.

HOUSE BILL

The provision extends for one year the present-law employment credit provision (through taxable years beginning on or before December 31, 2006).

*Effective date.*—The provision is effective for taxable years beginning after December 31, 2005.

SENATE AMENDMENT

The Senate amendment extends for two years the present-law employment credit provision (through taxable years beginning on or before December 31, 2007).

*Effective date.*—Same as the House bill provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

[2] All section references are to the Internal Revenue Code of 1986, unless otherwise indicated.

2. Accelerated depreciation for business property on Indian reservations (sec. 102(b) of the House bill, sec. 116 of the Senate amendment, and sec. 168(j) of the Code)

PRESENT LAW

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions under section 168(j) are determined using the following recovery periods:

| | *Years* |
|---|---|
| 3-year property | 2 |
| 5-year property | 3 |
| 7-year property | 4 |
| 10-year property | 6 |
| 15-year property | 9 |
| 20-year property | 12 |
| Nonresidential real property | 22 |

''Qualified Indian reservation property'' eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and (4) described in the recovery-period table above. In addition, property is not ''qualified Indian reservation property'' if it is placed in service for purposes of conducting gaming activities. Certain ''qualified infrastructure property'' may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).

An ''Indian reservation'' means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 or section 4(1) of the Indian Child Welfare Act of 1978. For purposes of the preceding sentence, section 3(d) is applied by treating ''former Indian reservations in Oklahoma'' as including only lands that are (1) within the jurisdictional area of an Oklahoma Indian tribe as determined by the Secretary of the Interior, and (2) recognized by such Secretary as an area eligible for trust land status under 25 CFR. Part 151 (as in effect on August 5, 1997).

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before January 1, 2006.

HOUSE BILL

The provision extends for one year the present-law incentive relating to depreciation of qualified Indian reservation property (to apply to property placed in service through December 31, 2006).

*Effective date.*—The provision applies to property placed in service after December 31, 2005.

SENATE AMENDMENT

The Senate amendment extends for two years the present-law incentive relating to depreciation of qualified Indian reservation property (to apply to property placed in service through December 31, 2007).

*Effective date.*—The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

C. WORK OPPORTUNITY TAX CREDIT AND WELFARE-TO-WORK TAX CREDIT

(Secs. 103 and 104 of the House bill, sec. 109 of the Senate amendment and secs. 51 and 51A of the Code)

PRESENT LAW

*Work opportunity tax credit*

*Targeted groups eligible for the credit*

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The eight targeted groups are: (1) certain families eligible to receive benefits under the Temporary Assistance for Needy Families Program; (2) high-risk youth; (3) qualified ex-felons; (4) vocational rehabilitation referrals; (5) qualified summer youth employees; (6) qualified veterans; (7) families receiving food stamps; and (8) persons receiving certain Supplemental Security Income (SSI) benefits.

A high-risk youth is an individual aged 18 but not aged 25 on the hiring date who is certified by a designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or renewal community. The credit is not available if such youth's principal place of abode ceases to be within an empowerment zone, enterprise community, or renewal community.

A qualified ex-felon is an individual certified by a designated local agency as: (1) having been convicted of a felony under State or Federal law; (2) being a member of an economically disadvantaged family; and (3) having a hiring date within one year of release from prison or conviction.

A food stamp recipient is an individual aged 18 but not aged 25 on the hiring date certified by a designated local agency as being a member of a family either currently or recently receiving assistance under an eligible food stamp program.

*Qualified wages*

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.

*Calculation of the credit*

The credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $2,400 (40 percent of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is $1,200 (40 percent of the first $3,000 of qualified first-year wages).

*Minimum employment period*

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

*Coordination of the work opportunity tax credit and the welfare-to-work tax credit*

An employer cannot claim the work opportunity tax credit with respect to wages of any employee on which the employer claims the welfare-to-work tax credit.

*Other rules*

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. Similarity wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

*Expiration*

The work opportunity tax credit is not available for individuals who begin work for an employer after December 31, 2005.

*Welfare-to-work tax credit*

*Targeted group eligible for the credit*

The welfare-to-work tax credit is available on an elective basis to employers of qualified long-term family assistance recipients. Qualified long-term family assistance recipients are: (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of the welfare-to-work tax credit) if they are hired within 2 years after the date that the 18–month total is reached; and (3) members of a family who are no longer eligible for family assistance because of either Federal or State time limits, if they are hired within 2 years after the Federal or State time limits made the family ineligible for family assistance.

*Qualified wages*

Qualified wages for purposes of the welfare-to-work tax credit are defined more broadly than the work opportunity tax credit. Unlike the definition of wages for the work opportunity tax credit which includes simply cash wages, the definition of wages for the welfare-to-work tax credit includes cash wages paid to an employee plus amounts paid by the employer for: (1) educational assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee, but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129. The employer's deduction for wages is reduced by the amount of the credit.

*Calculation of the credit*

The welfare-to-work tax credit is available on an elective basis to employers of qualified long-term family assistance recipients during the first two years of employment. The maximum credit is 35 percent of the first $10,000 of qualified first-year wages and 50 percent of the first $10,000 of qualified second-year wages. Qualified first-year wages are defined as qualified wages (not in excess of $10,000) attributable to service rendered by a member of the targeted group during the one-year period beginning with the day the individual began work for the employer. Qualified second-year wages are defined as qualified wages (not in excess of $10,000) attributable to service rendered by a member of the targeted group during the one-year period beginning immediately after the first year of that individual's employment for the employer. The maximum credit is $8,500 per qualified employee.

*Minimum employment period*

No credit is allowed for qualified wages paid to a member of the targeted group unless they work at least 400 hours or 180 days in the first year of employment.

*Coordination of the work opportunity tax credit and the welfare-to-work tax credit*

An employer cannot claim the work opportunity tax credit with respect to wages of any employee on which the employer claims the welfare-to-work tax credit.

*Other rules*

The welfare-to-work tax credit incorporates directly or by reference many of these other rules contained on the work opportunity tax credit.

*Expiration*

The welfare-to-work credit is not available for individuals who begin work for an employer after December 31, 2005.

HOUSE BILL

*Work opportunity tax credit*

The House bill extends the work opportunity credit for one year (through December 31, 2006). Also, the House bill raises the maximum age limit for the food stamp recipient category to include individuals who are at least age 18 but under age 35 on the hiring date.

*Effective date*

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

*Welfare-to-work tax credit*

The House bill extends the welfare-to-work tax credit for one year (through December 31, 2006).

*Effective date.*—The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

SENATE AMENDMENT

*In general*

The Senate amendment combines the work opportunity and welfare-to-work tax credits and extends the combined credit for one year. The welfare-to-work credit is repealed.

*Targeted groups eligible for the combined credit*

The combined credit is available on an elective basis for employers hiring individuals from one or more of all nine targeted groups. The nine targeted groups are the present-law eight groups with the addition of the welfare-to-work credit/long-term family assistance recipient as the ninth targeted group.

The Senate amendment raises the age limit for the high-risk youth category to include individuals aged 18 but not aged 40 on the hiring date. The Senate amendment also renames the high-risk youth category to be the designated community resident category.

The Senate amendment repeals the requirement that a qualified ex-felon be an individual certified as a member of an economically disadvantaged family.

The Senate amendment raises the age limit for the food stamp recipient category to include individuals aged 18 but not aged 40 on the hiring date.

*Qualified wages*

Qualified first-year wages for the eight work opportunity tax credit categories remain capped at $6,000 ($3,000 for qualified summer youth employees). No credit is allowed for second-year wages. In the case of long-term family assistance recipients, the cap is $10,000 for both qualified first-year wages and qualified second-year wages. The combined credit follows the work opportunity tax credit definition of wages which does not include amounts paid by the employer for: (1) educational assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee, but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129. For all targeted groups, the employer's deduction for wages is reduced by the amount of the credit.

*Calculation of the credit*

*First-year wages.*—For the eight work opportunity tax credit categories, the credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee for members of any of the eight work opportunity tax credit targeted groups generally is $2,400 (40 percent of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit remains $1,200 (40 percent of the first $3,000 of qualified first-year wages). For the welfare-to-work/long-term family assistance recipients, the maximum credit equals $4,000 per employee (40 percent of $10,000 of wages).

*Second year wages.*—In the case of long-term family assistance recipients the maximum credit is $5,000 (50 percent of the first $10,000 of qualified second-year wages).

*Minimum employment period*

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

*Coordination of the work opportunity tax credit and the welfare-to-work tax credit*

Coordination is no longer necessary once the two credits are combined.

*Effective date.*—The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

D. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT

(Sec. 105 of the House bill, sec. 111 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the charitable deduction generally is limited to the taxpayer's basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose. In cases involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the taxpayer's basis in the property.

Under present law, a taxpayer's deduction for charitable contributions of computer technology and equipment generally is limited to the taxpayer's basis (typically, cost) in the property. However, certain corporations may claim a deduction in excess of basis for a "qualified computer contribution." This enhanced deduction is equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one half of fair market value minus basis) or (2) two times basis. The enhanced deduction for qualified computer contributions expires for any contribution made during any taxable year beginning after December 31, 2005.

A qualified computer contribution means a charitable contribution of any computer technology or equipment, which meets standards of functionality and suitability as established by the Secretary of the Treasury. The contribution must be to certain educational organizations or public libraries and made not later than three years after the taxpayer acquired the property or, if the taxpayer constructed the property, not later than the date construction of the property is substantially completed. The original use of the property must be by the donor or the donee, and in the case of the donee, must be used substantially for educational purposes related to the function or purpose of the donee. The property must fit productively into the donee's education plan. The donee may not transfer the property in exchange for money, other property, or services, except for shipping, installation, and transfer costs. To determine whether property is constructed by the taxpayer, the rules applicable to qualified research contributions apply. That is, property is considered constructed by the taxpayer only if the cost of the parts used in the construction of the property (other than parts manufactured by the taxpayer or a related person) does not exceed 50 percent of the taxpayer's basis in the property. Contributions may be made to private foundations under certain conditions.

HOUSE BILL

The present-law provision is extended for one year to apply to contributions made during any taxable year beginning after December 31, 2005, and before January 1, 2007.

*Effective date.*—The provision is effective for contributions made in taxable years beginning after December 31, 2005.

SENATE AMENDMENT

Same as House bill.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

E. AVAILABILITY OF ARCHER MEDICAL SAVINGS ACCOUNTS

(Sec. 106 of the House bill and sec. 220 of the Code)

PRESENT LAW

*Archer medical savings accounts*

*In general*

Within limits, contributions to an Archer medical savings account ("Archer MSA") are deductible in determining adjusted gross income if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in an Archer MSA are not currently taxable. Distributions from an Archer MSA for medical expenses are not includible in gross income. Distributions not used for medical expenses are includible in gross income. In addition, distributions not used for medical expenses are subject to an additional 15-percent tax unless the distribution is made after age 65, death, or disability.

*Eligible individuals*

Archer MSAs are available to employees covered under an employer-sponsored high deductible plan of a small employer and self-employed individuals covered under a high deductible health plan. An employer is a small employer if it employed, on average, no more than 50 employees on business days during either the preceding or the second preceding year. An individual is not eligible for an Archer MSA if he or she is covered under any other health plan in addition to the high deductible plan.

*Tax treatment of and limits on contributions*

Individual contributions to an Archer MSA are deductible (within limits) in determining adjusted gross income (*i.e.*, "above-the-line"). In addition, employer contributions are excludable from gross income and wages for employment tax purposes (within the same limits), except that this exclusion does not apply to contributions made through a cafeteria plan. In the case of an employee, contributions can be made to an Archer MSA either by the individual or by the individual's employer.

The maximum annual contribution that can be made to an Archer MSA for a year is 65 percent of the deductible under the high deductible plan in the case of individual coverage and 75 percent of the deductible in the case of family coverage.

*Definition of high deductible plan*

A high deductible plan is a health plan with an annual deductible of at least $1,800 and no more than $2,700 in the case of individual coverage and at least $3,650 and no more than $5,450 in the case of family coverage (for 2006). In addition, the maximum out-of-pocket expenses with respect to allowed costs (including the deductible) must be no more than $3,650 in the case of individual coverage and no more than $6,650 in the case of family coverage (for 2006). A plan does not fail to qualify as a high deductible plan merely because it does not have a deductible for preventive care as required by State law. A plan does not qualify as a high deductible health plan if substantially all of the coverage under the plan is for certain permitted coverage. In the case of a self-insured plan, the plan must in fact be insurance (*e.g.*, there must be appropriate risk shifting) and not merely a reimbursement arrangement.

*Cap on taxpayers utilizing Archer MSAs and expiration of pilot program*

The number of taxpayers benefiting annually from an Archer MSA contribution is limited to a threshold level (generally 750,000 taxpayers). The number of Archer MSAs established has not exceeded the threshold level.

After 2005, no new contributions may be made to Archer MSAs except by or on behalf of individuals who previously made (or had made on their behalf) Archer MSA contributions and employees who are employed by a participating employer.

Trustees of Archer MSAs are generally required to make reports to the Treasury by August 1 regarding Archer MSAs established by July 1 of that year. If the threshold level is reached in a year, the Secretary is required to make and publish such determination by October 1 of such year.

*Health savings accounts*

Health savings accounts ("HSAs") were enacted by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Like Archer MSAs, an HSA is a tax-exempt trust or custodial account to which tax-deductible contributions may be made by individuals with a high deductible health plan. HSAs provide tax benefits similar to, but more favorable than, those provide by Archer MSAs. HSAs were established on a permanent basis.

HOUSE BILL

The House bill extends for one year the present-law Archer MSA provisions (through December 31, 2006).

The report required by Archer MSA trustees is treated as timely filed if made before the close of the 90-day period beginning on the date of enactment. The determination and publication whether the threshold level has been exceeded is treated as timely if made before the close of the 120-day period beginning on the date of enactment.

*Effective date.*—The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

F. FIFTEEN-YEAR STRAIGHT-LINE COST RECOVERY FOR QUALIFIED LEASEHOLD IMPROVEMENTS AND QUALIFIED RESTAURANT IMPROVEMENTS

(Sec. 107 and sec. 108 of the House bill, sec. 117 of the Senate amendment, and sec. 168 of the Code)

PRESENT LAW

*In general*

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system (''MACRS''), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168). The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month.

*Depreciation of leasehold improvements*

Generally, depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease. This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service. If a leasehold improvement constitutes an addition or improvement to nonresidential real property already placed in service, the improvement generally is depreciated using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement was placed in service. However, exceptions exist for certain qualified leasehold improvements and certain qualified restaurant property.

*Qualified leasehold improvement property*

Section 168(e)(3)(E)(iv) provides a statutory 15-year recovery period for qualified leasehold improvement property placed in service before January 1, 2006. Qualified leasehold improvement property is recovered using the straight-line method. Leasehold improvements placed in service in 2006 and later will be subject to the general rules described above.

Qualified leasehold improvement property is any improvement to an interior portion of a building that is nonresidential real property, provided certain requirements are met. The improvement must be made under or pursuant to a lease either by the lessee (or sublessee), or by the lessor, of that portion of the building to be occupied exclusively by the lessee (or sublessee). The improvement must be placed in service more than three years after the date the building was first placed in service. Qualified leasehold improvement property does not include any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, any structural component benefiting a common area, or the internal structural framework of the building. However, if a lessor makes an improvement that qualifies as qualified leasehold improvement property, such improvement does not qualify as qualified leasehold improvement property to any subsequent owner of such improvement. An exception to the rule applies in the case of death and certain transfers of property that qualify for nonrecognition treatment.

*Qualified restaurant property*

Section 168(e)(3)(E)(v) provides a statutory 15-year recovery period for qualified restaurant property placed in service before January 1, 2006. For purposes of the provision, qualified restaurant property means any improvement to a building if such improvement is placed in service more than three years after the date such building was first placed in service and more than 50 percent of the building's square footage is devoted to the preparation of, and seating for on-premises consumption of, prepared meals. Qualified restaurant property is recovered using the straight-line method.

HOUSE BILL

Under the House bill, the present-law provisions relating to qualified leasehold improvement property and qualified restaurant improvement property are extended for one year (through December 31, 2006).

*Effective date.*—The House bill applies to property placed in service after December 31, 2005.

SENATE AMENDMENT

Under the Senate amendment, the present-law provisions are extended for two years (through December 31, 2007).

*Effective date.*—The Senate amendment applies to property placed in service after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

G. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES

(Sec. 109 of the House bill and sec. 613A(c)(6)(H) of the Code)

PRESENT LAW

The Code permits taxpayers to recover their investments in oil and gas wells through depletion deductions. Two methods of depletion are currently allowable under the Code: (1) the cost depletion method, and (2) the percentage depletion method. Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer's basis in the property.

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners. Generally, under the percentage depletion method, 15 percent of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year. The amount deducted generally may not exceed 100 percent of the taxable income from that property in any year. For marginal production, the 100–percent taxable income limitation has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2006.

Marginal production is defined as domestic crude oil and natural gas production from stripper well property or from property substantially all of the production from which during the calendar year is heavy oil. Stripper well property is property from which the average daily production is 15 barrel equivalents or less, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on the property for the calendar year by the number of wells. Heavy oil is domestic crude oil with a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

HOUSE BILL

The provision extends for one year the present-law taxable income limitation suspension provision for marginal production (through taxable years beginning on or before December 31, 2006).

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

H. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA

(Sec. 110 of the House bill, sec. 114 of the Senate amendment and secs. 1400, 1400A, 1400B, and 1400C of the Code)

PRESENT LAW

*In general*

The Taxpayer Relief Act of 1997 designated certain economically depressed census tracts within the District of Columbia as the District of Columbia Enterprise Zone (the ''D.C. Zone''), within which businesses and individual residents are eligible for special tax incentives. The census tracts that compose the D.C. Zone are (1) all census tracts that presently are part of the D.C. enterprise community designated under section 1391 (i.e., portions of Anacostia, Mt. Pleasant, Chinatown, and the easternmost part of the District), and (2) all additional census tracts within the District of Columbia where the poverty rate is not less than 20 percent. The D.C. Zone designation remains in effect for the period from January 1, 1998, through December 31, 2005. In general, the tax incentives available in connection with the D.C. Zone are a 20–percent wage credit, an additional $35,000 of section 179 expensing for qualified zone property, expanded tax-exempt financing for certain zone facilities, and a zero-percent capital gains rate from the sale of certain qualified D.C. zone assets.

*Wage credit*

A 20-percent wage credit is available to employers for the first $15,000 of qualified wages paid to each employee (i.e., a maximum credit of $3,000 with respect to each qualified employee) who (1) is a resident of the D.C. Zone, and (2) performs substantially all employment services within the D.C. Zone in a trade or business of the employer.

Wages paid to a qualified employee who earns more than $15,000 are eligible for the wage credit (although only the first $15,000 of wages is eligible for the credit). The wage credit is available with respect to a qualified full-time or part-time employee (employed for at least 90 days), regardless of the number of other employees who work for the employer. In general, any taxable business carrying out activities in the D.C. Zone may claim the wage credit, regardless of whether the employer meets the definition of a ''D.C. Zone business.''[3]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of

[3]However, the wage credit is not available for wages paid in connection with certain business activities described in section 144(c)(6)(B) or certain farming activities. In addition, wages are not eligible for the wage credit if paid to (1) a person who owns more than five percent of the stock (or capital or profits interests) of the employer, (2) certain relatives of the employer, or (3) if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business.

wage credit claimed for that taxable year.[4] Wages are not to be taken into account for purposes of the wage credit if taken into account in determining the employer's work opportunity tax credit under section 51 or the welfare-to-work credit under section 51A.[5] In addition, the $15,000 cap is reduced by any wages taken into account in computing the work opportunity tax credit or the welfare-to-work credit.[6] The wage credit may be used to offset up to 25 percent of alternative minimum tax liability.[7]

*Section 179 expensing*

In general, a D.C. Zone business is allowed an additional $35,000 of section 179 expensing for qualifying property placed in service by a D.C. Zone business.[8] The section 179 expensing allowed to a taxpayer is phased out by the amount by which 50 percent of the cost of qualified zone property placed in service during the year by the taxpayer exceeds $200,000 ($400,000 for taxable years beginning after 2002 and before 2008). The term ''qualified zone property'' is defined as depreciable tangible property (including buildings), provided that (1) the property is acquired by the taxpayer (from an unrelated party) after the designation took effect, (2) the original use of the property in the D.C. Zone commences with the taxpayer, and (3) substantially all of the use of the property is in the D.C. Zone in the active conduct of a trade or business by the taxpayer.[9] Special rules are provided in the case of property that is substantially renovated by the taxpayer.

*Tax-exempt financing*

A qualified D.C. Zone business is permitted to borrow proceeds from tax-exempt qualified enterprise zone facility bonds (as defined in section 1394) issued by the District of Columbia.[10] Such bonds are subject to the District of Columbia's annual private activity bond volume limitation. Generally, qualified enterprise zone facility bonds for the District of Columbia are bonds 95 percent or more of the net proceeds of which are used to finance certain facilities within the D.C. Zone. The aggregate face amount of all outstanding qualified enterprise zone facility bonds per qualified D.C. Zone business may not exceed $15 million and may be issued only while the D.C. Zone designation is in effect.

*Zero-percent capital gains*

A zero-percent capital gains rate applies to capital gains from the sale of certain qualified D.C. Zone assets held for more than five years.[11] In general, a qualified ''D.C. Zone asset'' means stock or partnership interests held in, or tangible property held by, a D.C. Zone business. For purposes of the zero-percent capital gains rate, the D.C. Enterprise Zone is defined to include all census tracts within the District of Columbia where the poverty rate is not less than 10 percent.

In general, gain eligible for the zero-percent tax rate means gain from the sale or exchange of a qualified D.C. Zone asset that is (1) a capital asset or property used in the trade or business as defined in section 1231(b), and (2) acquired before January 1, 2006. Gain that is attributable to real property, or to intangible assets, qualifies for the zero-percent rate, provided that such real property or intangible asset is an integral part of a qualified D.C. Zone business.[12] However, no gain attributable to periods before January 1, 1998, and after December 31, 2010, is qualified capital gain.

*District of Columbia homebuyer tax credit*

First-time homebuyers of a principal residence in the District of Columbia are eligible for a nonrefundable tax credit of up to $5,000 of the amount of the purchase price. The $5,000 maximum credit applies both to individuals and married couples. Married individuals filing separately can claim a maximum credit of $2,500 each. The credit phases out for individual taxpayers with adjusted gross income between $70,000 and $90,000 ($110,000–$130,000 for joint filers). For purposes of eligibility, ''first-time homebuyer'' means any individual if such individual did not have a present ownership interest in a principal residence in the District of Columbia in the one-year period ending on the date of the purchase of the residence to which the credit applies. The credit is scheduled to expire for residences purchased after December 31, 2005.[13]

HOUSE BILL

The provision extends the designation of the D.C. Zone for one year (through December 31, 2006), thus extending the wage credit and section 179 expensing for one year.

The provision extends the tax-exempt financing authority for one year, applying to bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2006.

The provision extends the zero-percent capital gains rate applicable to capital gains from the sale of certain qualified D.C. Zone assets for one year.

The provision extends the first-time homebuyer credit for one year, through December 31, 2006.

*Effective date.*—The amendment generally is effective on January 1, 2006, except the provision relating to bonds is effective for obligations issued after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

## I. Possession Tax Credit With Respect to American Samoa

(Sec. 111 of the House bill and sec. 936 of the Code)

PRESENT LAW

*In general*

Certain domestic corporations with business operations in the U.S. possessions are eligible for the possession tax credit.[14] This credit offsets the U.S. tax imposed on certain income related to operations in the U.S. possessions.[15] For purposes of the section 936 credit, possessions include, among other places, American Samoa. Income eligible for the section 936 credit includes non-U.S. source income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investments. The section 936 credit expires for taxable years beginning after December 31, 2005.

To qualify for the possession tax credit for a taxable year, a domestic corporation must satisfy two conditions. First, the corporation must derive at least 80 percent of its gross income for the three-year period immediately preceding the close of the taxable year from sources within a possession. Second, the corporation must derive at least 75 percent of its gross income for that same period from the active conduct of a possession business. A domestic corporation that has elected the possession tax credit and that satisfies these two conditions for a taxable year generally is entitled to a credit against the U.S. tax attributable to the taxpayer's income that is eligible for the section 936 credit.

The possession tax credit applies only to a corporation that qualifies as an existing credit claimant. The determination of whether a corporation is an existing credit claimant is made separately for each possession. The possession tax credit is computed separately for each possession with respect to which the corporation is an existing credit claimant, and the credit is subject to either an economic activity-based limitation or an income-based limit.

*Qualification as existing credit claimant*

A corporation is an existing credit claimant with respect to a possession if (1) the corporation was engaged in the active conduct of a trade or business within the possession on October 13, 1995, and (2) the corporation elected the benefits of the possession tax credit in an election in effect for its taxable year that included October 13, 1995.[16] A corporation that adds a substantial new line of business (other than in a qualifying acquisition of all the assets of a trade or business of an existing credit claimant) ceases to be an existing credit claimant as of the close of the taxable year ending before the date on which that new line of business is added.

*Economic activity-based limit*

Under the economic activity-based limit, the amount of the credit determined under the rules described above may not exceed an amount equal to the sum of (1) 60 percent of the taxpayer's qualifying possession wage and fringe benefit expenses, (2) 15 percent of depreciation allowances with respect to short-life qualifying tangible property, plus 40 percent of depreciation allowances with respect to medium-life qualifying tangible property, plus 65 percent of depreciation allowances with respect to long-life tangible property, and (3) in certain cases, a portion of the taxpayer's possession income taxes.

*Income-based limit*

As an alternative to the economic activity-based limit, a taxpayer may elect to apply a limit equal to the applicable percentage of the credit that would otherwise be allowable with respect to possession business income; the applicable percentage currently is 40 percent.

*Repeal and phase out*

In 1996, the section 936 credit was repealed for new claimants for taxable years beginning after 1995 and was phased out for existing credit claimants over a period including taxable years beginning before 2006. The amount of the available credit during the phaseout period generally is reduced by special limitation rules. These phaseout period

[4] Sec. 280C(a).

[5] Secs. 1400H(a), 1396(c)(3)(A) and 51A(d)(2).

[6] Secs. 1400H(a), 1396(c)(3)(B) and 51A(d)(2).

[7] Sec. 38(c)(2).

[8] Sec. 1397A.

[9] Sec. 1397D.

[10] Sec. 1400A.

[11] Sec. 1400B.

[12] However, sole proprietorships and other taxpayers selling assets directly cannot claim the zero-percent rate on capital gain from the sale of any intangible property (i.e., the integrally related test does not apply).

[13] Sec. 1400C(i).

[14] Secs. 27(b), 936.

[15] Domestic corporations with activities in Puerto Rico are eligible for the seciton 30A economic activity credit. That credit is calculated under the rules set forth in section 936.

[16] A corporation will qualify as an existing credit claimant if it acquired all the assets of a trade or business of a corporation that (1) actively conducted that trade or business in a possession on October 13, 1995, and (2) had elected the benefits of the possession tax credit in an election for the taxable year that includes October 13, 1995.

limitation rules do not apply to the credit available to existing credit claimants for income from activities in Guam, American Samoa, and the Northern Mariana Islands. The section 936 credit is repealed for all possessions, including Guam, American Samoa, and the Northern Mariana Islands, for all taxable years beginning after 2005.

HOUSE BILL

The House bill extends for one year the present-law section 936 credit as applied to American Samoa; it thus allows existing credit claimants to claim the credit for income from activities in American Samoa in taxable years beginning on or before December 31, 2006.

*Effective date.*—The provision is effective for taxable years beginning after December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

J. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS

(Sec. 112 of the House bill and sec. 9812 of the Code)

PRESENT LAW[17]

The Code, the Employee Retirement Income Security Act of 1974 (''ERISA'') and the Public Health Service Act (''PHSA'') contain provisions under which group health plans that provide both medical and surgical benefits and mental health benefits cannot impose aggregate lifetime or annual dollar limits on mental health benefits that are not imposed on substantially all medical and surgical benefits (''mental health parity requirements''). In the case of a group health plan which provides benefits for mental health, the mental health parity requirements do not affect the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan, except as specifically provided in regard to parity in the imposition of aggregate lifetime limits and annual limits.

The Code imposes an excise tax on group health plans which fail to meet the mental health parity requirements. The excise tax is equal to $100 per day during the period of noncompliance and is generally imposed on the employer sponsoring the plan if the plan fails to meet the requirements. The maximum tax that can be imposed during a taxable year cannot exceed the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. No tax is imposed if the Secretary determines that the employer did not know, and in exercising reasonable diligence would not have known, that the failure existed.

The mental health parity requirements do not apply to group health plans of small employers nor do they apply if their application results in an increase in the cost under a group health plan of at least one percent. Further, the mental health parity requirements do not require group health plans to provide mental health benefits.

The Code, ERISA and PHSA mental health parity requirements are scheduled to expire with respect to benefits for services furnished after December 31, 2005.

[17] This description of present law refers to the law in effect at the time the bill passed the House of Representatives, which was before the enactment of Pub. L. No. 109–151, which extended the mental health parity requirements of the Code, ERISA, and the PHSA through December 31, 2006.

HOUSE BILL

The House bill extends for one year the present-law Code excise tax for failure to comply with the mental health parity requirements (through December 31, 2006).

*Effective date.*—The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

K. RESEARCH CREDIT

(Sec. 113 of the House bill, sec. 108 of the Senate amendment, and sec. 41 of the Code)

PRESENT LAW

*General rule*

Prior to January 1, 2006, a taxpayer could claim a research credit equal to 20 percent of the amount by which the taxpayer's qualified research expenses for a taxable year exceeded its base amount for that year.[18] Thus, the research credit was generally available with respect to incremental increases in qualified research.

A 20-percent research tax credit was also available with respect to the excess of (1) 100 percent of corporate cash expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation was commonly referred to as the university basic research credit (see sec. 41(e)).

Finally, a research credit was available for a taxpayer's expenditures on research undertaken by an energy research consortium. This separate credit computation was commonly referred to as the energy research credit. Unlike the other research credits, the energy research credit applied to all qualified expenditures, not just those in excess of a base amount.

The research credit, including the university basic research credit and the energy research credit, expired on December 31, 2005.[19]

*Computation of allowable credit*

Except for energy research payments and certain university basic research payments made by corporations, the research tax credit applied only to the extent that the taxpayer's qualified research expenses for the current taxable year exceeded its base amount. The base amount for the current year generally was computed by multiplying the taxpayer's fixed-base percentage by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenses and had gross receipts during each of at least three years from 1984 through 1988, then its fixed-base percentage was the ratio that its total qualified research expenses for the 1984–1988 period bore to its total gross receipts for that period (subject to a maximum fixed-base percentage of 16 percent). All other taxpayers (so-called start-up firms) were assigned a fixed-base percentage of three percent.[20]

[18] Sec. 41.

[19] The research tax credit initially was enacted in the Economic Recovery Tax Act of 1981 as a credit equal to 25 percent of the excess of qualified research expenses incurred in the current taxable year over the average of qualified research expenses incurred in the prior three taxable years. The research tax credit was modified in the Tax Reform Act of 1986, which (1) extended the credit through December 31, 1988, (2) reduced the credit rate to 20 percent, (3) tightened the definition of qualified research expenses eligible for the credit, and (4) enacted the separate university basic credit.

The Technical and Miscellaneous Revenue Act of 1988 (''1988 Act'') extended the research tax credit for one additional year, through December 31, 1989. The 1988 Act also reduced the deduction allowed under section 174 (or any other section) for qualified research expenses by an amount equal to 50 percent of the research tax credit determined for the year.

The Omnibus Budget Reconciliation Act of 1989 (''1989 Act'') effectively extended the research credit for nine months (by prorating qualified expenses incurred before January 1, 1991). The 1989 Act also modified the method for calculating a taxpayer's base amount (i.e., by substituting the present-law method which uses a fixed-base percentage for the prior-law moving base which was calculated by reference to the taxpayer's average research expenses incurred ion the preceding three taxable years). The 1989 Act further reduced the deduction allowed under section 174 (or any other section) for qualified research expenses by an amount equal to 100 percent of the research tax credit determined for the year.

The Omnibus Budget Reconciliation Act of 1990 extended the research tax credit through December 31, 1991 (and repealed the special rule to prorate qualified expenses incurred before January 1, 1991).

The Tax Extension Act of 1991 extended the research tax credit for six months (i.e., for qualified expenses incurred through June 30, 1992).

The Omnibus Budget Reconciliation Act of 1993 (''1993 Act'') extended the research tax credit for three years—i.e., retroactively from July 1, 1992 through June 30, 1995. The 1993 Act also provided a special rule for start-up firms, so that the fixed-base ratio of such firms eventually will be computed by reference to their actual research experience.

Although the research tax credit expired during the period July 1, 1995, through June 30, 1996, the Small Business Job Protection Act of 1996 (''1996 Act'') extended the credit for the period July 1, 1996, through May 31, 1997 (with a special 11-month extension for taxpayers that elect to be subject to the alternative incremental research credit regime). In addition, the 1996 Act expanded the definition of start-up firms under section 41(c)(3)(B)(i), enacted a special rule for certain research consortia payments under section 41(b)(3)(C), and provided that taxpayers may elect an alternative research credit regime (under which the taxpayer is assigned a three-tiered fixed-base percentage that is lower than the fixed-base percentage otherwise applicable and the credit rate likewise is reduced) for the taxpayer's first taxable year beginning after June 30, 1996, and before July 1, 1997.

The Taxpayer Relief Act of 1997 (''1997 Act'') extended the research credit for 13 months—i.e, generally for the period June 1, 1997, through June 30, 1998. The 1997 Act also provided that taxpayers are permitted to elect the alternative incremental research credit regime for any taxable year beginning after June 30, 1996 (and such election will apply to that taxable year and all subsequent taxable years unless revoked with the consent of the Secretary of the Treasury). The Tax and Trade Relief Extension Act of 1998 extended the research credit for 12 months, i.e., through June 30, 1999.

The Ticket to Work and Work Incentive Improvement Act of 1999 extended the research credit for five years, through June 30, 2004, increased the rates of credit under the alternative incremental research credit regime, and expanded the definition of research to include research undertaken in Puerto Rico and possessions of the United States.

The Working Families Tax Relief Act of 224 extended the research credit through December 31, 2005.

The Energy Tax Incentives Act of 2005 added the energy research credit.

[20] The Small Business Job Protection Act of 1996 expanded the definition of start-up firms under section 41(c)(3)(B)(i) to include any firm if the first taxable year in which such firm had both gross receipts and qualified research expenses began after 1983. A special rule (enacted in 1993) was designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm would be assigned a fixed-base percentage of three percent for each of its first five taxable years after 1993 in which it incurs qualified research expenses. In the event that the research credit is extended beyond its expiration date, a start-up date, a start-up firm's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurs qualified research expenses will be a phased-in ratio based on its actual research experience. For all subsequent taxable

In computing the credit, a taxpayer's base amount could not be less than 50 percent of its current-year qualified research expenses.

To prevent artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related entities, a special aggregation rule provided that all members of the same controlled group of corporations were treated as a single taxpayer (sec. 41(f)(1)). Under regulations prescribed by the Secretary, special rules applied for computing the credit when a major portion of a trade or business (or unit thereof) changed hands, under which qualified research expenses and gross receipts for periods prior to the change of ownership of a trade or business were treated as transferred with the trade or business that gave rise to those expenses and receipts for purposes of recomputing a taxpayer's fixed-base percentage (sec. 41(f)(3)).

*Alternative incremental research credit regime*

Taxpayers were allowed to elect an alternative incremental research credit regime.[21] If a taxpayer elected to be subject to this alternative regime, the taxpayer was assigned a three-tiered fixed-base percentage (that was lower than the fixed-base percentage otherwise applicable) and the credit rate likewise was reduced. Under the alternative incremental credit regime, a credit rate of 2.65 percent applied to the extent that a taxpayer's current-year research expenses exceeded a base amount computed by using a fixed-base percentage of one percent (i.e., the base amount equaled one percent of the taxpayer's average gross receipts for the four preceding years) but did not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 3.2 percent applied to the extent that a taxpayer's current-year research expenses exceeded a base amount computed by using a fixed-base percentage of 1.5 percent but did not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.75 percent applied to the extent that a taxpayer's current-year research expenses exceeded a base amount computed by using a fixed-base percentage of two percent. An election to be subject to this alternative incremental credit regime could be made for any taxable year beginning after June 30, 1996, and such an election applied to that taxable year and all subsequent years unless revoked with the consent of the Secretary of the Treasury.

*Eligible expenses*

Qualified research expenses eligible for the research tax credit consisted of: (1) in-house expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of amounts paid or incurred by the taxpayer to certain other persons for qualified research conducted on the taxpayer's behalf (so-called contract research expenses).[22] Notwithstanding the limitation for contract research expenses, qualified research expenses included 100 percent of amounts paid or incurred by the taxpayer to an eligible small business, university, or Federal laboratory for qualified energy research.

To be eligible for the credit, the research did not only have to satisfy the requirements of present-law section 174 (described below) but also had to be undertaken for the purpose of discovering information that is technological in nature, the application of which was intended to be useful in the development of a new or improved business component of the taxpayer, and substantially all of the activities of which had to constitute elements of a process of experimentation for functional aspects, performance, reliability, or quality of a business component. Research did not qualify for the credit if substantially all of the activities related to style, taste, cosmetic, or seasonal design factors (sec. 41(d)(3)). In addition, research did not qualify for the credit: (1) if conducted after the beginning of commercial production of the business component; (2) if related to the adaptation of an existing business component to a particular customer's requirements; (3) if related to the duplication of an existing business component from a physical examination of the component itself or certain other information; or (4) if related to certain efficiency surveys, management function or technique, market research, market testing, or market development, routine data collection or routine quality control (sec. 41(d)(4)). Research did not qualify for the credit if it was conducted outside the United States, Puerto Rico, or any U.S. possession.

*Relation to deduction*

Under section 174, taxpayers may elect to deduct currently the amount of certain research or experimental expenditures paid or incurred in connection with a trade or business, notwithstanding the general rule that business expenses to develop or create an asset that has a useful life extending beyond the current year must be capitalized.[23] While the research credit was in effect, however, deductions allowed to a taxpayer under section 174 (or any other section) were reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year (sec. 280C(c)). Taxpayers could alternatively elect to claim a reduced research tax credit amount (13 percent) under section 41 in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

HOUSE BILL

The provision extends for one year and modifies the present-law research credit provision (for amounts paid or incurred through December 31, 2006).

The provision increases the rates of the alternative incremental credit: (1) a credit rate of three percent (rather than 2.65 percent) applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of one percent (*i.e.*, the base amount equals one percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent; (2) a credit rate of four percent (rather than 3.2 percent) applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of two percent; and (3) a credit rate of 5 percent (rather than 3.75 percent) applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of two percent.

The provision also creates, at the election of the taxpayer, an alternative simplified credit for qualified research expenses. The alternative simplified research is equal to 12 percent of qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding taxable years. The rate is reduced to 6 percent if a taxpayer has no qualified research expenses in any one of the three preceding taxable years.

An election to use the alternative simplified credit applies to all succeeding taxable years unless revoked with the consent of the Secretary. An election to use the alternative simplified credit may not be made for any taxable year for which an election to use the alternative incremental credit is in effect. A special transition rule applies which permits a taxpayer to elect to use the alternative simplified credit in lieu of the alternative incremental credit if such election is made during the taxable year which includes the date of enactment of the provision. The transition rule only applies to the taxable year which includes the date of enactment.

*Effective date.*—The extension of the research credit applies to amounts paid or incurred after December 31, 2005. The modification of the alternative incremental credit and the creation of the alternative simplified credit are effective for taxable years ending after date of enactment.

SENATE AMENDMENT

The Senate amendment generally follows the House bill but provides for a two-year extension of the modified research credit. It also adds a provision that broadens the research credit as it applies to research consortia. Under the Senate amendment, a 20 percent credit would be available for a taxpayer's expenditures on research carried out by any research consortium, rather than being limited to research carried out by an energy research consortium.

*Effective date.*—The Senate amendment applies to amounts paid or incurred after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

L. QUALIFIED ZONE ACADEMY BONDS

(Sec. 114 of the House bill, sec. 110 of the Senate amendment and sec. 1397E of the Code)

PRESENT LAW

*Tax-exempt bonds*

Interest on State and local governmental bonds generally is excluded from gross income for Federal income tax purposes if the proceeds of the bonds are used to finance direct activities of these governmental units or if the bonds are repaid with revenues of these governmental units. Activities that can be financed with these tax-exempt bonds include the financing of public schools (sec. 103).

*Qualified zone academy bonds*

As an alternative to interest-bearing tax-exempt bonds, States and local governments are given the authority to issue ''qualified zone academy bonds'' (sec. 1397E). A total of $400 million of qualified zone academy bonds may be issued annually in calendar years 1998 through 2005. The $400 million aggregate bond cap is allocated each year to the States according to their respective populations of individuals below the poverty line. Each State, in turn, allocates the credit authority to qualified zone academies within such State.

years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenses to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993 (sec. 41(c)(3)(B)).

[21] Sec. 41(c)(4).

[22] Under a special rule enacted as part of the Small Business Job Protection Act of 1996, 75 percent of amounts paid to a research consortium for qualified research were treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule under section 41(b)(3) governing contract research expenses) if (1) such research consortium was a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and was organized and operated primarily to conduct scientific research, and (2) such qualified research was conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer. Sec. 41(b)(3)(C).

[23] Taxpayers may elect 10-year amortization of certain research expenditures allowable as a deduction under section 174(a). Secs. 174(f)(2) and 59(e).

Financial institutions that hold qualified zone academy bonds are entitled to a nonrefundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond. A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includable in gross income (as if it were a taxable interest payment on the bond), and may be claimed against regular income tax and AMT liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The maximum term of the bond is determined by the Treasury Department, so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond.

''Qualified zone academy bonds'' are defined as any bond issued by a State or local government, provided that: (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a ''qualified zone academy'' (''qualified zone academy property'') and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds.

A school is a ''qualified zone academy'' if: (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an empowerment zone or enterprise community designated under the Code or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

Arbitrage restrictions on tax-exempt bonds

To prevent States and local governments from issuing more tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'' before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government. Governmental bonds are subject to less restrictive arbitrage rules than most private activity bonds. The arbitrage rules do not apply to qualified zone academy bonds.

HOUSE BILL

The House bill extends for one year the present-law provision relating to qualified zone academy bonds (through December 31, 2006).

*Effective date.*—The provision is effective for bonds issued after December 31, 2005.

SENATE AMENDMENT

The Senate amendment extends for two years the present-law provision relating to qualified zone academy bonds (through December 31, 2007).

In addition, the Senate amendment imposes the arbitrage requirements of section 148 that apply to tax-exempt bonds to qualified zone academy bonds. Principles under section 148 and the regulations thereunder shall apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to qualified zone academy bonds. For example, for arbitrage purposes, the yield on an issue of qualified zone academy bonds is computed by taking into account all payments of interest, if any, on such bonds, i.e., whether the bonds are issued at par, premium, or discount. However, for purposes of determining yield, the amount of the credit allowed to a taxpayer holding qualified zone academy bonds is not treated as interest, although such credit amount is treated as interest income to the taxpayer.

The provision imposes new spending requirements for qualified zone academy bonds. An issuer of qualified zone academy bonds must reasonably expect to and actually spend 95 percent or more of the proceeds of such bonds on qualified zone academy property within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified zone academy property during the five-year spending period, bonds will continue to qualify as qualified zone academy bonds if unspent proceeds are used within 90 days from the end of such five-year period to redeem any ''nonqualified bonds.'' For these purposes, the amount of nonqualified bonds is to be determined in the same manner as Treasury regulations under section 142. In addition, the provision provides that the five-year spending period may be extended by the Secretary upon the issuer's request if reasonable cause for such extension is established.

Under the provision, qualified private business contributions must be in the form of cash or cash equivalents, rather than property or services as permitted under present law. The provision also requires an equal amount of principal is to be paid by the issuer during each calendar year that the issue is outstanding.

Under the provision, issuers of qualified zone academy bonds are required to report issuance to the IRS in a manner similar to that required for tax-exempt bonds.

*Effective date.*—The provision is effective for bonds issued after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

M. ABOVE-THE-LINE DEDUCTION FOR CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS

(Sec. 115 of the House bill, sec. 112 of the Senate amendment and sec. 62 of the Code)

PRESENT LAW

In general, ordinary and necessary business expenses are deductible (sec. 162). However, in general, unreimbursed employee business expenses are deductible only as an itemized deduction and only to the extent that the individual's total miscellaneous deductions (including employee business expenses) exceed two percent of adjusted gross income. An individual's otherwise allowable itemized deductions may be further limited by the overall limitation on itemized deductions, which reduces itemized deductions for taxpayers with adjusted gross income in excess of $145,950 (for 2005). In addition, miscellaneous itemized deductions are not allowable under the alternative minimum tax.

Certain expenses of eligible educators are allowed an above-the-line deduction. Specifically, for taxable years beginning prior to January 1, 2006, an above-the-line deduction is allowed for up to $250 annually of expenses paid or incurred by an eligible educator for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. To be eligible for this deduction, the expenses must be otherwise deductible under 162 as a trade or business expense. A deduction is allowed only to the extent the amount of expenses exceeds the amount excludable from income under section 135 (relating to education savings bonds), 529(c)(1) (relating to qualified tuition programs), and section 530(d)(2) (relating to Coverdell education savings accounts).

An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year. A school means any school which provides elementary education or secondary education, as determined under State law.

The above-the-line deduction for eligible educators is not allowed for taxable years beginning after December 31, 2005.

HOUSE BILL

The present-law provision is extended for one year, through December 31, 2006.

*Effective date.*—The provision is effective for expenses paid or incurred in taxable years beginning after December 31, 2005.

SENATE AMENDMENT

The present-law provision is extended for two years, through December 31, 2007.

*Effective date.*—The provision is effective for expenses paid or incurred in taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

N. ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION EXPENSES

(Sec. 116 of the House bill, sec. 103 of the Senate amendment and sec. 222 of the Code)

PRESENT LAW

An individual is allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. Qualified tuition and related expenses include tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer may claim a personal exemption, at an eligible institution of higher education for courses of instruction of such individual at such institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the deduction. The expenses of education involving sports, games, or hobbies are not qualified tuition and related expenses unless this education is part of the student's degree program.

The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual, and by the amount of such expenses taken into account for purposes of determining any exclusion from gross income of: (1) income from certain United States Savings Bonds used to pay higher education tuition and fees; and (2) income from a Coverdell education savings account. Additionally, such expenses must be reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion under section 529 is claimed with respect to expenses eligible for exclusion under section 222. No deduction is allowed for any expense

for which a deduction is otherwise allowed or with respect to an individual for whom a Hope credit or Lifetime Learning credit is elected for such taxable year.

The expenses must be in connection with enrollment at an institution of higher education during the taxable year, or with an academic term beginning during the taxable year or during the first three months of the next taxable year. The deduction is not available for tuition and related expenses paid for elementary or secondary education.

For taxable years beginning in 2004 and 2005, the maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for other individuals whose adjusted gross income does not exceed $80,000 ($160,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual with respect to whom a personal exemption deduction may be claimed by another taxpayer for the taxable year. The deduction is not available for taxable years beginning after December 31, 2005.

HOUSE BILL

The provision extends the tuition deduction for one year, through December 31, 2006.

*Effective date.*—The provision is effective for taxable years beginning after December 31, 2005.

SENATE AMENDMENT

The provision extends the tuition deduction for four years, through December 31, 2009.

*Effective date.*—The provision is effective for taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House provision or the Senate amendment provision.

O. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

(Sec. 117 of the House bill, sec. 105 of the Senate amendment, and sec. 164 of the Code)

PRESENT LAW

For purposes of determining regular tax liability, an itemized deduction is permitted for certain State and local taxes paid, including individual income taxes, real property taxes, and personal property taxes. The itemized deduction is not permitted for purposes of determining a taxpayer's alternative minimum taxable income. For taxable years beginning in 2004 and 2005, at the election of the taxpayer, an itemized deduction may be taken for State and local general sales taxes in lieu of the itemized deduction provided under present law for State and local income taxes. As is the case for State and local income taxes, the itemized deduction for State and local general sales taxes is not permitted for purposes of determining a taxpayer's alternative minimum taxable income. Taxpayers have two options with respect to the determination of the sales tax deduction amount. Taxpayers may deduct the total amount of general State and local sales taxes paid by accumulating receipts showing general sales taxes paid. Alternatively, taxpayers may use tables created by the Secretary of the Treasury that show the allowable deduction. The tables are based on average consumption by taxpayers on a State-by-State basis taking into account filing status, number of dependents, adjusted gross income and rates of State and local general sales taxation. Taxpayers who use the tables created by the Secretary may, in addition to the table amounts, deduct eligible general sales taxes paid with respect to the purchase of motor vehicles, boats and other items specified by the Secretary. Sales taxes for items that may be added to the tables are not reflected in the tables themselves.

The term ''general sales tax'' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items. However, in the case of items of food, clothing, medical supplies, and motor vehicles, the fact that the tax does not apply with respect to some or all of such items is not taken into account in determining whether the tax applies with respect to a broad range of classes of items, and the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax is not taken into account in determining whether the tax is imposed at one rate. Except in the case of a lower rate of tax applicable with respect to food, clothing, medical supplies, or motor vehicles, no deduction is allowed for any general sales tax imposed with respect to an item at a rate other than the general rate of tax. However, in the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate is treated as the rate of tax.

A compensating use tax with respect to an item is treated as a general sales tax, provided such tax is complimentary to a general sales tax and a deduction for sales taxes is allowable with respect to items sold at retail in the taxing jurisdiction that are similar to such item.

HOUSE BILL

The present-law provision allowing taxpayers to elect to deduct State and local sales taxes in lieu of State and local income taxes is extended for one year (through December 31, 2006).

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

SENATE AMENDMENT

The present-law provision allowing taxpayers to elect to deduct State and local sales taxes in lieu of State and local income taxes is extended for two years (through December 31, 2007).

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

P. EXTENSION AND EXPANSION TO PETROLEUM PRODUCTS OF EXPENSING FOR ENVIRONMENTAL REMEDIATION COSTS

(Sec. 201 of the House bill, sec. 113 of the Senate amendment, and sec. 198 of the Code)

PRESENT LAW

Present law allows a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business.[24] Treasury regulations provide that the cost of incidental repairs that neither materially add to the value of property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted currently as a business expense. Section 263(a)(1) limits the scope of section 162 by prohibiting a current deduction for certain capital expenditures. Treasury regulations define ''capital expenditures'' as amounts paid or incurred to materially add to the value, or substantially prolong the useful life, of property owned by the taxpayer, or to adapt property to a new or different use. Amounts paid for repairs and maintenance do not constitute capital expenditures. The determination of whether an expense is deductible or capitalizable is based on the facts and circumstances of each case.

Taxpayers may elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred.[25] The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. In general, any expenditure for the acquisition of depreciable property used in connection with the abatement or control of hazardous substances at a qualified contaminated site does not constitute a qualified environmental remediation expenditure. However, depreciation deductions allowable for such property, which would otherwise be allocated to the site under the principles set forth in Commissioner v. Idaho Power Co.[26] and section 263A, are treated as qualified environmental remediation expenditures.

A ''qualified contaminated site'' (a so-called ''brownfield'') generally is any property that is held for use in a trade or business, for the production of income, or as inventory and is certified by the appropriate State environmental agency to be an area at or on which there has been a release (or threat of release) or disposal of a hazardous substance. Both urban and rural property may qualify. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')[27] cannot qualify as targeted areas. Hazardous substances generally are defined by reference to sections 101(14) and 102 of CERCLA, subject to additional limitations applicable to asbestos and similar substances within buildings, certain naturally occurring substances such as radon, and certain other substances released into drinking water supplies due to deterioration through ordinary use. Petroleum products generally are not regarded as hazardous substances for purposes of section 198 (except for purposes of determining qualified environmental remediation expenditures in the ''Gulf Opportunity Zone'' under section 1400N(g), as described below).[28]

In the case of property to which a qualified environmental remediation expenditure otherwise would have been capitalized, any deduction allowed under section 198 is treated as a depreciation deduction and the property is treated as section 1245 property. Thus, deductions for qualified environmental remediation expenditures are subject to recapture as ordinary income upon a sale or other disposition of the property. In addition, sections 280B (demolition of structures) and 468 (special rules for mining and solid waste reclamation and closing costs) do not apply to amounts that are treated as expenses under this provision.

Eligible expenditures are those paid or incurred before January 1, 2006.

Under section 1400N(g), the above provisions apply to expenditures paid or incurred to abate contamination at qualified contaminated sites in the Gulf Opportunity Zone (defined as that portion of the Hurricane Katrina Disaster Area determined by

[24] Sec. 162.

[25] Sec. 198.

[26] 418 U.S. 1 (1974).

[27] Pub. L. No. 96–510 (1980).

[28] Section 101(14) of CERCLA specifically excludes ''petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph,'' from the definition of ''hazardous substance.''

the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina) before January 1, 2008; in addition, within the Gulf Opportunity Zone section 1400N(g) broadens the definition of hazardous substance to include petroleum products (defined by reference to section 4612(a)(3)).

HOUSE BILL

The House bill extends for two years the present-law provisions relating to environmental remediation expenditures (through December 31, 2007).

In addition, the provision expands the definition of hazardous substance to include petroleum products. Under the provision, petroleum products are defined by reference to section 4612(a)(3), and thus include crude oil, crude oil condensates and natural gasoline.[29]

*Effective date.*—The provision applies to expenditures paid or incurred after December 31, 2005.

SENATE AMENDMENT

The Senate amendment modifies the House bill to provide for only a one-year extension of the present-law provisions relating to environmental remediation expenditures (through December 31, 2006). The Senate amendment follows the House bill in expanding the definition of hazardous substances to include petroleum products.

*Effective date.*—The provision applies to expenditures paid or incurred after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

Q. CONTROLLED FOREIGN CORPORATIONS

1. Subpart F exception for active financing (Sec. 202(a) of the House bill and secs. 953 and 954 of the Code)

PRESENT LAW

Under the subpart F rules, 10–percent U.S. shareholders of a controlled foreign corporation (''CFC'') are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, insurance income and foreign base company income. Foreign base company income includes, among other things, foreign personal holding company income and foreign base company services income (i.e., income derived from services performed for or on behalf of a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents, and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and REMICs; (3) net gains from commodities transactions; (4) net gains from certain foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; (7) payments in lieu of dividends; and (8) amounts received under personal service contracts.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income.[30]

Temporary exceptions from foreign personal holding company income, foreign base company services income, and insurance income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business (so-called ''active financing income'').[31]

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be predominantly engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions. In addition, certain nexus requirements apply, which provide that income derived by a CFC or a qualified business unit (''QBU'') of a CFC from transactions with customers is eligible for the exceptions if, among other things, substantially all of the activities in connection with such transactions are conducted directly by the CFC or QBU in its home country, and such income is treated as earned by the CFC or QBU in its home country for purposes of such country's tax laws. Moreover, the exceptions apply to income derived from certain cross border transactions, provided that certain requirements are met. Additional exceptions from foreign personal holding company income apply for certain income derived by a securities dealer within the meaning of section 475 and for gain from the sale of active financing assets.

In the case of insurance, in addition to a temporary exception from foreign personal holding company income for certain income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization, certain temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of a qualifying branch of a qualifying insurance company with respect to risks located within the home country of the branch, provided certain requirements are met under each of the exceptions. Further, additional temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of certain CFCs or branches with respect to risks located in a country other than the United States, provided that the requirements for these exceptions are met.

In the case of a life insurance or annuity contract, reserves for such contracts are determined as follows for purposes of these provisions. The reserves equal the greater of: (1) the net surrender value of the contract (as defined in section 807(e)(1)(A)), including in the case of pension plan contracts; or (2) the amount determined by applying the tax reserve method that would apply if the qualifying life insurance company were subject to tax under Subchapter L of the Code, with the following modifications. First, there is substituted for the applicable Federal interest rate an interest rate determined for the functional currency of the qualifying insurance company's home country, calculated (except as provided by the Treasury Secretary in order to address insufficient data and similar problems) in the same manner as the mid-term applicable Federal interest rate (within the meaning of section 1274(d)). Second, there is substituted for the prevailing State assumed rate the highest assumed interest rate permitted to be used for purposes of determining statement reserves in the foreign country for the contract. Third, in lieu of U.S. mortality and morbidity tables, mortality and morbidity tables are applied that reasonably reflect the current mortality and morbidity risks in the foreign country. Fourth, the Treasury Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for one or more of its branches when appropriate. In no event may the reserve for any contract at any time exceed the foreign statement reserve for the contract, reduced by any catastrophe, equalization, or deficiency reserve or any similar reserve.

Present law permits a taxpayer in certain circumstances, subject to approval by the IRS through the ruling process or in published guidance, to establish that the reserve of a life insurance company for life insurance and annuity contracts is the amount taken into account in determining the foreign statement reserve for the contract (reduced by catastrophe, equalization, or deficiency reserve or any similar reserve). IRS approval is to be based on whether the method, the interest rate, the mortality and morbidity assumptions, and any other factors taken into account in determining foreign statement reserves (taken together or separately) provide an appropriate means of measuring income for Federal income tax purposes. In seeking a ruling, the taxpayer is required to provide the IRS with necessary and appropriate information as to the method, interest rate, mortality and morbidity assumptions and other assumptions under the foreign reserve rules so that a comparison can be made to the reserve amount determined by applying the tax reserve method that would apply if the qualifying insurance company were subject to tax under Subchapter L of the Code (with the modifications provided under present law for purposes of these exceptions). The IRS also may issue published guidance indicating its approval. Present law continues to apply with respect to reserves for any life insurance or annuity contract for which the IRS has not approved the use of the foreign statement reserve. An IRS ruling request under this provision is subject to the present-law provisions relating to IRS user fees.

HOUSE BILL

The House bill extends for two years (for taxable years beginning before 2009) the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

*Effective date.*—The provision is effective for taxable years of foreign corporations beginning after December 31, 2006, and before

[29] The present law exceptions for sites on the national priorities list under CERCLA, and for substances with respect to which a removal or remediation is not permitted under section 104 of CERCLA by reason of subsection (a)(3) thereof, would continue to apply to all hazardous substances (including petroleum products).

[30] Prop. Treas. Reg. sec. 1.953–1(a).

[31] Temporary exceptions from the subpart F provisions for certain active financing income applied only for taxable years beginning in 1998. Those exceptions were modified and extended for one year, applicable only for taxable years beginning in 1999. The Tax Relief Extension Act of 1999 (Pub. L. No. 106–170) clarified and extended the temporary exceptions for two years, applicable only for taxable years beginning after 1999 and before 2002. The Job Creation and Worker Assistance Act of 2002 (Pub. L. No. 107–147) modified and extended the temporary exceptions for five years, for taxable years beginning after 2001 and before 2007.

January 1, 2009, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

2. Look-through treatment of payments between related controlled foreign corporations under foreign personal holding company income rules (sec. 202(b) of the House bill and sec. 954(c) of the Code)

PRESENT LAW

In general, the rules of subpart F (secs. 951–964) require U.S. shareholders with a 10 percent or greater interest in a controlled foreign corporation (''CFC'') to include certain income of the CFC (referred to as ''subpart F income'') on a current basis for U.S. tax purposes, regardless of whether the income is distributed to the shareholders.

Subpart F income includes foreign base company income. One category of foreign base company income is foreign personal holding company income. For subpart F purposes, foreign personal holding company income generally includes dividends, interest, rents, and royalties, among other types of income. However, foreign personal holding company income does not include dividends and interest received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized, or rents and royalties received by a CFC from a related corporation for the use of property within the country in which the CFC is organized. Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor.

HOUSE BILL

Under the House bill, for taxable years beginning after 2005 and before 2009, dividends, interest,[32] rents, and royalties received by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to non-subpart-F income of the payor. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC's stock (by vote or value) constitutes control for these purposes. The bill provides that the Secretary shall prescribe such regulations as are appropriate to prevent the abuse of the purposes of this provision.

The provision in the House bill is effective for taxable years of foreign corporations beginning after December 31, 2005, but before January 1, 2009, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

R. REDUCED RATES FOR CAPITAL GAINS AND DIVIDENDS OF INDIVIDUALS

(Sec. 203 of the House bill and sec. 1(h) of the Code)

PRESENT LAW

*Capital gains*

*In general*

In general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of a capital asset, any gain generally is included in income. Any net capital gain of an individual is generally taxed at maximum rates lower than the rates applicable to ordinary income. Net capital gain is the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

Capital losses generally are deductible in full against capital gains. In addition, individual taxpayers may deduct capital losses against up to $3,000 of ordinary income in each year. Any remaining unused capital losses may be carried forward indefinitely to another taxable year.

A capital asset generally means any property except (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business, (2) depreciable or real property used in the taxpayer's trade or business, (3) specified literary or artistic property, (4) business accounts or notes receivable, (5) certain U.S. publications, (6) certain commodity derivative financial instruments, (7) hedging transactions, and (8) business supplies. In addition, the net gain from the disposition of certain property used in the taxpayer's trade or business is treated as long-term capital gain. Gain from the disposition of depreciable personal property is not treated as capital gain to the extent of all previous depreciation allowances. Gain from the disposition of depreciable real property is generally not treated as capital gain to the extent of the depreciation allowances in excess of the allowances that would have been available under the straight-line method of depreciation.

*Tax rates before 2009*

Under present law, for taxable years beginning before January 1, 2009, the maximum rate of tax on the adjusted net capital gain of an individual is 15 percent. Any adjusted net capital gain which otherwise would be taxed at a 10- or 15–percent rate is taxed at a 5-percent rate (zero for taxable years beginning after 2007). These rates apply for purposes of both the regular tax and the alternative minimum tax.

Under present law, the ''adjusted net capital gain'' of an individual is the net capital gain reduced (but not below zero) by the sum of the 28–percent rate gain and the unrecaptured section 1250 gain. The net capital gain is reduced by the amount of gain that the individual treats as investment income for purposes of determining the investment interest limitation under section 163(d).

The term ''28–percent rate gain'' means the amount of net gain attributable to long-term capital gains and losses from the sale or exchange of collectibles (as defined in section 408(m) without regard to paragraph (3) thereof), an amount of gain equal to the amount of gain excluded from gross income under section 1202 (relating to certain small business stock), the net short-term capital loss for the taxable year, and any long-term capital loss carryover to the taxable year.

''Unrecaptured section 1250 gain'' means any long-term capital gain from the sale or exchange of section 1250 property (i.e., depreciable real estate) held more than one year to the extent of the gain that would have been treated as ordinary income if section 1250 applied to all depreciation, reduced by the net loss (if any) attributable to the items taken into account in computing 28–percent rate gain. The amount of unrecaptured section 1250 gain (before the reduction for the net loss) attributable to the disposition of property to which section 1231 (relating to certain property used in a trade or business) applies may not exceed the net section 1231 gain for the year.

An individual's unrecaptured section 1250 gain is taxed at a maximum rate of 25 percent, and the 28–percent rate gain is taxed at a maximum rate of 28 percent. Any amount of unrecaptured section 1250 gain or 28–percent rate gain otherwise taxed at a 10- or 15–percent rate is taxed at the otherwise applicable rate.

*Tax rates after 2008*

For taxable years beginning after December 31, 2008, the maximum rate of tax on the adjusted net capital gain of an individual is 20 percent. Any adjusted net capital gain which otherwise would be taxed at a 10- or 15–percent rate is taxed at a 10–percent rate.

In addition, any gain from the sale or exchange of property held more than five years that would otherwise have been taxed at the 10–percent rate is taxed at an 8–percent rate. Any gain from the sale or exchange of property held more than five years and the holding period for which began after December 31, 2000, that would otherwise have been taxed at a 20–percent rate is taxed at an 18–percent rate.

The tax rates on 28–percent gain and unrecaptured section 1250 gain are the same as for taxable years beginning before 2009.

*Dividends*

*In general*

A dividend is the distribution of property made by a corporation to its shareholders out of its after-tax earnings and profits.

*Tax rates before 2009*

Under present law, dividends received by an individual from domestic corporations and qualified foreign corporations are taxed at the same rates that apply to capital gains. This treatment applies for purposes of both the regular tax and the alternative minimum tax. Thus, for taxable years beginning before 2009, dividends received by an individual are taxed at rates of five (zero for taxable years beginning after 2007) and 15 percent.

If a shareholder does not hold a share of stock for more than 60 days during the 121–day period beginning 60 days before the ex-dividend date (as measured under section 246(c)), dividends received on the stock are not eligible for the reduced rates. Also, the reduced rates are not available for dividends to the extent that the taxpayer is obligated to make related payments with respect to positions in substantially similar or related property.

Qualified dividend income includes otherwise qualified dividends received from qualified foreign corporations. The term ''qualified foreign corporation'' includes a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States which the Treasury Department determines to be satisfactory and which includes an exchange of information program. In addition, a foreign corporation is treated as a qualified foreign corporation with respect to any dividend paid by the corporation with respect to stock that is readily tradable on an established securities market in the United States.

Dividends received from a corporation that is a passive foreign investment company (as defined in section 1297) in either the taxable year of the distribution, or the preceding taxable year, are not qualified dividends.

Special rules apply in determining a taxpayer's foreign tax credit limitation under section 904 in the case of qualified dividend income. For these purposes, rules similar to the rules of section 904(b)(2)(B) concerning adjustments to the foreign tax credit limitation to reflect any capital gain rate differential will apply to any qualified dividend income.

[32] Interest for this purpose includes factoring income which is treated as equivalent to interest under sec. 954(c)(1)(E).

If a taxpayer receives an extraordinary dividend (within the meaning of section 1059(c)) eligible for the reduced rates with respect to any share of stock, any loss on the sale of the stock is treated as a long-term capital loss to the extent of the dividend.

A dividend is treated as investment income for purposes of determining the amount of deductible investment interest only if the taxpayer elects to treat the dividend as not eligible for the reduced rates.

The amount of dividends qualifying for reduced rates that may be paid by a regulated investment company (''RIC'') for any taxable year in which the qualified dividend income received by the RIC is less than 95 percent of its gross income (as specially computed) may not exceed the sum of (i) the qualified dividend income of the RIC for the taxable year and (ii) the amount of earnings and profits accumulated in a non-RIC taxable year that were distributed by the RIC during the taxable year.

The amount of dividends qualifying for reduced rates that may be paid by a real estate investment trust (''REIT'') for any taxable year may not exceed the sum of (i) the qualified dividend income of the REIT for the taxable year, (ii) an amount equal to the excess of the income subject to the taxes imposed by section 857(b)(1) and the regulations prescribed under section 337(d) for the preceding taxable year over the amount of these taxes for the preceding taxable year, and (iii) the amount of earnings and profits accumulated in a non-REIT taxable year that were distributed by the REIT during the taxable year.

The reduced rates do not apply to dividends received from an organization that was exempt from tax under section 501 or was a tax-exempt farmers' cooperative in either the taxable year of the distribution or the preceding taxable year; dividends received from a mutual savings bank that received a deduction under section 591; or deductible dividends paid on employer securities.[33]

*Tax rates after 2008*

For taxable years beginning after 2008, dividends received by an individual are taxed at ordinary income tax rates.

HOUSE BILL

The House bill extends for two years the present-law provisions relating to lower capital gain and dividend tax rates (through taxable years beginning on or before December 31, 2010).

*Effective date.*—The provision applies to taxable years beginning after December 31, 2008.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

S. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS (THE ''SAVER'S CREDIT'')

(Sec. 204 of the House bill, sec. 102 of the Senate amendment, and sec. 25B of the Code)

PRESENT LAW

Present law provides a temporary nonrefundable tax credit for eligible taxpayers for qualified retirement savings contributions, referred to as the ''saver's credit.'' The maximum annual contribution eligible for the credit is $2,000. The credit rate depends on the adjusted gross income (''AGI'') of the taxpayer. Taxpayers filing joint returns with AGI of $50,000 or less, head of household returns of $37,500 or less, and single returns of $25,000 or less are eligible for the credit. The AGI limits applicable to single taxpayers apply to married taxpayers filing separate returns. The credit is in addition to any deduction or exclusion that would otherwise apply with respect to the contribution. The credit offsets minimum tax liability as well as regular tax liability. The credit is available to individuals who are 18 or over, other than individuals who are full-time students or claimed as a dependent on another taxpayer's return.

The credit is available with respect to: (1) elective deferrals to a qualified cash or deferred arrangement (a ''section 401(k) plan''), a tax-sheltered annuity (a ''section 403(b)'' annuity), an eligible deferred compensation arrangement of a State or local government (a ''governmental section 457 plan''), a SIMPLE plan, or a simplified employee pension (''SEP''); (2) contributions to a traditional or Roth IRA; and (3) voluntary after-tax employee contributions to a tax-sheltered annuity or qualified retirement plan.

The amount of any contribution eligible for the credit is generally reduced by distributions received by the taxpayer (or by the taxpayer's spouse if the taxpayer filed a joint return with the spouse) from any plan or IRA to which eligible contributions can be made during the taxable year for which the credit is claimed, the two taxable years prior to the year the credit is claimed, and during the period after the end of the taxable year for which the credit is claimed and prior to the due date for filing the taxpayer's return for the year. Distributions that are rolled over to another retirement plan do not affect the credit.

The credit rates based on AGI are provided below.

TABLE 1.—CREDIT RATES FOR SAVER'S CREDIT

| Joint filers | Heads of households | All other filers | Credit rate (percent) |
|---|---|---|---|
| $0–$30,000 | $0–$22,500 | $0–$15,000 | 50 |
| 30,001–32,500 | 22,501–24,375 | 15,001–16,250 | 20 |
| 32,501—50,000 | 24,376–37,500 | 16,251–25,000 | 10 |
| Over $50,000 | Over $37,500 | Over $25,000 | 0 |

The credit does not apply to taxable years beginning after December 31, 2006.[34]

HOUSE BILL

The House bill extends the saver's credit for two years, through December 31, 2008.

*Effective date.*—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment extends the saver's credit for three years, through December 31, 2009.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

T. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS

(Sec. 205 of the House bill, sec. 101 of the Senate amendment, and sec. 179 of the Code)

PRESENT LAW

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or ''expense'') such costs. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2007, is $100,000 of the cost of qualifying property placed in service for the taxable year.[35] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2008 is treated as qualifying property. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $100,000 and $400,000 amounts are indexed for inflation for taxable years beginning after 2003 and before 2008.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.[36]

For taxable years beginning in 2008 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner.[37]

[33] In addition, for taxable years beginning before 2009, amounts treated as ordinary income on the disposition of certain preferred stock (sec. 306) are treated as dividends for purposes of applying the reduced rates; the tax rate for the accumulated earnings tax (sec. 531) and the personal holding company tax (sec. 541) is reduced to 15 percent; and the collapsible corporation rules (sec. 341) are repealed.

[34] The saver's credit was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (''EGTRRA''), Pub. L. No. 107–16. The provisions of EGTRRA generally do not apply for years beginning after December 31, 2010.

[35] Additional section 179 incentives are provided with respect to a qualified property used by a business in the New York Liberty Zone (sec. 1400L(f)), an empowerment zone (sec. 1397A), or a renewal community (sec. 1400J).

[36] Sec. 179(c)(1). Under Treas. Reg. sec. 179–5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9209, July 12, 2005.

[37] Sec. 179(c)(2).

HOUSE BILL

The provision extends for two years the increased amount that a taxpayer may deduct and the other section 179 rules applicable in taxable years beginning before 2008. Thus, under the provision, these present-law rules continue in effect for taxable years beginning after 2007 and before 2010.

*Effective date.*—The provision is effective for taxable years beginning after 2007 and before 2010.

SENATE AMENDMENT

The Senate amendment provision is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill and the Senate amendment.

U. EXTEND AND INCREASE ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT FOR INDIVIDUALS

(Sec. 106 of the Senate amendment and sec. 55 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax. The alternative minimum tax is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (''AMTI'') as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The exemption amount is: (1) $45,000 ($58,000 for taxable years beginning before 2006) in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 ($40,250 for taxable years beginning before 2006) in the case of unmarried individuals other than surviving spouses; (3) $22,500 ($29,000 for taxable years beginning before 2006) in the case of married individuals filing a separate return; and (4) $22,500 in the case of estates and trusts. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of unmarried individuals other than surviving spouses, and (3) $75,000 in the case of married individuals filing separate returns, estates, and trusts. These amounts are not indexed for inflation.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, for taxable years beginning in 2006, the exemption amounts are increased to: (1) $62,550 in the case of married individuals filing a joint return and surviving spouses; (2) $42,500 in the case of unmarried individuals other than surviving spouses; and (3) $31,275 in the case of married individuals filing a separate return.

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the Senate amendment.

V. EXTENSION AND MODIFICATION OF THE NEW MARKETS TAX CREDIT

(Sec. 204 of the Senate amendment and sec. 45D of the Code)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity (''CDE'').[38] The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years. The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available for a taxable year to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE. A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.

A ''low-income community'' is a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). In the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (rather than 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

The Secretary has the authority to designate ''targeted populations'' as low-income communities for purposes of the new markets tax credit. For this purpose, a ''targeted population'' is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments. Under such Act, ''low-income'' means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a non-metropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income.[39] Under such Act, a targeted population is not required to be within any census tract. In addition, a population census tract with a population of less than 2,000 is treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of such business is used in a low-income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

The maximum annual amount of qualified equity investments is capped at $2.0 billion per year for calendar years 2004 and 2005, and at $3.5 billion per year for calendar years 2006 and 2007.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision extends through 2008 the $3.5 billion maximum annual amount of qualified equity investments. The provision also requires that the Secretary prescribe regulations to ensure that non-metropolitan counties receive a proportional allocation of qualified equity investments.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

W. PHASEDOWN OF CREDIT FOR ELECTRIC VEHICLES

(Sec. 118 of the Senate amendment and sec. 30 of the Code)

PRESENT LAW

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000. A qualified electric vehicle generally is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current. The full amount of the credit is available for purchases prior to 2006. The credit is reduced to 25 percent of the otherwise allowable amount for purchases in 2006,

[38] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106–554 (December 21, 2000).

[39] 12. U.S.C. 4702(17) (defines ''low-income'' for purposes of 12 U.S.C. 4702(20)).

and is unavailable for purchases after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the full amount of the credit for qualified electric vehicles is available for purchases prior to 2006. As under present law, the credit is unavailable for purchases after December 31, 2006.

*Effective date.*—The provision is effective for property placed in service after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

X. APPLICATION OF EGTRRA SUNSET TO TITLE II OF THE SENATE AMENDMENT

(Sec. 231 of the Senate amendment)

PRESENT LAW

Reconciliation is a procedure under the Congressional Budget Act of 1974 (the ''Budget Act'') by which Congress implements spending and tax policies contained in a budget resolution. The Budget Act contains numerous rules enforcing the scope of items permitted to be considered under the budget reconciliation process. One such rule, the so-called ''Byrd rule,'' was incorporated into the Budget Act in 1990. The Byrd rule, named after its principal sponsor, Senator Robert C. Byrd, is contained in section 313 of the Budget Act. The Byrd rule generally permits members to raise a point of order against extraneous provisions (those which are unrelated to the goals of the reconciliation process) from either a reconciliation bill or a conference report on such bill.

Under the Byrd rule, a provision is considered to be extraneous if it falls under one or more of the following six definitions:

1. It does not produce a change in outlays or revenues;
2. It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
3. It is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
4. It produces a change in outlays or revenues which is merely incidental to the nonbudgetary components of the provision;
5. It would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; and
6. It recommends changes in Social Security.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) contains sunset provisions to ensure compliance with the Budget Act. Under title IX of EGTRRA, the provisions of, and amendments made by that Act that are in effect on September 30, 2011, shall cease to apply as of the close of September 30, 2011, except that all provisions of, and amendments made by, the Act generally do not apply for taxable, plan or limitation years beginning after December 31, 2010. With respect to the estate, gift, and generation-skipping provisions of the Act, the provisions do not apply to estates of decedents dying, gifts made, or generation-skipping transfers, after December 31, 2010. The Code and the Employee Retirement Income Security Act of 1974 are applied to such years, estates, gifts and transfers after December 31, 2010, as if the provisions of and amendments made by the Act had never been enacted.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Sunset of provisions*

To ensure compliance with the Budget Act, the Senate amendment provides that all provisions of, and amendments made by title II of the Senate amendment shall be subject to the sunset provisions of EGTRRA to the same extent and in the same manner as the provision of such Act to which the Senate amendment provision relates.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

TITLE II—OTHER PROVISONS

A. TAXATION OF CERTAIN SETTLEMENT FUNDS

(Sec. 301 of the House bill and sec. 468B of the Code)

PRESENT LAW

Present law provides that if a taxpayer makes a payment to a designated settlement fund pursuant to a court order, the deduction timing rules that require economic performance generally are deemed to be met as the payments are made by the taxpayer to the fund. A designated settlement fund means a fund which: is established pursuant to a court order; extinguishes completely the taxpayer's tort liability arising out of personal injury, death or property damage; is administered by persons a majority of whom are independent of the taxpayer; and under the terms of the fund the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund.

Generally, a designated or qualified settlement fund is taxed as a separate entity at the maximum trust rate on its modified income. Modified income is generally gross income less deductions for administrative costs and other incidental expenses incurred in connection with the operation of the settlement fund.

The cleanup of hazardous waste sites is sometimes funded by environmental ''settlement funds'' or escrow accounts. These escrow accounts are established in consent decrees between the Environmental Protection Agency (''EPA'') and the settling parties under the jurisdiction of a Federal district court. The EPA uses these accounts to resolve claims against private parties under Comprehensive Environmental Response, Compensation and Liability Act of 1980 (''CERCLA'').

Present law provides that nothing in any provision of law is to be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax.

HOUSE BILL

The provision provides that certain settlement funds established in consent decrees for the sole purpose of resolving claims under CERCLA are to be treated as beneficially owned by the United States government and therefore not subject to Federal income tax.

To qualify the settlement fund must be: (1) established pursuant to a consent decree entered by a judge of a United States District Court; (2) created for the receipt of settlement payments for the sole purpose of resolving claims under CERCLA; (3) controlled (in terms of expenditures of contributions and earnings thereon) by the government or an agency or instrumentality thereof; and (4) upon termination, any remaining funds will be disbursed to such government entity and used in accordance with applicable law. For purposes of the provision, a government entity means the United States, any State of political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of the foregoing.

The provision does not apply to accounts or funds established after December 31, 2010.

*Effective date.*—The provision is effective for accounts and funds established after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

B. MODIFICATIONS TO RULES RELATING TO TAXATION OF DISTRIBUTIONS OF STOCK AND SECURITIES OF A CONTROLLED CORPORATION

(Sec. 302 of the House bill, sec. 467 of the Senate amendment and sec. 355 of the Code)

PRESENT LAW

A corporation generally is required to recognize gain on the distribution of property (including stock of a subsidiary) to its shareholders as if the corporation had sold such property for its fair market value. In addition, the shareholders receiving the distributed property are ordinarily treated as receiving a dividend of the value of the distribution (to the extent of the distributing corporation's earnings and profits), or capital gain in the case of a stock buyback that significantly reduces the shareholder's interest in the parent corporation.

An exception to these rules applies if the distribution of the stock of a controlled corporation satisfies the requirements of section 355 of the Code. If all the requirements are satisfied, there is no tax to the distributing corporation or to the shareholders on the distribution.

One requirement to qualify for tax-free treatment under section 355 is that both the distributing corporation and the controlled corporation must be engaged immediately after the distribution in the active conduct of a trade or business that has been conducted for at least five years and was not acquired in a taxable transaction during that period (the ''active business test'').[40] For this purpose, a corporation is engaged in the active conduct of a trade or business only if (1) the corporation is directly engaged in the active conduct of a trade or business, or (2) the corporation is not directly engaged in an active business, but substantially all its assets consist of stock and securities of one or more corporations that it controls that are engaged in the active conduct of a trade or business.[41]

In determining whether a corporation is directly engaged in an active trade or business that satisfies the requirement, old IRS guidelines for advance ruling purposes required that the value of the gross assets of the trade or business being relied on must ordinarily constitute at least five percent of the total fair market value of the gross assets of the corporation directly conducting the trade or business.[42] More recently, the IRS has suspended this specific rule in connection with its general administrative practice of moving IRS resources away from advance rulings on factual aspects of section 355 transactions in general.[43]

If the distributing or controlled corporation is not directly engaged in an active trade or business, then the IRS takes the position that the ''substantially all'' test as applied to that corporation requires that at

[40] Section 355(b).

[41] Section 355(b)(2)(A). The IRS takes the position that the statutory test requires that at least 90 percent of the fair market value of the corporation's gross assets consist of stock and securities of a controlled corporation that is engaged in the active conduct of a trade or business. Rev. Proc. 96–30, sec. 4.03(5), 1996–1 C.B. 696; Rev. Proc. 77–37, sec. 3.04, 1977–2 C.B. 568.

[42] Rev. Proc. 2003–3, sec. 4.01(30), 2003–1 I.R.B. 113.

[43] Rev. Proc. 2003–48, 2003–29 I.R.B. 86.

least 90 percent of the fair market value of the corporation's gross assets consist of stock and securities of a controlled corporation that is engaged in the active conduct of a trade or business.[44]

In determining whether assets are part of a five-year qualifying active business, assets acquired more recently than five years prior to the distribution, in a taxable transaction, are permitted to qualify as five-year ''active business'' assets if they are considered to have been acquired as part of an expansion of an existing business that does so qualify.[45]

When a corporation holds an interest in a partnership, IRS revenue rulings have allowed an active business of the partnership to count as an active business of a corporate partner in certain circumstances. One such case involved a situation in which the corporation owned at least 20 percent of the partnership, was actively engaged in management of the partnership, and the partnership itself had an active business.[46]

In addition to its active business requirements, section 355 does not apply to any transaction that is a ''device'' for the distribution of earnings and profits to a shareholder without the payment of tax on a dividend. A transaction is ordinarily not considered a ''device'' to avoid dividend tax if the distribution would have been treated by the shareholder as a redemption that was a sale or exchange of its stock, rather than as a dividend, if section 355 had not applied.[47]

HOUSE BILL

Under the House bill provision, the active business test is determined by reference to the relevant affiliated group. For the distributing corporation, the relevant affiliated group consists of the distributing corporation as the common parent and all corporations affiliated with the distributing corporation through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)), immediately after the distribution. The relevant affiliated group for a controlled corporation is determined in a similar manner (with the controlled corporation as the common parent).

*Effective date.*—The provision applies to distributions after the date of enactment and before December 31, 2010, with three exceptions. The provision does not apply to distributions (1) made pursuant to an agreement which is binding on the date of enactment and at all times thereafter, (2) described in a ruling request submitted to the IRS on or before the date of enactment, or (3) described on or before the date of enactment in a public announcement or in a filing with the Securities and Exchange Commission. The distributing corporation may irrevocably elect not to have the exceptions described above apply.

The provision also applies, solely for the purpose of determining whether, after the date of enactment, there is continuing qualification under the requirements of section 355(b)(2)(A) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date and before December 31, 2010.[48]

SENATE AMENDMENT

The Senate amendment provision is the same as the House bill with respect to the House bill provision described above, except for the date on which that provision sunsets.[49]

In addition, the Senate amendment contains another provision that denies section 355 treatment if either the distributing or distributed corporation is a disqualified investment corporation immediately after the transaction (including any series of related transactions) and any person that did not hold 50 percent or more of the voting power or value of stock of such distributing or controlled corporation immediately before the transaction does hold such a 50 percent or greater interest immediately after such transaction. The attribution rules of section 318 apply for purposes of this determination.

A disqualified investment corporation is any distributing or controlled corporation if the fair market value of the investment assets of the corporation is 75 percent or more of the fair market value of all assets of the corporation. Except as otherwise provided, the term ''investment assets'' for this purpose means (i) cash, (ii) any stock or securities in a corporation, (iii) any interest in a partnership, (iv) any debt instrument or other evidence of indebtedness; (v) any option, forward or futures contract, notional principal contract, or derivative; (vi) foreign currency, or (vii) any similar asset.

The term ''investment assets'' does not include any asset which is held for use in the active and regular conduct of (i) a lending or finance business (as defined in section 954(h)(4)); (ii) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19), or any similar institution specified by the Secretary; or (iii) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body. These exceptions only apply with respect to any business if substantially all the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1) to the person conducting the business.

The term ''investment assets'' also does not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

The term ''investment assets'' also does not include any stock or securities in, or any debt instrument, evidence of indebtedness, option, forward or futures contract, notional principal contract, or derivative issued by, a corporation which is a 25-percent controlled entity with respect to the distributing or controlled corporation. Instead, the distributing or controlled corporation is treated as owning its ratable share of the assets of any 25-percent controlled entity.

The term 25-percent controlled entity means any corporation with respect to which the corporation in question (distributing or controlled) owns directly or indirectly stock possessing at least 25 percent of voting power and value, excluding stock that is not entitled to vote, is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and is not convertible into another class of stock.

The term ''investment assets'' also does not include any interest in a partnership, or any debt instrument or other evidence of indebtedness issued by the partnership, if one or more trades or businesses of the partnership are, (or without regard to the 5-year requirement of section 355(b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the active business test of section 355 is met by such corporation.

The Treasury department shall provide regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of the provision, including regulations in cases involving related persons, intermediaries, pass-through entities, or other arrangements; and the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such assets. Regulations may also in appropriate cases exclude from the application of the provision a distribution which does not have the character of a redemption and which would be treated as a sale or exchange under section 302, and may modify the application of the attribution rules.

*Effective date.*—The effective date of the first provision of the Senate amendment generally is the same as the effective date of the identical provision of the House bill, except that the Senate amendment provision sunsets for distributions (and for acquisitions, dispositions, or other restructurings as relating to continuing qualification of pre-effective date distributions) after December 31, 2009, rather than for distributions (and for acquisitions, dispositions, or other restructurings as relating to continuing qualification of pre-effective date distributions) on or after December 31, 2010.

The second provision of the Senate amendment is effective for distributions after the date of enactment, except in transactions which are (i) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter; (ii) described in a ruling request submitted to the Intetnal Revenue Service on or before such date, or (iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

CONFERENCE AGREEMENT

The conference agreement includes the House bill and the Senate amendment with modifications.

With respect to the provision that applies the active business test by reference to the relevant affiliated group, the conference agreement provision is the same as the House bill and the Senate amendment except for the date on which the conference agreement provision sunsets.[50]

With respect to the provision that affects transactions involving disqualified investment corporations, the conference agreement reduces the percentage of investment assets of a corporation that will cause such corporation to be a disqualified investment corporation, from 75 percent (three-quarters) to two-thirds of the fair market value of the corporation's assets, for distributions occurring after one year after the date of enactment.

The conference agreement also reduces from 25 percent to 20 percent the percentage stock ownership in a corporation that will cause such ownership to be disregarded as an investment asset itself, instead requiring ''look-through'' to the ratable share of the underlying assets of such corporation attributable to such stock ownership.

[44] Rev. Proc. 96–30, sec. 4.03(5), 1996–1 C.B. 696; Rev. Proc. 77–37, sec. 3.04, 1977–2 C.B. 568.

[45] Treas. Reg. sec. 1.355–3(b)(ii).

[46] Rev. Rul. 92–17, 1002–1 C.B. 142; see also, Rev. Rul. 2002–49, 2002–2 C.B. 50.

[47] Treas. Reg. sec. 1.355–2(d)(5)(iv).

[48] For example, a holding company taxpayer that had distributed a controlled corporation in a spin-off prior to the date of enactment, in which spin-off the taxpayer satisfied the ''substantially all'' active business stock test of present law section 355(b)(2)(A) immediately after the distribution, would not be deemed to have failed to satisfy any requirement that it continue that same qualified structure for any period of time after the distribution, solely because of a restructuring that occurs after the date of enactment and before January 1, 2010, and that would satisfy the requirements of new section 355(b)(2)(A).

[49] See ''Effective date'' for the Senate Amendment, infra.

[50] See ''Effective date'' of the conference agreement provision, infra.

The conferees wish to clarify that the disqualified investment corporation provision applies when a person directly or indirectly holds 50 percent of either the vote or the value of a company immediately following a distribution, and such person did not hold such 50 percent interest directly or indirectly prior to the distribution. As one example, the provision applies if a person that held 50 percent or more of the vote, but not of the value, of a distributing corporation immediately prior to a transaction in which a controlled corporation that was 100 percent owned by that distributing corporation is distributed, directly or indirectly holds 50 percent of the value of either the distributing or controlled corporation immediately following such transaction.

The conferees further wish to clarify that the enumeration in subsection 355(g)(5)(A) through (C) of specific situations that Treasury regulations may address is not intended to restrict or limit any other situations that Treasury may address under the general authority of new section 355(g)(5) to carry out, or prevent the avoidance of, the purposes of the disqualified investment corporation provision.

*Effective date.*—The starting effective date of the provision that applies the active business test by reference to the relevant affiliated group is the same as that of the House bill and the Senate amendment provisions. The conference agreement changes the date on which the provision sunsets so that the provision does not apply for distributions (or for acquisitions, dispositions, or other restructurings as relating to continuing qualification of pre-effective date distributions) occurring after December 31, 2010.

The effective date of the provision that affects transactions involving disqualified investment corporations is the same as that of the Senate amendment provision, except for the conference agreement reduction in the amount of investment assets of a corporation that will cause it to be a disqualified investment corporation, from three-quarters to two thirds of the fair market value of all assets of the corporation. The two-thirds test applies for distributions occurring after one year after the date of enactment.

### C. QUALIFIED VETERAN'S MORTGAGE BONDS

(Sec. 303 of the House bill and sec. 143 of the Code)

PRESENT LAW

Private activity bonds are bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such private person. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (''qualified private activity bonds''). The definition of a qualified private activity bond includes both qualified mortgage bonds and qualified veterans' mortgage bonds.

Qualified veterans' mortgage bonds are private activity bonds the proceeds of which are used to make mortgage loans to certain veterans. Authority to issue qualified veterans' mortgage bonds is limited to States that had issued such bonds before June 22, 1984. Qualified veterans' mortgage bonds are not subject to the State volume limitations generally applicable to private activity bonds. Instead, annual issuance in each State is subject to a State volume limitation based on the volume of such bonds issued by the State before June 22, 1984. The five States eligible to issue these bonds are Alaska, California, Oregon, Texas, and Wisconsin. Loans financed with qualified veterans' mortgage bonds can be made only with respect to principal residences and can not be made to acquire or replace existing mortgages. Mortgage loans made with the proceeds of these bonds can be made only to veterans who served on active duty before 1977 and who applied for the financing before the date 30 years after the last date on which such veteran left active service (the ''eligibility period'').

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagors for owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including income limitations for homebuyers and purchase price limitations for the home financed with bond proceeds. In addition, qualified mortgage bonds generally cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the ''first-time homebuyer'' requirement).

HOUSE BILL

The House bill repeals the requirement that veterans receiving loans financed with qualified veterans' mortgage bonds must have served before 1977. It also reduces the eligibility period to 25 years (rather than 30 years) following release from the military service. The bill provides new State volume limits for these bonds for the five eligible States. In 2010, the new annual limit on the total volume of veterans' bonds is $25 million for Alaska, $66.25 million for California, $25 million for Oregon, $53.75 million for Texas, and $25 million for Wisconsin. These volume limits are phased-in over the four-year period immediately preceding 2010 by allowing the applicable percentage of the 2010 volume limits. The following table provides those percentages.

| *Calendar Year:* | *Applicable Percentage is:* |
|---|---|
| 2006 | 20 |
| 2007 | 40 |
| 2008 | 60 |
| 2009 | 80 |

The volume limits are zero for 2011 and each year thereafter. Unused allocation cannot be carried forward to subsequent years.

*Effective date.*—The provision generally applies to bonds issued after December 31, 2005. The provision expanding the definition of eligible veterans applies to financing provided after date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill with the following modifications. The conference agreement does not amend present law as it relates to qualified veterans' mortgage bonds issued by the States of California and Texas. In the case of qualified veterans' mortgage bonds issued by the States of Alaska, Oregon, and Wisconsin, (1) the requirement that veterans must have served before 1977 is repealed and (2) the eligibility period for applying for a loan following release from the military service is reduced from 30 years to 25 years.

In addition, the annual issuance of qualified veterans' mortgage bonds in the States of Alaska, Oregon and Wisconsin is subject to new State volume limitations which are phased in between the years 2006 and 2010. The State volume limit in these States for any calendar year after 2010 is zero.

*Effective date.*—The provision expanding the definition of eligible veterans applies to bonds issued on or after date of enactment. The provision amending State volume limitations applies to allocations of volume limitation made after April 5, 2006.

### D. CAPITAL GAINS TREATMENT FOR CERTAIN SELF-CREATED MUSICAL WORKS

(Sec. 304 of the House bill and sec. 1221 of the Code)

PRESENT LAW

*Capital gains*

The maximum tax rate on the net capital gain income of an individual is 15 percent for taxable years beginning in 2006. By contrast, the maximum tax rate on an individual's ordinary income is 35 percent. The reduced 15-percent rate generally is available for gain from the sale or exchange of a capital asset for which the taxpayer has satisfied a holding-period requirement. Capital assets generally include all property held by a taxpayer with certain specified exclusions.

An exclusion from the definition of a capital asset applies to inventory property or property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Another exclusion from capital asset status applies to copyrights, literary, musical, or artistic compositions, letters or memoranda, or similar property held by a taxpayer whose personal efforts created the property (or held by a taxpayer whose basis in the property is determined by reference to the basis of the taxpayer whose personal efforts created the property). Consequently, when a taxpayer that owns copyrights in, for example, books, songs, or paintings that the taxpayer created (or when a taxpayer to which the copyrights have been transferred by the works' creator in a substituted basis transaction) sells the copyrights, gain from the sale is treated as ordinary income, not capital gain.

*Charitable contributions*

A taxpayer generally is allowed a deduction for the fair market value of property contributed to a charity. If a taxpayer makes a contribution of property that would have generated ordinary income (or short-term capital gain), the taxpayer's charitable contribution deduction generally is limited to the property's adjusted basis.

HOUSE BILL

The House bill provides that at the election of a taxpayer, the sale or exchange before January 1, 2011 of musical compositions or copyrights in musical works created by the taxpayer's personal efforts (or having a basis determined by reference to the basis in the hands of the taxpayer whose personal efforts created the compositions or copyrights) is treated as the sale or exchange of a capital asset. The House bill provision does not change the present law limitation on a taxpayer's charitable deduction for the contribution of those compositions or copyrights.

*Effective date.*—The provision is effective for sales or exchanges in taxable years beginning after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

### E. DECREASE MINIMUM VESSEL TONNAGE LIMIT TO 6,000 DEADWEIGHT TONS

(Sec. 305 of the House bill and sec. 1355 of the Code)

PRESENT LAW

The United States employs a ''worldwide'' tax system, under which domestic corporations generally are taxed on all income, including income from shipping operations, whether derived in the United States or abroad. In order to mitigate double taxation, a foreign tax credit for income taxes paid to foreign countries is provided to reduce or eliminate the U.S. tax owed on such income, subject to certain limitations.

Generally, the United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income, including income from shipping operations, which is ''effectively connected'' with the conduct of a trade or business in the United States (sec. 882). Such ''effectively connected income'' generally is taxed in the same manner and at the same rates as the income of a U.S. corporation.

The United States imposes a four percent tax on the amount of a foreign corporation's U.S. source gross transportation income (sec. 887). Transportation income includes income from the use (or hiring or leasing for use) of a vessel and income from services directly related to the use of a vessel. Fifty percent of the transportation income attributable to transportation that either begins or ends (but not both) in the United States is treated as U.S. source gross transportation income. The tax does not apply, however, to U.S. source gross transportation income that is treated as income effectively connected with the conduct of a U.S. trade or business. U.S. source gross transportation income is not treated as effectively connected income unless (1) the taxpayer has a fixed place of business in the United States involved in earning the income, and (2) substantially all the income is attributable to regularly scheduled transportation.

The tax imposed by section 882 or 887 on income from shipping operations may be limited by an applicable U.S. income tax treaty or by an exemption of a foreign corporation's international shipping operations income in instances where a foreign country grants an equivalent exemption (sec. 883).

Notwithstanding the general rules described above, the American Jobs Creation Act of 2004 (''AJCA'')[51] generally allows corporations that are qualifying vessel operators[52] to elect a ''tonnage tax'' in lieu of the corporate income tax on taxable income from certain shipping activities. Accordingly, an electing corporation's gross income does not include its income from qualifying shipping activities (and items of loss, deduction, or credit are disallowed with respect to such excluded income), and electing corporations are only subject to tax on these activities at the maximum corporate income tax rate on their notional shipping income, which is based on the net tonnage of the corporation's qualifying vessels.[53] No deductions are allowed against the notional shipping income of an electing corporation, and no credit is allowed against the notional tax imposed under the tonnage tax regime. In addition, special deferral rules apply to the gain on the sale of a qualifying vessel, if such vessel is replaced during a limited replacement period.

Generally, a ''qualifying vessel'' is defined as a self-propelled (or a combination of self-propelled and non-self-propelled) U.S.-flag vessel of not less than 10,000 deadweight tons[54] that is used exclusively in the U.S. foreign trade.

HOUSE BILL

The House bill expands the definition of ''qualifying vessel'' to include self-propelled (or a combination of self-propelled and non-self-propelled) U.S. flag vessels of not less than 6,000 deadweight tons used exclusively in the United States foreign trade. The modified definition applies for taxable years beginning after December 31, 2005 and ending before January 1, 2011.

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005 and ending before January 1, 2011.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

F. MODIFICATION OF SPECIAL ARBITRAGE RULE FOR CERTAIN FUNDS

(Sec. 306 of the House bill and sec. 307 of the Senate amendment)

PRESENT LAW

In general, present-law tax-exempt bond arbitrage restrictions provide that interest on a State or local government bond is not eligible for tax-exemption if the proceeds are invested, directly or indirectly, in materially higher yielding investments or if the debt service on the bond is secured by or paid from (directly or indirectly) such investments. An exception to the arbitrage restrictions, enacted in 1984, provides that the pledge of income from investments in the Texas Permanent University Fund (the ''Fund'') as security for a limited amount of tax-exempt bonds will not cause interest on those bonds to be taxable. The terms of this exception are limited to State constitutional or statutory restrictions continuously in effect since October 9, 1969. In addition, the exception only applies to an amount of tax-exempt bonds that does not exceed 20 percent of the value of the Fund.

The Fund consists of certain State lands that were set aside for the benefit of higher education, the income from mineral rights to these lands, and certain other earnings on Fund assets. The Texas constitution directs that monies held in the Fund are to be invested in interest-bearing obligations and other securities. Income from the Fund is apportioned between two university systems operated by the State. Tax-exempt bonds issued by the university systems to finance buildings and other permanent improvements were secured by and payable from the income of the Fund.

Prior to 1999, the constitution did not permit the expenditure or mortgage of the Fund for any purpose. In 1999, the State constitutional rules governing the Fund were modified with regard to the manner in which amounts in the Fund are distributed for the benefit of the two university systems. The State constitutional amendments allow for the possibility that in the event investment earnings are less than annual debt service on the bonds some of the debt service could be considered as having been paid with the Fund corpus. The 1984 exception refers only to bonds secured by investment earnings on securities or obligations held by the Fund. Despite the constitutional amendments, the IRS has agreed to continue to apply the 1984 exception to the Fund through August 31, 2007, if clarifying legislation is introduced in the 109th Congress prior to August 31, 2005. Clarifying legislation was introduced in the 109th Congress on May 26, 2005.[55]

HOUSE BILL

The provision codifies and extends the IRS agreement until August 31, 2009. The 1984 exception is conformed to the State constitutional amendments to permit its continued applicability to bonds of the two university systems. The limitation on the aggregate amount of bonds which may benefit from the exception is not modified, and remains at 20 percent of the value of the Fund. The provision sunsets August 31, 2009.

*Effective date.*—The provision is effective for bonds issued after the date of enactment and before August 31, 2009.

SENATE AMENDMENT

The Senate amendment follows the House bill provision, and also increases the amount of bonds that may benefit from the exception to 30 percent of the value of the Fund.

*Effective date.*—The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

G. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS

(Sec. 468 of the Senate amendment and secs. 167(g) and 263A of the Code)

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. Section 167(g) provides that the cost of motion picture films, sound recordings, copyrights, books, patents, and other property specified in regulations is eligible to be recovered using the income forecast method of depreciation.

Under the income forecast method, the depreciation deduction with respect to eligible property for a taxable year is determined by multiplying the adjusted basis of the property by a fraction, the numerator of which is the income generated by the property during the year, and the denominator of which is the total forecasted or estimated income expected to be generated prior to the close of the tenth taxable year after the year the property was placed in service. Any costs that are not recovered by the end of the tenth taxable year after the property was placed in service may be taken into account as depreciation in such year.

The adjusted basis of property that may be taken into account under the income forecast method includes only amounts that satisfy the economic performance standard of section 461(h) (except in the case of certain participations and residuals). In addition, taxpayers that claim depreciation deductions under the income forecast method are required to pay (or receive) interest based on a recalculation of depreciation under a ''look-back'' method.

The ''look-back'' method is applied in any ''recomputation year'' by (1) comparing depreciation deductions that had been claimed in prior periods to depreciation deductions that would have been claimed had the taxpayer used actual, rather than estimated,

[51] Pub. L. No. 108–357, sec. 248. The tonnage tax regime is effective for taxable years beginning after the date of enactment of AJCA (October 22, 2004).

[52] Generally, a qualifying vessel operator is a corporation that (1) operates one or more qualifying vessels and (2) meets certain requirements with respect to its shipping activities.

[53] An electing corporation's notional shipping income for the taxable year is the product of the following amounts for each of the qualifying vessels it operates: (1) the daily notional shipping income from the operation of the qualifying vessel, and (2) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in the United States foreign trade. The daily notional shipping income from the operation of a qualifying vessel is (1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and (2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons. ''United States foreign trade'' means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places. The temporary use in the United States domestic trade (i.e., the transportation of goods or passengers between places in the United States) of any qualifying vessel or the temporary ceasing to use a qualifying vessel may be disregarded, under special rules.

[54] Deadweight measures the lifting capacity of a ship expressed in long tons (2,240 lbs.), including cargo, crew, and consumables such as fuel, lube oil, drinking water, and stores. It is the difference between the number of tons of water a vessel displaces without such items on board and the number of tons it displaces when fully loaded.

[55] H.R. 2661.

total income from the property; (2) determining the hypothetical overpayment or underpayment of tax based on this recalculated depreciation; and (3) applying the overpayment rate of section 6621 of the Code. Except as provided in Treasury regulations, a ''recomputation year'' is the third and tenth taxable year after the taxable year the property was placed in service, unless the actual income from the property for each taxable year ending with or before the close of such years was within 10 percent of the estimated income from the property for such years.

A special rule is provided under Treasury guidance in the case of certain authors and other taxpayers, with respect to their capitalization of costs under section 263A and with respect to the recovery or amortization of such costs. Specifically, IRS Notice 88–62 (1988–1 C.B. 548) provides an elective safe harbor under which eligible taxpayers capitalize qualified created costs incurred during the taxable year and amortize 50 percent of the costs in the taxable year incurred, and 25 percent in each of the two successive taxable years. Under the Notice, qualified creative costs generally are those incurred by a self-employed individual in the production of creative properties (such as films, sound recordings, musical and dance compositions including accompanying words, and other similar properties), provided the personal efforts of the individual predominantly create the properties. An eligible taxpayer is an individual, and also a corporation or partnership, substantially all of which is owned by one qualified employee owner (an individual and family members).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that if any expense is paid or incurred by the taxpayer in creating or acquiring any musical composition (including accompanying words) or any copyright with respect to a musical composition that is required to be capitalized, then the income forecast method does not apply to such expenses, but rather, the expenses are amortized over a five-year period. The five-year period is the period beginning with the month in which the composition or copyright was acquired (or if created, the five-taxable-year period beginning with the taxable year in which the expenses were paid or incurred).

The provision does not apply to certain expenses. The expenses to which it does not apply are expenses: (1) that are qualified creative expenses under section 263A(h); (2) to which a simplified procedure established under section 263A(j)(2) applies; (3) that are an amortizable section 197 intangible; or (4) that, without regard to this provision, would not be allowable as a deduction.

*Effective date.*—The provision is effective for expenses paid or incurred after December 31, 2005, in taxable years ending after that date.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision with the following modifications. Under the conference agreement, the five-year amortization period is elective for the taxable year. Thus, a taxpayer that places in service any musical composition or copyright with respect to a musical composition in a taxable year may elect to apply the provision with respect to all musical compositions and musical composition copyrights placed in service in that taxable year. An eligible taxpayer that does not make the election may recover the costs under any method allowable under present law, including the income forecast method.

Under the conference agreement, the election may be made for any taxable year which begins before January 1, 2011.

In addition, the conference agreement provides that the five-year amortization period begins in the month the property is placed in service.

*Effective date.*—The conference agreement is effective for expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005 and before January 1, 2011.

## TITLE III—CHARITABLE PROVISIONS

### A. CHARITABLE GIVING INCENTIVES

1. Charitable deduction for nonitemizers; floor on deductions for itemizers (Sec. 201 of the Senate amendment and secs. 63 and 170 of the Code)

PRESENT LAW

In computing taxable income, an individual taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and up to the fair market value of property contributed to a charity described in section 501(c)(3), to certain veterans' organizations, fraternal societies, and cemetery companies,[56] or to a Federal, State, or local governmental entity for exclusively public purposes.[57] The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[58]

A taxpayer who takes the standard deduction (i.e., who does not itemize deductions) may not take a separate deduction for charitable contributions.[59]

A payment to a charity (regardless of whether it is termed a ''contribution'') in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[60] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a ''quid pro quo'' contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services is deductible as a charitable contribution.[61]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50–percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50–percent, 30–percent, and 20–percent limit may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2006 is $150,500 ($77,250 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by three percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the overall limitation on itemized deductions phases out for all taxpayers. The overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006 and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however, this elimination of the limitation sunsets on December 31, 2010.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Deduction for nonitemizers*

In the case of an individual taxpayer who does not itemize deductions, the provision allows a ''direct charitable deduction'' from adjusted gross income for charitable contributions paid in cash during the taxable year. This deduction is allowed in addition to the standard deduction. The direct charitable deduction is the amount of the deduction allowable under section 170(a) for the taxable year for cash contributions (determined without regard to any carryover). The amount deductible under the provision is subject to the rules normally governing charitable contribution deductions, such as the substantiation requirements. In addition, the amount of the deduction is available only to the extent that the otherwise allowable direct charitable deduction exceeds the floor on charitable contributions, described below (i.e., $210 ($420 in the case of a joint return)). The deduction is allowed in computing alternative minimum taxable income.

The provision does not change the present-law rules regarding the carryover of charitable contributions to or from a taxable year, including a taxable year in which the taxpayer is allowed the direct contribution deduction.

*Floor on itemized deductions*

Under the provision, the amount of an individual's charitable contribution deduction

[56] Secs. 170(c)(3)–(5).

[57] Sec. 170(c)(1).

[58] Secs. 170(b) and (e).

[59] Sec. 170(a). The Economic Recovery Tax Act of 1981 adopted a temporary provision that permitted individual taxpayers who did not itemize income tax deductions to claim a deduction from gross income for a specified percentage of their charitable contributions. The maximum deduction was $25 for 1982 and 1983, $75 for 1984, 50 percent of the amount of the contribution for 1985, and 100 percent of the amount of the contribution for 1986. The nonitemizer deduction terminated for contributions made after 1986.

[60] Sec. 170(f)(8).

[61] Sec. 6115.

(cash and noncash) is subject to a floor. The floor is $210 ($420 in the case of a joint return). In the case of an individual who elects to itemize deductions, the floor applies to the deduction otherwise allowed under section 170 for all contributions. In the case of an individual who does not elect to itemize deductions, the floor applies in determining the amount of the direct charitable deduction. The provision does not otherwise change the present-law rules pertaining to charitable contributions.

*Effective date.*—The provision is effective for contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Tax-free distributions from individual retirement plans for charitable purposes (Sec. 202 of the Senate amendment and secs. 408, 6034, 6104, and 6652 of the Code)

PRESENT LAW

*In general*

If an amount withdrawn from a traditional individual retirement arrangement (''IRA'') or a Roth IRA is donated to a charitable organization, the rules relating to the tax treatment of withdrawals from IRAs apply to the amount withdrawn and the charitable contribution is subject to the normally applicable limitations on deductibility of such contributions.

*Charitable contributions*

In computing taxable income, an individual taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and up to the fair market value of property contributed to a charity described in section 501(c)(3), to certain veterans' organizations, fraternal societies, and cemetery companies,[62] or to a Federal, State, or local governmental entity for exclusively public purposes.[63] The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[64]

A taxpayer who takes the standard deduction (i.e., who does not itemize deductions) may not take a separate deduction for charitable contributions.[65]

A payment to a charity (regardless of whether it is termed a ''contribution'') in exchange for which the donor receives an economic benefit is not deductible, except to the extent that the donor can demonstrate, among other things, that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[66] In addition, present law requires that any charity that receives a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a ''quid pro quo'' contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion exceeding the value of the goods or services may be deductible as a charitable contribution.[67]

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base, which is the taxpayer's adjusted gross income for a taxable year (disregarding any net operating loss carryback). To the extent a taxpayer has not exceeded the 50–percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer's contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 30 percent of the taxpayer's contribution base, and (3) contributions of capital gain property to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer's contribution base.

Contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limits may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income in excess of a threshold amount, which is indexed annually for inflation. The threshold amount for 2006 is $150,500 ($75,250 for married individuals filing separate returns). For those deductions that are subject to the limit, the total amount of itemized deductions is reduced by three percent of adjusted gross income over the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the overall limitation on itemized deductions phases-out for all taxpayers. The overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006 and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however, this elimination of the limitation sunsets on December 31, 2010.

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity (e.g., a remainder) while also either retaining an interest in that property (e.g., an income interest) or transferring an interest in that property to a noncharity for less than full and adequate consideration.[68] Exceptions to this general rule are provided for, among other interests, remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, and present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property.[69] For such interests, a charitable deduction is allowed to the extent of the present value of the interest designated for a charitable organization.

*IRA rules*

Within limits, individuals may make deductible and nondeductible contributions to a traditional IRA. Amounts in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal represents a return of nondeductible contributions). Individuals also may make nondeductible contributions to a Roth IRA. Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from a Roth IRA that are not qualified withdrawals are includible in gross income to the extent attributable to earnings. Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 59½ are subject to an additional 10–percent early withdrawal tax, unless an exception applies. Under present law, minimum distributions are required to be made from tax-favored retirement arrangements, including IRAs. Minimum required distributions from a traditional IRA must generally begin by the April 1 of the calendar year following the year in which the IRA owner attains age 70½.[70]

If an individual has made nondeductible contributions to a traditional IRA, a portion of each distribution from an IRA is nontaxable until the total amount of nondeductible contributions has been received. In general, the amount of a distribution that is nontaxable is determined by multiplying the amount of the distribution by the ratio of the remaining nondeductible contributions to the account balance. In making the calculation, all traditional IRAs of an individual are treated as a single IRA, all distributions during any taxable year are treated as a single distribution, and the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year.

In the case of a distribution from a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings, contributions and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions;[71] (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution, all regular Roth IRA contributions for a year are treated as a single contribution, and all conversion contributions during the year are treated as a single contribution.

Distributions from an IRA (other than a Roth IRA) are generally subject to withholding unless the individual elects not to have withholding apply.[72] Elections not to have withholding apply are to be made in the time and manner prescribed by the Secretary.

*Split-interest trust filing requirements*

Split-interest trusts, including charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, are required to file an annual information return (Form 1041A).[73] Trusts that are not split-interest trusts but that claim a charitable deduction for amounts permanently set aside for a charitable purpose[74] also are required to file Form 1041A. The returns are required to be made publicly available.[75] A trust that is required to distribute all trust net income currently to trust beneficiaries in a taxable

[62] Secs. 170(c)(3)–(5).
[63] Sec. 170(c)(1).
[64] Secs. 170(b) and (e).
[65] Sec. 170(a).
[66] Sec. 170(f)(8).
[67] Sec. 6115.
[68] Secs. 170(f), 2055(e)(2), and 2522(c)(2).
[69] Sec. 170(f)(2).
[70] Minimum distribution rules also apply in the case of distributions after the death of a traditional or Roth IRA owner.
[71] Conversion contributions refer to conversions of amounts in a traditional IRA to a Roth IRA.
[72] Sec. 3405.
[73] Sec. 6034. This requirement applies to all split-interest trusts described in section 4947(a)(2).
[74] Sec. 642(c).
[75] Sec. 6104(b).

year is exempt from this return requirement for such taxable year. A failure to file the required return may result in a penalty on the trust of $10 a day for as long as the failure continues, up to a maximum of $5,000 per return.

In addition, split-interest trusts are required to file annually Form 5227.[76] Form 5227 requires disclosure of information regarding a trust's noncharitable beneficiaries. The penalty for failure to file this return is calculated based on the amount of tax owed. A split-interest trust generally is not subject to tax and therefore, in general, a penalty may not be imposed for the failure to file Form 5227. Form 5227 is not required to be made publicly available.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Qualified charitable distributions from IRAs*

The provision provides an exclusion from gross income for otherwise taxable IRA distributions from a traditional or a Roth IRA in the case of qualified charitable distributions.[77] Special rules apply in determining the amount of an IRA distribution that is otherwise taxable. The present-law rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable distributions. Qualified charitable distributions are taken into account for purposes of the minimum distribution rules applicable to traditional IRAs to the same extent the distribution would have been taken into account under such rules had the distribution not been directly distributed under the provision. An IRA does not fail to qualify as an IRA merely because qualified charitable distributions have been made from the IRA. It is intended that the Secretary will prescribe rules under which IRA owners are deemed to elect out of withholding if they designate that a distribution is intended to be a qualified charitable distribution.

A qualified charitable distribution is any distribution from an IRA that is made after December 31, 2005, and before January 1, 2008, directly by the IRA trustee either to (1) an organization to which deductible contributions can be made (a ''direct distribution'') or (2) a ''split-interest entity.'' A split-interest entity means a charitable remainder annuity trust or charitable remainder unitrust (together referred to as a ''charitable remainder trust''), a pooled income fund, or a charitable gift annuity. Direct distributions are eligible for the exclusion only if made on or after the date the IRA owner attains age 70½. Distributions to a split interest entity are eligible for the exclusion only if made on or after the date the IRA owner attains age 59½. In the case of distributions to split-interest distributions, no person may hold an income interest in the amounts in the split-interest entity attributable to the charitable distribution other than the IRA owner, the IRA owner's spouse, or a charitable organization.

The exclusion applies to direct distributions only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution. Similarly, the exclusion applies in the case of a distribution directly to a split-interest entity only if a charitable contribution deduction for the entire present value of the charitable interest (for example, a remainder interest) otherwise would be allowable, determined without regard to the generally applicable percentage limitations.

If the IRA owner has any IRA that includes nondeductible contributions, a special rule applies in determining the portion of a distribution that is includible in gross income (but for the provision) and thus is eligible for qualified charitable distribution treatment. Under the special rule, the distribution is treated as consisting of income first, up to the aggregate amount that would be includible in gross income (but for the provision) if the aggregate balance of all IRAs having the same owner were distributed during the same year. In determining the amount of subsequent IRA distributions includible in income, proper adjustments are to be made to reflect the amount treated as a qualified charitable distribution under the special rule.

Special rules apply for distributions to split-interest entities. For distributions to charitable remainder trusts, the provision provides that subsequent distributions from the charitable remainder trust are treated as ordinary income in the hands of the beneficiary, notwithstanding how such amounts normally are treated under section 664(b). In addition, for a charitable remainder trust to be eligible to receive qualified charitable distributions, the charitable remainder trust has to be funded exclusively by such distributions. For example, an IRA owner may not make qualified charitable distributions to an existing charitable remainder trust any part of which was funded with assets that were not qualified charitable distributions.

Under the provision, a pooled income fund is eligible to receive qualified charitable distributions only if the fund accounts separately for amounts attributable to such distributions. In addition, all distributions from the pooled income fund that are attributable to qualified charitable distributions are treated as ordinary income to the beneficiary. Qualified charitable distributions to a pooled income fund are not includible in the fund's gross income.

In determining the amount includible in gross income by reason of a payment from a charitable gift annuity purchased with a qualified charitable distribution from an IRA, the portion of the distribution from the IRA used to purchase the annuity is not an investment in the annuity contract.

Any amount excluded from gross income by reason of the provision is not taken into account in determining the deduction for charitable contributions under section 170.

*Qualified charitable distribution examples*

The following examples illustrate the determination of the portion of an IRA distribution that is a qualified charitable distribution and the application of the special rules for a qualified charitable distribution to a split-interest entity. In each example, it is assumed that the requirements for qualified charitable distribution treatment are otherwise met (e.g., the applicable age requirement and the requirement that contributions are otherwise deductible) and that no other IRA distributions occur during the year.

*Example 1.*—Individual A has a traditional IRA with a balance of $100,000, consisting solely of deductible contributions and earnings. Individual A has no other IRA. The entire IRA balance is distributed in a direct distribution to a charitable organization. Under present law, the entire distribution of $100,000 would be includible in Individual A's income. Accordingly, under the provision, the entire distribution of $100,000 is a qualified charitable distribution. As a result, no amount is included in Individual A's income as a result of the distribution and the distribution is not taken into account in determining the amount of Individual A's charitable deduction for the year.

*Example 2.*—The facts are the same as in Example 1, except that the entire IRA balance of $100,000 is distributed to a charitable remainder unitrust, which contains no other assets and which must be funded exclusively by qualified charitable distributions. Under the terms of the trust, Individual A is entitled to receive five percent of the net fair market value of the trust assets each year. As explained in Example 1, the entire $100,000 distribution is a qualified charitable distribution, no amount is included in Individual A's income as a result of the distribution, and the distribution is not taken into account in determining the amount of Individual A's charitable deduction for the year. In addition, under a special rule in the provision for charitable remainder trusts, any distribution from the charitable remainder unitrust to Individual A is includible in gross income as ordinary income, regardless of the character of the distribution under the usual rules for the taxation of distributions from such a trust.

*Example 3.*—Individual B has a traditional IRA with a balance of $100,000, consisting of $20,000 of nondeductible contributions and $80,000 of deductible contributions and earnings. Individual B has no other IRA. In a direct distribution to a charitable organization, $80,000 is distributed from the IRA. Under present law, a portion of the distribution from the IRA would be treated as a nontaxable return of nondeductible contributions. The nontaxable portion of the distribution would be $16,000, determined by multiplying the amount of the distribution ($80,000) by the ratio of the nondeductible contributions to the account balance ($20,000/$100,000). Accordingly, under present law, $64,000 of the distribution ($80,000 minus $16,000) would be includible in Individual B's income.

Under the provision, notwithstanding the present-law tax treatment of IRA distributions, the distribution is treated as consisting of income first, up to the total amount that would be includible in gross income (but for the provision) if all amounts were distributed from all IRAs otherwise taken into account in determining the amount of IRA distributions. The total amount that would be includible in income if all amounts were distributed from the IRA is $80,000. Accordingly, under the provision, the entire $80,000 distributed to the charitable organization is treated as includible in income (before application of the provision) and is a qualified charitable distribution. As a result, no amount is included in Individual B's income as a result of the distribution and the distribution is not taken into account in determining the amount of Individual B's charitable deduction for the year. In addition, for purposes of determining the tax treatment of other distributions from the IRA, $20,000 of the amount remaining in the IRA is treated as Individual B's nondeductible contributions (i.e., not subject to tax upon distribution).

*Split-interest trust filing requirements*

The provision increases the penalty on split-interest trusts for failure to file a return and for failure to include any of the information required to be shown on such return and to show the correct information.

[76] Sec. 6011; Treas. Reg. sec. 53.6011–1(d).

[77] The provision does not apply to distributions from employer-sponsored retirements plans, including SIMPLE IRAs and simplified employee pensions (''SEPs'').

The penalty is $20 for each day the failure continues up to $10,000 for any one return. In the case of a split-interest trust with gross income in excess of $250,000, the penalty is $100 for each day the failure continues up to a maximum of $50,000. In addition, if a person (meaning any officer, director, trustee, employee, or other individual who is under a duty to file the return or include required information)[78] knowingly failed to file the return or include required information, then that person is personally liable for such a penalty, which would be imposed in addition to the penalty that is paid by the organization. Information regarding beneficiaries that are not charitable organizations as described in section 170(c) is exempt from the requirement to make information publicly available. In addition, the provision repeals the present-law exception to the filing requirement for split-interest trusts that are required in a taxable year to distribute all net income currently to beneficiaries. Such exception remains available to trusts other than split-interest trusts that are otherwise subject to the filing requirement.

*Effective date*

The provision relating to qualified charitable distributions is effective for distributions made in taxable years beginning after December 31, 2005, and before January 1, 2008. The provision relating to information returns of split-interest trusts is effective for returns for taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Charitable deduction for contributions of food inventory (sec. 203 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or if less the fair market value of the inventory.

For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (*i.e.*, basis plus one half of fair market value in excess of basis) or (2) two times basis (sec. 170(e)(3)). In general, a C corporation's charitable contribution deductions for a year may not exceed 10 percent of the corporation's taxable income (sec. 170(b)(2)). To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory (Treas. Reg. sec. 1.170A–4A(c)(3)). Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor's basis may still be recovered by the donor other than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of disputes between taxpayers and the IRS.[79]

Under the Katrina Emergency Tax Relief Act of 2005, any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for certain donations made after August 28, 2005, and before January 1, 2006, of food inventory. For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 10 percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other entity that is not a C corporation) from which contributions of ''apparently wholesome food'' are made. ''Apparently wholesome food'' is defined as food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Extension of Katrina Emergency Tax Relief Act of 2005*

The provision extends the provision enacted as part of the Katrina Emergency Tax Relief Act of 2005. As under such Act, under the provision, any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for donations of food inventory. For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 10 percent of the taxpayer's net income for such taxable year from all sole proprietorships, S corporations, or partnerships (or other non C corporation) from which contributions of apparently wholesome food are made. For example, as under the Katrina Emergency Tax Relief Act of 2005, if a taxpayer is a sole proprietor, a shareholder in an S corporation, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer's deduction for donations of food inventory is limited to 10 percent of the taxpayer's net income from the sole proprietorship and the taxpayer's interests in the S corporation and partnership. However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer's deduction would be limited to 10 percent of the net income from the trade or business of the sole proprietorship and the taxpayer's interest in the S corporation, but not the taxpayer's interest in the partnership.[80]

Under the provision, the enhanced deduction for food is available only for food that qualifies as ''apparently wholesome food.'' ''Apparently wholesome food'' is defined as it is defined under the Katrina Emergency Tax Relief Act of 2005.

*Modifications to enhanced deduction for food inventory*

Under the provision, for purposes of calculating the enhanced deduction, taxpayers that do not account for inventories under section 471 and that are not required to capitalize indirect costs under section 263A are able to elect to treat the basis of the contributed food as being equal to 25 percent of the food's fair market value.[81]

The provision changes the amount of the enhanced deduction for eligible contributions of food inventory to the lesser of fair market value or twice the taxpayer's basis in the inventory. For example, a taxpayer who makes an eligible donation of food that has a fair market value of $10 and a basis of $4 could take a deduction of $8 (twice basis). If the taxpayer's basis is $6 instead of $4, then the deduction would be $10 (fair market value). By contrast, under present law, a C corporation's deduction in the first example would be $7 (fair market value less half the appreciation) and in the second example would be $8. (Except for contributions made after August 28, 2005, and before January 1, 2006, taxpayers other than C corporations generally could take a deduction for a contribution of food inventory only for the $4 basis in either example.)

The provision provides that the fair market value of donated apparently wholesome food that cannot or will not be sold solely due to internal standards of the taxpayer or lack of market is determined without regard to such internal standards or lack of market and by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution or, if not so sold at such time, in the recent past.

*Effective date*

The provision is effective for contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Basis adjustment to stock of S corporation contributing property (Sec. 204 of the Senate amendment and sec. 1367 of the Code)

PRESENT LAW

Under present law, if an S corporation contributes money or other property to a charity, each shareholder takes into account the shareholder's pro rata share of the contribution in determining its own income tax liability.[82] A shareholder of an S corporation reduces the basis in the stock of the S corporation by the amount of the charitable contribution that flows through to the shareholder.[83]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that the amount of a shareholder's basis reduction in the stock

[78] Sec. 6652(c)(4)(C).

[79] *Lucky Stores Inc.* v. *Commissioner*, 105 T.C. 420 (1995) (holding that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted).

[80] The 10 percent limitation does not affect the application of the generally applicable percentage limitations. For example, if 10 percent of a sole proprietor's net income from the proprietor's trade or business was greater than 50 percent of the proprietor's contribution base, the available deduction for the taxable year (with respect to contributions to public charities) would be 50 percent of the proprietor's contribution base. Consistent with present law, such contributions may be carried forward because they exceed the 50 percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed the 10 percent limitation but not the 50 percent limitation could not be carried forward.

[81] This includes, for example, taxpayers who are eligible for administrative relief under Revenue Procedures 2002–28 and 2001–10.

[82] Sec. 1366(a)(1)(A).

[83] Sec. 1367(a)(2)(B).

of an S corporation by reason of a charitable contribution made by the corporation will be equal to the shareholder's pro rata share of the adjusted basis of the contributed property.[84]

Thus, for example, assume an S corporation with one individual shareholder makes a charitable contribution of stock with a basis of $200 and a fair market value of $500. The shareholder will be treated as having made a $500 charitable contribution (or a lesser amount if the special rules of section 170(e) apply), and will reduce the basis of the S corporation stock by $200.[85]

*Effective date.*—The provision applies to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Charitable deduction for contributions of book inventory (Sec. 205 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

Under present law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or if less the fair market value of the inventory.

For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis (sec. 170(e)(3)). In general, a C corporation's charitable contribution deductions for a year may not exceed 10 percent of the corporation's taxable income (sec. 170(b)(2)). To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory (Treas. Reg. sec. 1.170A–4A(c)(3)). Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor's basis may still be recovered by the donor other than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis.

The Katrina Emergency Tax Relief Act of 2005 extended the present-law enhanced deduction for C corporations to certain qualified book contributions made after August 28, 2005, and before January 1, 2006. For such purposes, a qualified book contribution means a charitable contribution of books to a public school that provides elementary education or secondary education (kindergarten through grade 12) and that is an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The enhanced deduction under the Katrina Emergency Tax Relief Act of 2005 is not allowed unless the donee organization certifies in writing that the contributed books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs and that the donee will use the books in such educational programs.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the present-law enhanced deduction for C corporations so that it is equal to the lesser of fair market value or twice the taxpayer's basis in the case of qualified book contributions. The provision provides that the fair market value for this purpose is determined by reference to a bona fide published market price for the book. Under the provision, a bona fide published market price of a book is a price of a book, determined using the same printing and same edition, published within seven years preceding the contribution, determined as a result of an arm's length transaction, and for which the book was customarily sold. For example, a publisher's listed retail price for a book would not meet the standard if the publisher could not demonstrate to the satisfaction of the Secretary that the price was one at which the book was customarily sold and was the result of an arm's length transaction. If a publisher entered into a contract with a local school district to sell newly published textbooks six years prior to making a qualified book contribution of such textbooks, the publisher could use as a bona fide published market price, the price at which such books regularly were sold to the school district under the contract. By contrast, if a publisher listed in a catalogue or elsewhere a ''suggested retail price,'' but books were not in fact customarily sold at such price, the publisher could not use the ''suggested retail price'' to determine the fair market value of the book for purposes of the enhanced deduction. Thus, in general, a bona fide published market price must be independently verifiable by reference to actual sales within the seven-year period preceding the contribution, and not to a publisher's own price list.

As an illustration of the mechanics of calculating the enhanced deduction under the provision, a C corporation that made a qualified book contribution with a bona fide published market price of $10 and a basis of $4 could take a deduction of $8 (twice basis). If the taxpayer's basis is $6 instead of $4, then the deduction is $10. Also, in such latter case, if the book's bona fide published market price was $5 at the time of the contribution but was $10 five years before the contribution, then the deduction is $10.

A qualified book contribution means a charitable contribution of books to: (1) an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on; (2) a public library; or (3) an organization described in section 501(c)(3) (except for private nonoperating foundations), that is organized primarily to make books available to the general public at no cost or to operate a literacy program. The donee must: (1) use the property consistent with the donee's exempt purpose; (2) not transfer the property in exchange for money, other property, or services; and (3) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements and also that the books are suitable, in terms of currency, content, and quantity, for use in the donee's educational programs and that the donee will use the books in such educational programs.

*Effective date.*—The provision is effective for contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. Modify tax treatment of certain payments to controlling exempt organizations and public disclosure of information relating to UBIT (Sec. 206 of the Senate amendment and secs. 512, 6011, 6104, and new sec. 6720C of the Code)

PRESENT LAW

*Payments to controlling exempt organizations*

In general, interest, rents, royalties, and annuities are excluded from the unrelated business income of tax-exempt organizations. However, section 512(b)(13) generally treats otherwise excluded rent, royalty, annuity, and interest income as unrelated business income if such income is received from a taxable or tax-exempt subsidiary that is 50 percent controlled by the parent tax-exempt organization. In the case of a stock subsidiary, ''control'' means ownership by vote or value of more than 50 percent of the stock. In the case of a partnership or other entity, control means ownership of more than 50 percent of the profits, capital or beneficial interests. In addition, present law applies the constructive ownership rules of section 318 for purposes of section 512(b)(13). Thus, a parent exempt organization is deemed to control any subsidiary in which it holds more than 50 percent of the voting power or value, directly (as in the case of a first-tier subsidiary) or indirectly (as in the case of a second-tier subsidiary).

Under present law, interest, rent, annuity, or royalty payments made by a controlled entity to a tax-exempt organization are includable in the latter organization's unrelated business income and are subject to the unrelated business income tax to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity (determined as if the entity were tax exempt).

The Taxpayer Relief Act of 1997 (the ''1997 Act'') made several modifications to the control requirement of section 512(b)(13). In order to provide transitional relief, the changes made by the 1997 Act do not apply to any payment received or accrued during the first two taxable years beginning on or after the date of enactment of the 1997 Act (August 5, 1997) if such payment is received or accrued pursuant to a binding written contract in effect on June 8, 1997, and at all times thereafter before such payment (but not pursuant to any contract provision that permits optional accelerated payments).

*Public disclosure of returns*

In general, an organization described in section 501(c) or (d) is required to make available for public inspection a copy of its annual information return (Form 990) and exemption application materials.[86] A penalty may be imposed on any person who does not

[84] See Rev. Rul. 96–11 (1996–1 C.B. 140) for a rule reaching a similar result in the case of charitable contributions made by a partnership.

[85] This example assumes that basis of the S corporation stock (before reduction) is at least $200.

[86] Sec. 6104(d).

make an organization's annual returns or exemption application materials available for public inspection. The penalty amount is $20 for each day during which a failure occurs. If more than one person fails to comply, each person is jointly and severally liable for the full amount of the penalty. The maximum penalty that may be imposed on all persons for any one annual return is $10,000. There is no maximum penalty amount for failing to make exemption application materials available for public inspection. Any person who willfully fails to comply with the public inspection requirements is subject to an additional penalty of $5,000.[87]

These requirements do not apply to an organization's annual return for unrelated business income tax (generally Form 990–T).[88]

HOUSE BILL

No provision.

SENATE AMENDMENT

*Payments to controlling exempt organizations*

The provision provides that the general rule of section 512(b)(13), which includes interest, rent, annuity, or royalty payments made by a controlled entity to a tax-exempt organization in the latter organization's unrelated business income to the extent the payment reduces the net unrelated income (or increases any net unrelated loss) of the controlled entity, applies only to the portion of payments received or accrued in a taxable year that exceed the amount of the specified payment that would have been paid or accrued if such payment had been determined under the principles of section 482. Thus, if a payment of rent by a controlled subsidiary to its tax-exempt parent organization exceeds fair market value, the excess amount of such payment over fair market value (as determined in accordance with section 482) is included in the parent organization's unrelated business income, to the extent that such excess reduced the net unrelated income (or increased any net unrelated loss) of the controlled entity (determined as if the entity were tax exempt). In addition, the provision imposes a 20–percent penalty on the larger of such excess determined without regard to any amendment or supplement to a return of tax, or such excess determined with regard to all such amendments and supplements.

The provision provides that if modifications to section 512(b)(13) made by the 1997 Act did not apply to a contract because of the transitional relief provided by the 1997 Act, then such modifications also do not apply to amounts received or accrued under such contract before January 1, 2001.

*Require public availability of unrelated business income tax returns*

The provision extends the present-law public inspection and disclosure requirements and penalties applicable to the Form 990 to the unrelated business income tax return (Form 990–T) of organizations described in section 501(c)(3). The provision provides that certain information may be withheld by the organization from public disclosure and inspection if public availability would adversely affect the organization, similar to the information that may be withheld under present law with respect to applications for tax exemption and the Form 990 (e.g., information relating to a trade secret, patent, process, style of work, or apparatus of the organization, if the Secretary determines that public disclosure of such information would adversely affect the organization).

*Require a UBIT certification for certain large charitable organizations*

Under the provision, a charitable organization that has annual total gross income and receipts (including, e.g., contributions and grants, program service revenue, investment income, and revenues from an unrelated trade or business or other sources) or gross assets of at least $10 million on the last day of the taxable year must include with its Form 990 and Form 990–T filings (if any) a statement by an independent auditor or an independent counsel that (1) contains a certification that the information contained in the return has been reviewed by the auditor or counsel and, to the best of his or her knowledge, is accurate; (2) to the best of the auditor's or counsel's knowledge, the allocation of expenses between the exempt and the unrelated business income activities of the organization comply with the requirements set forth by the Secretary under section 512; and (3) indicates whether the auditor or counsel has provided a tax opinion to the organization regarding the classification of any trade or business of the organization as an unrelated trade or business or the treatment of any income as unrelated business taxable income and a description of any material facts with respect to any such opinion.

Failure to file the required statement results in a penalty, imposed on the organization, of one half of one percent (0.5 percent) of the organization's total gross revenues for the taxable year, excluding revenues from contributions and grants. No penalty is imposed with respect to any failure that is due to reasonable cause.

*Effective date.*—The provision related to payments to controlling organizations applies to payments received or accrued after December 31, 2000. The public availability requirements of the provision apply to returns filed after the date of enactment. The certification requirement applies to returns for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Encourage contributions of real property made for conservation purposes (Sec. 207 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

*Charitable contributions generally*

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. The amount of deduction generally equals the fair market value of the contributed property on the date of the contribution. Charitable deductions are provided for income, estate, and gift tax purposes.[89]

In general, in any taxable year, charitable contributions by a corporation are not deductible to the extent the aggregate contributions exceed 10 percent of the corporation's taxable income computed without regard to net operating or capital loss carrybacks. For individuals, the amount deductible is a percentage of the taxpayer's contribution base, which is the taxpayer's adjusted gross income computed without regard to any net operating loss carryback. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. Cash contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer's contribution base. Cash contributions to private foundations and certain other organizations generally may be deducted up to 30 percent of the taxpayer's contribution base.

In general, a charitable deduction is not allowed for income, estate, or gift tax purposes if the donor transfers an interest in property to a charity while also either retaining an interest in that property or transferring an interest in that property to a noncharity for less than full and adequate consideration. Exceptions to this general rule are provided for, among other interests, remainder interests in charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds, present interests in the form of a guaranteed annuity or a fixed percentage of the annual value of the property, and qualified conservation contributions.

*Capital gain property*

Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property to a qualified charity are deductible at fair market value within certain limitations. Contributions of capital gain property to charitable organizations described in section 170(b)(1)(A) (*e.g.*, public charities, private foundations other than private non-operating foundations, and certain governmental units) generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of capital gain property for a taxable year within the 50–percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of capital gain property to charitable organizations described in section 170(b)(1)(B) (*e.g.*, private non-operating foundations) are deductible up to 20 percent of the taxpayer's contribution base.

For purposes of determining whether a taxpayer's aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions. Contributions of capital gain property that exceed the percentage limitation may be carried forward for five years.

*Qualified conservation contributions*

Qualified conservation contributions are not subject to the ''partial interest'' rule, which generally bars deductions for charitable contributions of partial interests in property. A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property. Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations. Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of

[87] Sec. 6685.

[88] Treas. Reg. sec. 301.6104(d)–1(b)(4)(ii).

[89] Secs. 170, 2055, and 2522, respectively.

an historically important land area or a certified historic structure.

Qualified conservation contributions of capital gain property are subject to the same limitations and carryover rules of other charitable contributions of capital gain property.

HOUSE BILL

No provision.

SENATE AMENDMENT

*In general*

Under the provision, the 30–percent contribution base limitation on contributions of capital gain property by individuals does not apply to qualified conservation contributions (as defined under present law). Instead, individuals may deduct the fair market value of any qualified conservation contribution to an organization described in section 170(b)(1)(A) to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. These contributions are not taken into account in determining the amount of other allowable charitable contributions.

Individuals are allowed to carryover any qualified conservation contributions that exceed the 50–percent limitation for up to 15 years.

For example, assume an individual with a contribution base of $100 makes a qualified conservation contribution of property with a fair market value of $80 and makes other charitable contributions subject to the 50–percent limitation of $60. The individual is allowed a deduction of $50 in the current taxable year for the non-conservation contributions (50 percent of the $100 contribution base) and is allowed to carryover the excess $10 for up to 5 years. No current deduction is allowed for the qualified conservation contribution, but the entire $80 qualified conservation contribution may be carried forward for up to 15 years.

*Farmers and ranchers*

*Individuals*

In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, a qualified conservation contribution is allowable up to 100 percent of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

In the above example, if the individual is a qualified farmer or rancher, in addition to the $50 deduction for non-conservation contributions, an additional $50 for the qualified conservation contribution is allowed and $30 may be carried forward for up to 15 years as a contribution subject to the 100–percent limitation.

*Corporations*

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation's taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100–percent limitation.

*Definition*

A qualified farmer or rancher means a taxpayer whose gross income from the trade of business of farming (within the meaning of section 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year.

*Effective date.*—The provision applies to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Enhanced deduction for charitable contributions of literary, musical, artistic, and scholarly compositions (sec. 208 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the deduction generally is limited to the taxpayer's basis in the property.[90] In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer's basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose. In cases involving contributions of tangible personal property to a private foundation (other than certain private foundations),[91] the amount of the deduction is limited to the taxpayer's basis in the property.

Under present law, charitable contributions of literary, musical, and artistic compositions created or prepared by the donor are considered ordinary income property and a taxpayer's deduction of such property is limited to the taxpayer's basis (typically, cost) in the property. A charitable contribution of a literary, musical, or artistic composition by a person other than the person who created or prepared the work generally is eligible for a fair market value deduction if the donee organization's use of the property is related to such organization's exempt purposes.

To be eligible for the deduction, the contribution must be of an undivided portion of the donor's entire interest in the property.[92] For purposes of the charitable income tax deduction, the copyright and the work in which the copyright is embodied are not treated as separate property interests. Accordingly, if a donor owns a work of art and the copyright to the work of art, a gift of the artwork without the copyright or the copyright without the artwork will constitute a gift of a ''partial interest'' and will not qualify for the income tax charitable deduction.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that a deduction for ''qualified artistic charitable contributions'' generally is increased from the value under present law (generally, basis) to the fair market value of the property contributed, measured at the time of the contribution. However, the amount of the increase of the deduction provided by the provision may not exceed the amount of the donor's adjusted gross income for the taxable year attributable to: (1) income from the sale or use of property created by the personal efforts of the donor that is of the same type as the donated property; and (2) income from teaching, lecturing, performing, or similar activities with respect to such property. In addition, the increase to the present-law deduction provided by the provision may not be carried over and deducted in other taxable years.

The provision defines a qualified artistic charitable contribution to mean a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both) that meets certain requirements. First, the contributed property must have been created by the personal efforts of the donor at least 18 months prior to the date of contribution. Second, the donor must obtain a qualified appraisal of the contributed property, a copy of which is required to be attached to the donor's income tax return for the taxable year in which such contribution is made. The appraisal must include evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been owned, maintained, and displayed by certain charitable organizations and sold to or exchanged by persons other than the taxpayer, donee, or any related person. Third, the contribution must be made to a public charity or to certain limited types of private foundations (i.e., an organization described in section 170(b)(1)(A)). Finally, the use of donated property by the recipient organization must be related to the organization's charitable purpose or function, and the donor must receive a written statement from the organization verifying such use.

Under the provision, the tangible property and the copyright on such property are treated as separate properties for purposes of the ''partial interest'' rule; thus, a gift of artwork without the copyright or a copyright without the artwork does not constitute a gift of a partial interest and is deductible. Contributions of letters, memoranda, or similar property that are written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including a government agency or instrumentality) do not qualify for a fair market value deduction unless the contributed property is entirely personal.

*Effective date.*—The deduction for qualified artistic charitable contributions applies to contributions made after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Mileage reimbursements to charitable volunteers excluded from gross income (sec. 209 of the Senate amendment and new sec. 139B of the Code)

PRESENT LAW

In general, an itemized deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. Unreimbursed out-of-pocket expenditures made incident to providing donated services to a qualified charitable organization—such as out-of-pocket transportation expenses necessarily incurred in performing donated services—may qualify as a charitable contribution.[93] No charitable contribution deduction is allowed for traveling expenses (including expenses for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.[94]

In determining the amount treated as a charitable contribution where a taxpayer operates a vehicle to provide donated services to a charity, the taxpayer either may deduct actual out-of-pocket expenditures or, in the case of a passenger automobile, may use the charitable standard mileage rate. The charitable standard mileage rate is set by statute at 14 cents per mile.[95] The taxpayer may also deduct (under either computation method), any parking fees and tolls incurred in rendering the services, but may not deduct any amount (regardless of the computation

[90] Sec. 170(e)(1).
[91] Sec. 170(e)(1)(B)(ii).
[92] Sec. 170(f)(3).
[93] Treas. Reg. sec. 1.170A–1(g).
[94] Sec. 170(j).
[95] Sec. 170(i).

method used) for general repair or maintenance expenses, depreciation, insurance, registration fees, etc. Regardless of the computation method used, the taxpayer must keep reliable written records of expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain records of miles driven, time, place (or use), and purpose of the mileage. If the charitable standard mileage rate is not used to determine the deduction, the taxpayer generally must maintain reliable written records of actual expenses incurred.

In lieu of actual operating expenses, an optional standard mileage rate may be used in computing the deductible costs of business use of an automobile. The business standard mileage rate is determined by the IRS and updated periodically. For business use occurring on or after January 1, 2006, the business standard mileage rate specified by the IRS is 44.5 cents per mile.

The standard mileage rate for charitable purposes is lower than the standard business rate because the charitable rate covers only the out-of-pocket operating expenses (including gasoline and oil) directly related to the use of the automobile in performing the donated services that a taxpayer may deduct as a charitable contribution. The charitable rate does not include costs that are not deductible as a charitable contribution such as general repair or maintenance expenses, depreciation, insurance, and registration fees. Such costs are, however, included in computing the business standard mileage rate.

Volunteer drivers who are reimbursed for mileage expenses have taxable income to the extent the reimbursement exceeds deductible travel expenses. Employees who are reimbursed for mileage expenses under a qualified arrangement that pays a mileage allowance in lieu of reimbursing actual expenses generally have taxable income to the extent the reimbursement exceeds the amount of the business standard mileage rate multiplied by the actual business miles.

Under section 6041, information reporting generally is required with respect to payments of $600 or more in any taxable year.

Under the Katrina Emergency Tax Relief Act of 2005, reimbursement by an organization described in section 170(c) (including public charities and private foundations) to a volunteer for the costs of using a passenger automobile in providing donated services to charity solely for the provision of relief related to Hurricane Katrina is excludable from the gross income of the volunteer up to an amount that does not exceed the business standard mileage rate prescribed for business use (as periodically adjusted), provided that recordkeeping requirements applicable to deductible business expenses are satisfied. The Katrina Emergency Tax Relief Act of 2005 does not permit a volunteer to claim a deduction or credit with respect to such amounts excluded. The provision applies for purposes of use of a passenger automobile during the period beginning on August 25, 2005, and ending on December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision extends the provision enacted as part of the Katrina Emergency Tax Relief Act of 2005. Under the provision, reimbursement by an organization described in section 170(c) (including public charities and private foundations) to a volunteer for the costs of using a passenger automobile in providing donated services to charity is excludable from the gross income of the volunteer up to an amount that does not exceed the business standard mileage rate prescribed for business use (as periodically adjusted), provided that recordkeeping requirements applicable to deductible business expenses are satisfied. Unlike the provision enacted as part of the Katrina Emergency Tax Relief Act of 2005, the provision is not limited to use solely for the provision of relief related to Hurricane Katrina. The provision does not permit a volunteer to claim a deduction or credit with respect to amounts excluded under the provision. Information reporting required by section 6041 is not required with respect to reimbursements excluded under the provision.

*Effective date*.—The provision applies for taxable years beginning after December 31, 2005, and beginning before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Alternative percentage limitation for corporate charitable contributions to the mathematics and science partnership program (sec. 210 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

Under present law, a corporation is allowed to deduct charitable contributions up to 10 percent of the corporation's modified taxable income for the year. For this purpose, taxable income is determined without regard to (1) the charitable contributions deduction, (2) any net operating loss carryback, (3) deductions for dividends received, and (4) any capital loss carryback for the taxable year.[96] Any charitable contribution by a corporation that is not currently deductible because of the percentage limitation may be carried forward for up to five taxable years.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, the corporate percentage limitation is applied separately to eligible mathematics and science contributions and to all other charitable contributions. In addition, the applicable percentage limitation for purposes of eligible mathematics and science contributions is 15 percent; the applicable percentage limitation for all other corporate charitable contributions remains 10 percent.

In general, an eligible mathematics and science contribution is a charitable contribution (other than a contribution of used equipment) to a qualified partnership for the purpose of an activity described in section 2202(c) of the Elementary and Secondary Education Act of 1965. Such activities include, for example, creating opportunities for enhanced and ongoing professional development of mathematics and science teachers and promoting strong teaching skills for mathematics and science teachers and teacher educators. A qualified partnership is an eligible partnership within the meaning of section 2201(b)(1) of the Elementary and Secondary Education Act of 1965, but only to the extent that such partnership does not include a person other than a person described in section 170(b)(1)(A) (describing organizations to which individuals may make charitable contributions deductible up to 50 percent of such individual's contribution base).

*Effective date*.—The provision applies for contributions made in taxable years beginning after December 31, 2005, and beginning before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

[96] Sec. 170(b)(2).

B. REFORMING CHARITABLE ORGANIZATIONS

1. Tax involvement of accommodation parties in tax-shelter transactions (Sec. 211 of the Senate amendment and secs. 6011, 6033, 6652, and new sec. 4965 of the Code)

PRESENT LAW

*Disclosure of listed and other reportable transactions by taxpayers*

Present law provides that a taxpayer that participates in a reportable transaction (including a listed transaction) and that is required to file a tax return must attach to its return a disclosure statement in the form prescribed by the Secretary.[97] For this purpose, the term taxpayer includes any person, including an individual, trust, estate, partnership, association, company, or corporation.[98]

Under present Treasury regulations, a reportable transaction includes a listed transaction and five other categories of transactions: (1) confidential transactions, which are transactions offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee; (2) transactions with contractual protection, which include transactions for which the taxpayer or a related party has the right to a full or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained, or for which fees are contingent on the taxpayer's realization of tax benefits from the transaction; (3) loss transactions, which are transactions resulting in the taxpayer claiming a loss under section 165 that exceeds certain thresholds, depending upon the type of taxpayer; (4) transactions with a significant book-tax difference; and (5) transactions involving a brief asset holding period.[99] A listed transaction means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011 (relating to the filing of returns and statements), and identified by notice, regulation, or other form of published guidance as a listed transaction.[100] The fact that a transaction is a reportable transaction does not affect the legal determination of whether the taxpayer's treatment of the transaction is proper.[101] Present law authorizes the Secretary to define a reportable transaction on the basis of such transaction being of a type which the Secretary determines as having a potential for tax avoidance or evasion.[102]

Treasury regulations provide guidance regarding the determination of when a taxpayer participates in a transaction for these purposes.[103] A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction, or if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences of a tax strategy described in published guidance that lists a transaction. A taxpayer has participated in a confidential transaction if the taxpayer's tax return reflects a tax benefit from the transaction and the taxpayer's disclosure of the tax treatment or tax structure of the transaction is limited under conditions of confidentiality. A taxpayer has participated in a transaction with contractual

[97] Treas. Reg. sec. 1.6011–4(a).

[98] Sec. 7701(a)(1); Treas. Reg. sec. 1.6011–4(c)(1).

[99] Treas. Reg. sec. 1.6011–4(b). In Notice 2006–6 (January 6, 2006), the Service indicated that it was removing transactions with a significant book-tax difference from the categories of reportable transactions.

[100] Sec. 6707A(c)(2); Treas. Reg. sec. 1.6011–4(b)(2).

[101] Treas. Reg. sec. 1.6011–4(a).

[102] Sec. 6707A(c)(1).

[103] Treas. Reg. sec. 1.6011–4(c)(3).

protection if the taxpayer's tax return reflects a tax benefit from the transaction, and the taxpayer has the right to the full or partial refund of fees or the fees are contingent.

Present law provides a penalty for any person who fails to include on any return or statement any required information with respect to a reportable transaction.[104] The penalty applies without regard to whether the transaction ultimately results in an understatement of tax, and applies in addition to any other penalty that may be imposed.

The penalty for failing to disclose a reportable transaction is $10,000 in the case of a natural person and $50,000 in any other case. The amount is increased to $100,000 and $200,000, respectively, if the failure is with respect to a listed transaction. The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the IRS Commissioner may rescind all or a portion of the penalty if rescission would promote compliance with the tax laws and effective tax administration.

*Disclosure of listed and other reportable transactions by material advisors*

Present law requires each material advisor with respect to any reportable transaction (including any listed transaction) to timely file an information return with the Secretary (in such form and manner as the Secretary may prescribe).[105] The information return must include (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. The return must be filed by the date specified by the Secretary.

A ''material advisor'' means any person (1) who provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and (2) who directly or indirectly derives gross income in excess of $250,000 ($50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons) or such other amount as may be prescribed by the Secretary for such advice or assistance.[106]

The Secretary may prescribe regulations which provide (1) that only one material advisor is required to file an information return in cases in which two or more material advisors would otherwise be required to file information returns with respect to a particular reportable transaction, (2) exemptions from the requirements of this section, and (3) other rules as may be necessary or appropriate to carry out the purposes of this section.[107]

Present law imposes a penalty on any material advisor who fails to timely file an information return, or who files a false or incomplete information return, with respect to a reportable transaction (including a listed transaction).[108] The amount of the penalty is $50,000. If the penalty is with respect to a listed transaction, the amount of the penalty is increased to the greater of (1) $200,000, or (2) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the transaction before the date the information return that includes the transaction is filed. An intentional failure or act by a material advisor with respect to the requirement to disclose a listed transaction increases the penalty to 75 percent of the gross income derived from the transaction.

The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the IRS Commissioner can rescind all or a portion of the penalty if rescission would promote compliance with the tax laws and effective tax administration.

HOUSE BILL

No provision.

SENATE AMENDMENT

*In general*

In general, under the provision, certain tax-exempt entities are subject to penalties for being a party to a prohibited tax shelter transaction. A prohibited tax shelter transaction is a transaction that the Secretary determines is a listed transaction (as defined in section 6707A(c)(2)) or a prohibited transaction. A prohibited reportable transaction is a confidential transaction or a transaction with contractual protection (as defined by the Secretary in regulations) which is a reportable transaction as defined in sec. 6707A(c)(1). Under the provision, a tax-exempt entity is an entity that is described in section 501(c), 501(d), or 170(c) (not including the United States), Indian tribal governments, and tax qualified pension plans, individual retirement arrangements (''IRAs''), and similar tax-favored savings arrangements (such as Coverdell education savings accounts, health savings accounts, and qualified tuition plans).

*Entity level tax*

Under the provision, if a tax-exempt entity is a party at any time to a transaction during a taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, the entity is subject to a tax for such year equal to the greater of (1) 100 percent of the entity's net income (after taking into account any tax imposed with respect to the transaction) for such year that is attributable to the transaction or (2) 75 percent of the proceeds received by the entity that are attributable to the transaction.

In addition, if a transaction is not a listed transaction at the time a tax-exempt entity enters into the transaction (and is not otherwise a prohibited tax shelter transaction), but the transaction subsequently is determined by the Secretary to be a listed transaction (a ''subsequently listed transaction''), the entity must pay each taxable year an excise tax at the highest unrelated business taxable income rate times the greater of (1) the entity's net income (after taking into account any tax imposed) that is attributable to the subsequently listed transaction and that is properly allocable to the period beginning on the later of the date such transaction is listed by the Secretary or the first day of the taxable year or (2) 75 percent of the proceeds received by the entity that are attributable to the subsequently listed transaction and that are properly allocable to the period beginning on the later of the date such transaction is listed by the Secretary or the first day of the taxable year. The Secretary has the authority to promulgate regulations that provide guidance regarding the determination of the allocation of net income of a tax-exempt entity that is attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of enactment of the provision.

The entity level tax does not apply if the entity's participation is not willful and is due to reasonable cause, except that the willful and reasonable cause exception does not apply to the tax imposed for subsequently listed transactions. The entity level taxes do not apply to tax qualified pension plans, IRAs, and similar tax-favored savings arrangements (such as Coverdell education savings accounts, health savings accounts, and qualified tuition plans).

*Disclosure of participation in prohibited tax shelter transactions*

The provision requires that a taxable party to a prohibited tax shelter transaction disclose to the tax-exempt entity that the transaction is a prohibited tax shelter transaction. Failure to make such disclosure is subject to the present-law penalty for failure to include reportable transaction information under section 6707A. Thus, the penalty is $10,000 in the case of a natural person or $50,000 in any other case, except that if the transaction is a listed transaction, the penalty is $100,000 in the case of a natural person and $200,000 in any other case.[109]

The provision requires disclosure by a tax-exempt entity to the IRS of each participation in a prohibited tax shelter transaction and disclosure of other known parties to the transaction. The penalty for failure to disclose is imposed on the entity (or entity manager, in the case of qualified pension plans and similar tax favored retirement arrangements) at $100 per day the failure continues, not to exceed $50,000. If any person fails to comply with a demand on the tax-exempt entity by the Secretary for disclosure, such person or persons shall pay a penalty of $100 per day (beginning on the date of the failure to comply) not to exceed $10,000 per prohibited tax shelter transaction. As under present-law section 6652, no penalty is imposed with respect to any failure if it is shown that the failure is due to reasonable cause.

*Penalty on entity managers*

A tax of $20,000 is imposed on an entity manager that approves or otherwise causes a tax-exempt entity to be a party to a prohibited tax shelter transaction at any time during the taxable year, knowing or with reason to know that the transaction is a prohibited tax shelter transaction. An entity manager is defined as a person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, except: (1) in the case of an entity described in section 501(c)(3) or (c)(4) (other than a private foundation), an entity manager is an organization manager as defined in section 4958(f)(2); and (2) in the case of a private foundation, an entity manager is a foundation manager as defined in section 4946(b). The reasonable cause (or no willful participation) exception applies to this tax.

*Effective date.*—The provision generally is effective for transactions after the date of enactment, except that no tax applies with respect to income that is properly allocable to any period on or before the date that is 90 days after the date of enactment. The disclosure provisions apply to disclosures the due date for which are after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with modifications.

The conference agreement does not include the provision that the entity level or entity manager tax does not apply if the entity's participation is not willful and is due to reasonable cause.

In addition, the conference agreement adds a tax in the event that a tax-exempt entity

[104] Sec. 6707A.

[105] Sec. 6707(a), as added by the American Jobs Creation Act of 2004, Pub. L. No. 108–357, sec. 816(a).

[106] Sec. 6707(b)(1).

[107] Sec. 6707(c).

[108] Sec. 6707(b).

[109] The IRS Commissioner may rescind all or any portion of any such penalty if the violation is with respect to a prohibited tax shelter transaction other than a listed transaction and doing so would promote compliance with the requirements of the Code and effective tax administration. See sec. 6707A(d).

becomes a party to a prohibited tax shelter transaction without knowing or having reason to know that the transaction is a prohibited tax shelter transaction. In that case, the tax-exempt entity is subject to a tax in the taxable year the entity becomes a party and any subsequent taxable year of the highest unrelated business taxable income rate times the greater of (1) the entity's net income (after taking into account any tax imposed with respect to the transaction) for such year that is attributable to the transaction or (2) 75 percent of the proceeds received by the entity that are attributable to the transaction for such year.[110]

The conference agreement clarifies that the entity level tax rate that applies if the entity knows or has reason to know that a transaction is a prohibited tax shelter transaction does not apply to subsequently listed transactions.

The conference agreement modifies the definition of an entity manager to provide that: (1) in the case of tax qualified pension plans, IRAs, and similar tax-favored savings arrangements (such as Coverdell education savings accounts, health savings accounts, and qualified tuition plans) an entity manager is the person that approves or otherwise causes the entity to be a party to a prohibited tax shelter transaction, and (2) in all other cases the entity manager is the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and with respect to any act, the person having authority or responsibility with respect to such act.

In the case of a qualified pension plan, IRA, or similar tax-favored savings arrangement (such as a Coverdell education savings account, health savings account, or qualified tuition plan), the conferees intend that, in general, a person who decides that assets of the plan, IRA, or other savings arrangement are to be invested in a prohibited tax shelter transaction is the entity manager under the provision. Except in the case of a fully self-directed plan or other savings arrangement with respect to which a participant or beneficiary decides to invest in the prohibited tax shelter transaction, a participant or beneficiary generally is not an entity manager under the provision. Thus, for example, a participant or beneficiary is not an entity manager merely by reason of choosing among pre-selected investment options (as is typically the case if a qualified retirement plan provides for participant-directed investments).[111] Similarly, if an individual has an IRA and may choose among various mutual funds offered by the IRA trustee, but has no control over the investments held in the mutual funds, the individual is not an entity manager under the provision.

Under the provision, certain taxes are imposed if the entity or entity manager knows or has reason to know that a transaction is a prohibited tax shelter transaction. In general, the conferees intend that in order for an entity or entity manager to have reason to know that a transaction is a prohibited tax shelter transaction, the entity or entity manager must have knowledge of sufficient facts that would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction. If there is justifiable reliance on a reasoned written opinion of legal counsel (including in-house counsel) or of an independent accountant with expertise in tax matters, after making full disclosure of relevant facts about a transaction to such counsel or accountant, that a transaction is not a prohibited tax shelter transaction, then absent knowledge of facts not considered in the reasoned written opinion that would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction, the reason to know standard is not met.

Not obtaining a reasoned written opinion of legal counsel does not alone indicate whether a person has reason to know. However, if a transaction is extraordinary for the entity, promises a return for the organization that is exceptional considering the amount invested by, the participation of, or the absence of risk to the organization, or the transaction is of significant size, either in an absolute sense or relative to the receipts of the entity, then, in general, the presence of such factors may indicate that the entity or entity manager has a responsibility to inquire further about whether a transaction is a prohibited tax shelter transaction, or, absent such inquiry, that the reason to know standard is satisfied. For example, if a tax-exempt entity's investment in a transaction is $1,000, and the entity is promised or expects to receive $10,000 in the near term, in general, the rate of return would be considered exceptional and the entity should make inquiries with respect to the transaction. As another example, if a tax-exempt entity's expected income from a transaction is greater than five percent of the entity's annual receipts, or is in excess of $1,000,000, and the entity fails to make appropriate inquiries with respect to its participation in such transaction, such failure is a factor tending to show that the reason to know standard is met. Appropriate inquiries need not involve obtaining a reasoned written opinion. In general, if a transaction does not present the factors described above and the organization is small (measured by receipts and assets) and described in section 501(c)(3), it is expected that the reason to know standard will not be met.

In general, the conferees intend that in determining whether a tax-exempt entity is a ''party'' to a prohibited tax shelter transaction all the facts and circumstances should be taken into account. Absence of a written agreement is not determinative. Certain indirect involvement in a prohibited tax shelter transaction would not result in an entity being considered a party to the transaction. For example, investment by a tax-exempt entity in a mutual fund that in turn invests in or participates in a prohibited tax shelter transaction does not, in general, make the tax-exempt entity a party to such transaction, absent facts or circumstances that indicate that the purpose of the tax exempt entity's investment in the mutual fund was specifically to participate in such a transaction. However, whether a tax-exempt entity is a party to such a transaction will be informed by whether the entity or entity manager knew or had reason to know that an investment of the entity would be used in a prohibited tax shelter transaction. Presence of such knowledge or reason to know may indicate that the purpose of the investment was to participate in the prohibited tax shelter transaction and that the tax-exempt entity is a party to such transaction.

The conference agreement clarifies that a subsequently listed transaction means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after the entity has ''become a party to'' the transaction, and not, as under the Senate amendment, when the entity ''entered into'' the transaction. The conference agreement provides that a subsequently listed transaction does not include a transaction that is a prohibited reportable transaction. The conference agreement provides that the Secretary has the authority to allocate proceeds as well as income of a tax-exempt entity to various periods. The conference agreement also provides that the disclosure by tax-exempt entities to the Internal Revenue Service required under the provision is based on an entity's being a party to a prohibited tax shelter transaction and not, as under the Senate amendment, on an entity's ''participation'' in a prohibited tax shelter transaction. The conference agreement further provides that the Secretary may make a demand for disclosure on any entity manager subject to the tax, as well as on any tax exempt entity, and also provides that such managers and entities and not, as under the Senate amendment, ''persons'' are subject to the penalty for failure to comply with the demand.

*Effective date.*—In general, the provision is effective for taxable years ending after the date of enactment, with respect to transactions before, on, or after such date, except that no tax shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date that is 90 days after the date of enactment. The tax on certain knowing transactions does not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enactment. The disclosure provisions apply to disclosures the due date for which are after the date of enactment.

2. Apply an excise tax to acquisitions of interests in insurance contracts in which certain exempt organizations hold interests (sec. 212 of the Senate amendment and new secs. 4966 and 6050V of the Code)

PRESENT LAW

*Amounts received under a life insurance contract*

Amounts received under a life insurance contract paid by reason of the death of the insured are not includible in gross income for Federal tax purposes.[112] No Federal income tax generally is imposed on a policyholder with respect to the earnings under a life insurance contract (inside buildup).[113]

Distributions from a life insurance contract (other than a modified endowment contract) that are made prior to the death of the insured generally are includible in income to the extent that the amounts distributed exceed the taxpayer's investment in the contract (i.e., basis). Such distributions generally are treated first as a tax-free recovery of basis, and then as income.[114]

*Transfers for value*

A limitation on the exclusion for amounts received under a life insurance contract is provided in the case of transfers for value. If a life insurance contract (or an interest in the contract) is transferred for valuable consideration, the amount excluded from income by reason of the death of the insured is limited to the actual value of the consideration plus the premiums and other amounts

[110] The conference agreement clarifies that in all cases the 75 percent of proceeds received by the entity that are attributable to the transaction are with respect to the taxable year.

[111] Depending on the circumstances, the person who is responsible for determining the pre-selected investment options may be an entity manager under the provision.

[112] Sec. 101(a).

[113] This favorable tax treatment is available only if a life insurance contract meets certain requirements designed to limit the investment character of the contract. Sec. 7702.

[114] Sec. 72(e). In the case of a modified endowment contract, however, in general, distributions are treated as income first, loans are treated as distributions (i.e., income rather than basis recovery first), and an additional 10-percent tax is imposed on the income portion of distributions made before age 59½ and in certain other circumstances. Secs. 72(e) and (v). A modified endowment contract is a life insurance contract that does not meet a statutory ''7-pay'' test, i.e., generally is funded more rapidly than seven annual level premiums. Sec. 7702A.

subsequently paid by the acquiror of the contract.[115]

*Tax treatment of charitable organizations and donors*

Present law generally provides tax-exempt status for charitable, educational and certain other organizations, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which meet certain other requirements.[116] Governmental entities, including some educational organizations, are exempt from tax on income under other tax rules providing that gross income does not include income derived from the exercise of any essential governmental function and accruing to a State or any political subdivision thereof.[117]

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity for exclusively public purposes.[118]

*State-law insurable interest rules*

State laws generally provide that the owner of a life insurance contract must have an insurable interest in the insured person when the life insurance contract is issued. State laws vary as to the insurable interest of a charitable organization in the life of any individual. Some State laws provide that a charitable organization meeting the requirements of section 501(c)(3) of the Code is treated as having an insurable interest in the life of any donor,[119] or, in other States, in the life of any individual who consents (whether or not the individual is a donor).[120] Other States' insurable interest rules permit the purchase of a life insurance contract even though the person paying the consideration has no insurable interest in the life of the person insured if a charitable, benevolent, educational or religious institution is designated irrevocably as the beneficiary.[121]

*Transactions involving charities and non-charities acquiring life insurance*

Recently, there has been an increase in transactions involving the acquisition of life insurance contracts using arrangements in which both exempt organizations, primarily charities, and private investors have an interest in the contract.[122] The exempt organization has an insurable interest in the insured individuals, either because they are donors, because they consent, or otherwise under applicable State insurable interest rules. Private investors provide capital used to fund the purchase of the life insurance contracts, sometimes together with annuity contracts. Both the private investors and the charity have an interest in the contracts, directly or indirectly, through the use of trusts, partnerships, or other arrangements for sharing the rights to the contracts. Both the charity and the private investors receive cash amounts in connection with the investment in the contracts while the life insurance is in force or as the insured individuals die.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision imposes an excise tax, equal to 100 percent of the acquisition costs, on the taxable acquisition of any interest in an applicable insurance contract. An applicable insurance contract is any life insurance, annuity or endowment contract in which both an applicable exempt organization and any person that is not an applicable exempt organization have, directly or indirectly, held an interest in the contract (whether or not the interests are held at the same time).

An applicable exempt organization is any organization described in section 170(c), 168(h)(2)(A)(iv), 2055(a), or 2522(a). Thus, for example, an applicable exempt organization generally includes an organization that is exempt from Federal income tax by reason of being described in section 501(c)(3) (including one organized outside the United States), a government or political subdivision of a government, and an Indian tribal government.

A taxable acquisition is the acquisition of any direct or indirect interest in an applicable insurance contract by an applicable exempt organization, or by any other person if the interest in the contract in that person's hands is not described in the specific exceptions to ''applicable insurance contract.''

Under the provision, acquisition costs mean the direct or indirect costs (including premiums, commissions, fees, charges, or other amounts) of acquiring or maintaining an interest in an applicable insurance contract. Except as provided in regulations, if acquisition costs of any taxable acquisition are paid or incurred in more than one calendar year, the excise tax under the provision is imposed each time such costs are paid or incurred. In the case of an acquisition of an interest in an entity that directly or indirectly holds an interest in an applicable insurance contract, acquisition costs are intended to include the amount of money or value of property (including an applicable insurance contract) contributed to an entity or otherwise transferred or paid to acquire or increase an interest in the entity, that directly or indirectly holds an interest in an applicable insurance contract.

For example, acquisition costs include (1) each premium, commission, or fee with respect to the contract, (2) each amount paid or incurred to acquire or increase an interest in the contract, (3) each amount paid or incurred to acquire or increase an interest in an entity (such as a partnership, trust, corporation, or other type of entity or arrangement) that has a direct or indirect interest in the contract, and (4) if the contract is contributed to an entity, the greater of the value of the contract or the total amount of premiums, commissions, and fees paid or incurred to acquire and maintain the insurance contract. It is intended that, under regulatory authority provided as necessary to carry out the purposes of the provision, any other similar or economically equivalent amount paid or incurred is to be treated as acquisition costs.

Under the provision, an interest in an applicable insurance contract includes any right with respect to the contract, whether as an owner, beneficiary, or otherwise. An indirect interest in a contract includes an interest in an entity that, directly or indirectly, holds an interest in the contract. In the case of a section 1035 exchange of an applicable insurance contract, any interest in any of the contracts involved in the exchange is treated as an interest in all such contracts. An increase in an interest in an applicable insurance contract is treated as a separate acquisition, for purposes of application of the excise tax under the provision.

If an interest of an applicable exempt organization exists solely because the organization holds, as part of a diversified investment strategy, a de minimis interest in an entity which directly or indirectly holds an interest in the contract, such interest is not taken into account for purposes of the provision. For example, if an applicable exempt organization owns a de minimis amount of stock in a corporation which in turn owns life insurance contracts covering key employees, the excise tax under the provision does not apply because the stock ownership is not treated as an indirect interest in this circumstance. It is intended that Treasury regulations provide guidance as to the application of this rule so that it does not permit circumvention of the provision.

Except as provided in regulations, if a person acquires an interest in a contract before the contract is treated as an applicable insurance contract, the acquisition is treated as a taxable acquisition of an interest in applicable insurance contract as of the date the contract becomes an applicable insurance contract.

It is intended that an interest in an applicable insurance contract includes, for example, (1) a right with respect to the applicable insurance contract pursuant to a side contract or other similar arrangement, (2) an interest as a trust beneficiary in distributions from or income of a trust holding an interest in a contract, and (3) a right to distributions, guaranteed payments, or income of a partnership that holds an interest in a contract. It is not intended that a right with respect to the contract include typical rights of issuers of applicable insurance contracts.

Exceptions to the term ''applicable insurance contract'' apply under the provision. First, the term does not apply if each person (other than an applicable exempt organization) with a direct or indirect interest in the contract has an insurable interest in the insured independent of any interest of the exempt organization in the contract. Second, the term does not apply if the sole interest in the contract of each person other than the applicable exempt organization is as a named beneficiary. Third, the term does not apply if the sole interest in the contract of each person other than the applicable exempt organization is either (1) as a beneficiary of a trust holding an interest in the contract, but only if the person's designation as such a beneficiary was made without consideration and solely on a purely gratuitous basis, or (2) as a trustee who holds an interest in the contract in a fiduciary capacity solely for the benefit of applicable exempt organizations or of persons otherwise meeting one of the first two exceptions.

An exception to the term ''applicable insurance contract'' also is provided under the provision in certain cases in which a person other than an applicable exempt organization has an interest solely as a lender[123] with respect to the contract, and the contract covers only one individual who is an officer, director, or employee of the applicable exempt organization with an interest in the

[115] Section 101(a)(2). The transfer-for-value rule does not apply, however, in the case of a transfer in which the life insurance contract (or interest in the contract) transferred has a basis in the hands of the transferee that is determined by reference to the transferor's basis. Similarly, the transfer-for-value rule generally does not apply if the transfer is between certain parties (specifically, if the transfer is to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer).

[116] Section 501(c)(3).

[117] Section 115.

[118] Section 170.

[119] See, e.g., Mass. Gen. Laws Ann. ch. 175, sec. 123A(2) (West 2005); Iowa Code Ann. sec. 511.39 (West 2004) (''a person who, when purchasing a life insurance policy, makes a donation to the charitable organization or makes the charitable organization the beneficiary of all or a part of the proceeds of the policy . . . ).

[120] See, e.g., Cal. Ins. Code sec. 10110.1(f) (West 2005); 40 Pa. Cons. Stat. Ann. sec. 40–512 (2004); Fla. Stat. Ann. sec. 27.404 (2) (2004); Mich. Comp. Laws Ann. sec. 500.2212 (West 2004).

[121] Or. Rev. Stat. sec. 743.030 (2003); Del. Code Ann. Tit. 18, sec. 2705(a) (2004).

[122] Davis, Wendy, ''Death-Pool Donations,'' Trusts and Estates, May 2004, 55; Francis, Theo, ''Tax May Thwart Investment Plans Enlisting Charities,'' Wall St. J., Feb. 8, 2005, A–10.

[123] For this purpose, an interest as a lender includes a security interest in the insurance contract to which the loan relates.

contract, provided other requirements are met. This exception applies only if the number of insured persons under loans by such lenders with respect to such contracts does not exceed the greater of: (1) the lesser of five percent of the total officers, directors, and employees of the organization or 20, or (2) five. Under this exception, the aggregate amount of indebtedness with respect to 1 or more contracts covering a single individual may not exceed $50,000.

In addition, Treasury regulatory authority is provided to except certain contracts from treatment as applicable insurance contracts. Contracts may be excepted based on specific factors including (1) whether the transaction is at arms' length, (2) whether the economic benefits to the applicable exempt organization substantially exceed the economic benefits to all other persons with an interest in the contract (determined without regard to whether, or the extent to which, such organization has paid or contributed with respect to the contract), and (3) the likelihood of abuse.

The application of the exceptions can be illustrated as follows. Assume that an individual acquires a life insurance contract in which the individual is the insured person, and the named beneficiaries are the individual's son and a university that is an organization described in section 170(c). The contract is not an applicable insurance contract because the first exception applies. That is, because both the individual and his son have an insurable interest in the individual, all persons holding any interest in the contract (other than applicable exempt organizations) have an insurable interest in the insured independent of any interest of an applicable exempt organization in the contract. The second exception also applies in this situation.

As another example, assume that the three named beneficiaries are the insured's son, an unrelated friend, and a charity. The contract is not an applicable insurance contract because the second exception applies. That is, each beneficiary's sole interest is as a named beneficiary. In addition, the first exception also applies in this situation.

As a further example, assume that the insured individual creates an irrevocable trust for the benefit of the insured's descendants, and that the trustee of the trust uses trust funds to purchase a life insurance policy on the insured's life, and the trust is both the owner and beneficiary of the insurance policy. The insured individual's naming of his or her descendants as trust beneficiaries is a gratuitous act, done without consideration. As a result, the contract is not an applicable insurance contract under the third exception.

No Federal income tax deduction is permitted for the excise tax payable under the provision, as provided under the rule of Code section 275(a)(6). The amount of the excise tax payable under the provision is not included in the investment in the contract for purposes of section 72.

Treasury regulatory authority is provided to carry out the purposes of the provision. This includes authority to provide appropriate rules in the case in which a person acquires an interest before a contract is treated as an applicable insurance contract. This also includes authority to prevent, in cases the Treasury Secretary determines appropriate, the imposition of more than one tax if the same interest is acquired more than once (otherwise, the tax under the provision applies to each acquisition). Treasury regulatory authority is also provided to prevent avoidance of the provision, including through the use of intermediaries.

The provision provides reporting rules requiring an applicable exempt organization or other person that makes a taxable acquisition of an applicable insurance contract to file a return containing required information and such other information as is prescribed by the Treasury Secretary. Under these rules, a statement is required to be furnished to each person whose taxpayer identification information is required to be reported on the return. Penalties apply for failure to file the return or furnish the statement, including, in the case of intentional disregard of the return filing requirement, a penalty equal to the amount of the excise tax that has not been paid with respect to the items required to be included on the return.

*Effective date.*—The provision is effective for contracts issued after May 3, 2005.

The application of the effective date with respect to prior acquisitions of interests may be illustrated as follows. Assume that an exempt organization and a person that is not an exempt organization described in section 170(c) form a partnership before May 3, 2005. After May 3, 2005, the partnership acquires an interest in a life insurance contract that is issued after May 3, 2005. The acquisition by the partnership of the interest in the contract is treated as a taxable acquisition under the provision by each of the partners (*i.e.*, the exempt organization and the other person).

The provision also requires reporting of existing life insurance, endowment and annuity contracts issued on or before that date, in which an applicable exempt organization holds an interest on that date and which would be treated as an applicable insurance contract under the provision. This reporting is required within one year after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Increase the amounts of excise taxes imposed on public charities, social welfare organizations, and private foundations (sec. 213 of the Senate amendment and secs. 4941, 4942, 4943, 4944, 4945, and 4958 of the Code)

PRESENT LAW

*Public charities and social welfare organizations*

The Code imposes excise taxes on excess benefit transactions between disqualified persons (as defined in section 4958(f)) and charitable organizations (other than private foundations) or social welfare organizations (as described in section 501(c)(4)).[124] An excess benefit transaction generally is a transaction in which an economic benefit is provided by a charitable or social welfare organization directly or indirectly to or for the use of a disqualified person, if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

The excess benefit tax is imposed on the disqualified person and, in certain cases, on the organization manager, but is not imposed on the exempt organization. An initial tax of 25 percent of the excess benefit amount is imposed on the disqualified person that receives the excess benefit. An additional tax on the disqualified person of 200 percent of the excess benefit applies if the violation is not corrected. A tax of 10 percent of the excess benefit (not to exceed $10,000 with respect to any excess benefit transaction) is imposed on an organization manager that knowingly participated in the excess benefit transaction, if the manager's participation was willful and not due to reasonable cause, and if the initial tax was imposed on the disqualified person.[125] If more than one person is liable for the tax on disqualified persons or on management, all such persons are jointly and severally liable for the tax.[126]

*Private foundations*

*Self-dealing by private foundations*

Excise taxes are imposed on acts of self-dealing between a disqualified person (as defined in section 4946) and a private foundation.[127] In general, self-dealing transactions are any direct or indirect: (1) sale or exchange, or leasing, of property between a private foundation and a disqualified person; (2) lending of money or other extension of credit between a private foundation and a disqualified person; (3) the furnishing of goods, services, or facilities between a private foundation and a disqualified person; (4) the payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; (5) the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the private foundation; and (6) certain payments of money or property to a government official.[128] Certain exceptions apply.[129]

An initial tax of five percent of the amount involved with respect to an act of self-dealing is imposed on any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing. If such a tax is imposed, a 2.5-percent tax of the amount involved is imposed on a foundation manager who participated in the act of self-dealing knowing it was such an act (and such participation was not willful and was due to reasonable cause) up to $10,000 per act. Such initial taxes may not be abated.[130] Such initial taxes are imposed for each year in the taxable period, which begins on the date the act of self-dealing occurs and ends on the earliest of the date of mailing of a notice of deficiency for the tax, the date on which the tax is assessed, or the date on which correction of the act of self-dealing is completed. A government official (as defined in section 4946(c)) is subject to such initial tax only if the official participates in the act of self-dealing knowing it is such an act. If the act of self-dealing is not corrected, a tax of 200 percent of the amount involved is imposed on the disqualified person and a tax of 50 percent of the amount involved (up to $10,000 per act) is imposed on a foundation manager who refused to agree to correcting the act of self-dealing. Such additional taxes are subject to abatement.[131]

*Tax on failure to distribute income*

Private nonoperating foundations are required to pay out a minimum amount each year as qualifying distributions. In general, a qualifying distribution is an amount paid to accomplish one or more of the organization's exempt purposes, including reasonable and necessary administrative expenses.[132] Failure to pay out the minimum results in an initial excise tax on the foundation of 15 percent of the undistributed amount. An additional tax of 100 percent of the undistributed amount applies if an initial tax is imposed and the required distributions have

[124] Sec. 4958. The excess benefit transaction tax is commonly referred to as ''intermediate sanctions,'' because it imposes penalties generally considered to be less punitive than revocation of the organization's exempt status.

[125] Sec. 4958(d)(2). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[126] Sec. 4958(d)(1).

[127] Sec. 4941.

[128] Sec. 4941(d)(1).

[129] See sec. 4941(d)(2).

[130] Sec. 4962(b).

[131] Sec. 4961.

[132] Sec. 4942(g)(1)(A).

not been made by the end of the applicable taxable period.[133] A foundation may include as a qualifying distribution the salaries, occupancy expenses, travel costs, and other reasonable and necessary administrative expenses that the foundation incurs in operating a grant program. A qualifying distribution also includes any amount paid to acquire an asset used (or held for use) directly in carrying out one or more of the organization's exempt purposes and certain amounts set-aside for exempt purposes.[134] Private operating foundations are not subject to the payout requirements.

*Tax on excess business holdings*

Private foundations are subject to tax on excess business holdings.[135] In general, a private foundation is permitted to hold 20 percent of the voting stock in a corporation, reduced by the amount of voting stock held by all disqualified persons (as defined in section 4946). If it is established that no disqualified person has effective control of the corporation, a private foundation and disqualified persons together may own up to 35 percent of the voting stock of a corporation. A private foundation shall not be treated as having excess business holdings in any corporation if it owns (together with certain other related private foundations) not more than two percent of the voting stock and not more than two percent in value of all outstanding shares of all classes of stock in that corporation. Similar rules apply with respect to holdings in a partnership (''profits interest'' is substituted for ''voting stock'' and ''capital interest'' for ''nonvoting stock'') and to other unincorporated enterprises (by substituting ''beneficial interest'' for ''voting stock''). Private foundations are not permitted to have holdings in a proprietorship. Foundations generally have a five-year period to dispose of excess business holdings (acquired other than by purchase) without being subject to tax.[136] This five-year period may be extended an additional five years in limited circumstances.[137]

The initial tax is equal to five percent of the value of the excess business holdings held during the foundation's applicable taxable year. An additional tax is imposed if an initial tax is imposed and at the close of the applicable taxable period, the foundation continues to hold excess business holdings. The amount of the additional tax is equal to 200 percent of such holdings.

*Tax on jeopardizing investments*

Private foundations and foundation managers are subject to tax on investments that jeopardize the foundation's charitable purpose.[138] In general, an initial tax of five percent of the amount of the investment applies to the foundation and to foundation managers who participated in the making of the investment knowing that it jeopardized the carrying out of the foundation's exempt purposes. The initial tax on foundation managers may not exceed $5,000 per investment. If the investment is not removed from jeopardy (e.g., sold or otherwise disposed of), an additional tax of 25 percent of the amount of the investment is imposed on the foundation and five percent of the amount of the investment on a foundation manager who refused to agree to removing the investment from jeopardy. The additional tax on foundation managers may not exceed $10,000 per investment. An investment, the primary purpose of which is to accomplish a charitable purpose and no significant purpose of which is the production of income or the appreciation of property, is not considered a jeopardizing investment.[139]

*Tax on taxable expenditures*

Certain expenditures of private foundations are subject to tax.[140] In general, taxable expenditures are expenses: (1) for lobbying; (2) to influence the outcome of a public election or carry on a voter registration drive (unless certain requirements are met); (3) as a grant to an individual for travel, study, or similar purposes unless made pursuant to procedures approved by the Secretary; (4) as a grant to an organization that is not a public charity or exempt operating foundation unless the foundation exercises expenditure responsibility[141] with respect to the grant; or (5) for any non-charitable purpose. For each taxable expenditure, a tax is imposed on the foundation of 10 percent of the amount of the expenditure, and an additional tax of 100 percent is imposed on the foundation if the expenditure is not corrected. A tax of 2.5 percent of the expenditure (up to $5,000) also is imposed on a foundation manager who agrees to making a taxable expenditure knowing that it is a taxable expenditure. An additional tax of 50 percent of the amount of the expenditure (up to $10,000) is imposed on a foundation manager who refuses to agree to correction of such expenditure.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Self-dealing and excess benefit transaction initial taxes and dollar limitations*

For acts of self-dealing other than the payment of compensation by a private foundation to a disqualified person, the provision increases the initial tax on the self-dealer from five percent of the amount involved to 10 percent of the amount involved. For acts of self-dealing regarding the payment of compensation by a private foundation to a disqualified person, the provision increases the initial tax on the self-dealer from five percent of the amount involved (none of which is subject to abatement) to 25 percent of the amount involved (15 percent of which is subject to abatement). The provision increases the initial tax on foundation managers from 2.5 percent of the amount involved to five percent of the amount involved and increases the dollar limitation on the amount of the initial and additional taxes on foundation managers per act of self-dealing from $10,000 per act to $20,000 per act. Similarly, the provision doubles the dollar limitation on organization managers of public charities and social welfare organizations for participation in excess benefit transactions from $10,000 per transaction to $20,000 per transaction.

*Failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures*

The provision doubles the amounts of the initial taxes and the dollar limitations on foundation managers with respect to the private foundation excise taxes on the failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures.

Specifically, for the failure to distribute income, the initial tax on the foundation is increased from 15 percent of the undistributed amount to 30 percent of the undistributed amount.

For excess business holdings, the initial tax on excess business holdings is increased from five percent of the value of such holdings to 10 percent of such value.

For jeopardizing investments, the initial tax of five percent of the amount of the investment that is imposed on the foundation and on foundation managers is increased to 10 percent of the amount of the investment. The dollar limitation on the initial tax on foundation managers of $5,000 per investment is increased to $10,000 and the dollar limitation on the additional tax on foundation managers of $10,000 per investment is increased to $20,000.

For taxable expenditures, the initial tax on the foundation is increased from 10 percent of the amount of the expenditure to 20 percent, the initial tax on the foundation manager is increased from 2.5 percent of the amount of the expenditure to five percent, the dollar limitation on the initial tax on foundation managers is increased from $5,000 to $10,000, and the dollar limitation on the additional tax on foundation managers is increased from $10,000 to $20,000.

*Effective date*

The provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Reform rules for charitable contributions of easements on buildings in registered historic districts (Sec. 214 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

*In general*

Present law provides special rules that apply to charitable deductions of qualified conservation contributions, which include conservation easements and facade easements.[142] Qualified conservation contributions are not subject to the ''partial interest'' rule, which generally bars deductions for charitable contributions of partial interests in property.[143] Accordingly, qualified conservation contributions are contributions of partial interests that are eligible for a fair market value charitable deduction.

A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A qualified real property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property.[144] Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations.

Conservation purposes include: (1) the preservation of land areas for outdoor recreation

[133] Sec. 4942(a) and (b). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[134] Sec. 4942(g)(1)(B) and 4942(g)(2). In general, an organization is permitted to adjust the distributable amount in those cases where distributions during the five preceding years have exceeded the payout requirements. Sec. 4942(i).

[135] Sec. 4943. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[136] Sec. 4943(c)(6).

[137] Sec. 4943(c)(7).

[138] Sec. 4944. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[139] Sec. 4944(c).

[140] Sec. 4945. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[141] In general, expenditure responsibility requires that a foundation make all reasonable efforts and establish reasonable procedures to ensure that the grant is spent solely for the purpose for which it was made, to obtain reports from the grantee on the expenditure of the grant, and to make reports to the Secretary regarding such expenditures. Sec. 4945(h).

[142] Sec. 170(h).

[143] Sec. 170(f)(3).

[144] Charitable contributions of interests that constitute the taxpayer's entire interest in the property are not regarded as qualified real property interests within the meaning of section 170(h), but instead are subject to the general rules applicable to charitable contributions of entire interests of the taxpayer (i.e., generally are deductible at fair market value, without regard to satisfaction of the requirements of section 170(h)).

by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.[145]

In general, no deduction is available if the property may be put to a use that is inconsistent with the conservation purpose of the gift.[146] A contribution is not deductible if it accomplishes a permitted conservation purpose while also destroying other significant conservation interests.[147]

Taxpayers are required to obtain a qualified appraisal for donated property with a value of $5,000 or more, and to attach an appraisal summary to the tax return.[148] Under Treasury regulations, a qualified appraisal means an appraisal document that, among other things: (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170;[149] (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[150]

*Valuation*

The value of a conservation restriction granted in perpetuity generally is determined under the ''before and after approach.'' Such approach provides that the fair market value of the restriction is equal to the difference (if any) between the fair market value of the property the restriction encumbers before the restriction is granted and the fair market value of the encumbered property after the restriction is granted.[151]

If the granting of a perpetual restriction has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the charitable deduction for the conservation contribution is to be reduced by the amount of the increase in the value of the other property.[152] In addition, the donor is to reduce the amount of the charitable deduction by the amount of financial or economic benefits that the donor or a related person receives or can reasonably be expected to receive as a result of the contribution.[153] If such benefits are greater than those that will inure to the general public from the transfer, no deduction is allowed.[154] In those instances where the grant of a conservation restriction has no material effect on the value of the property, or serves to enhance, rather than reduce, the value of the property, no deduction is allowed.[155]

*Preservation of a certified historic structure*

A certified historic structure means any building, structure, or land which is (i) listed in the National Register, or (ii) located in a registered historic district (as defined in section 47(c)(3)(B)) and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.[156] For this purpose, a structure means any structure, whether or not it is depreciable, and, accordingly, easements on private residences may qualify.[157] If restrictions to preserve a building or land area within a registered historic district permit future development on the site, a deduction will be allowed only if the terms of the restrictions require that such development conform with appropriate local, State, or Federal standards for construction or rehabilitation within the district.[158]

The IRS and the courts have held that a facade easement may constitute a qualifying conservation contribution.[159] In general, a facade easement is a restriction the purpose of which is to preserve certain architectural, historic, and cultural features of the facade, or front, of a building. The terms of a facade easement might permit the property owner to make alterations to the facade of the structure if the owner obtains consent from the qualified organization that holds the easement.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision revises the rules for qualified conservation contributions with respect to property for which a charitable deduction is allowable under section 170(h)(4)(B)(ii) by reason of a property's location in a registered historic district. Under the provision, a charitable deduction is not allowable with respect to a structure or land area located in such a district (by reason of the structure or land area's location in such a district). A charitable deduction is allowable with respect to buildings (as is the case under present law) but the qualified real property interest that relates to the exterior of the building must preserve the entire exterior of the building, including the space above the building, the sides, the rear, and the front of the building. In addition, such qualified real property interest must provide that no portion of the exterior of the building may be changed in a manner inconsistent with the historical character of such exterior.

For any contribution relating to a registered historic district made after the date of enactment of the provision, taxpayers must include with the return for the taxable year of the contribution a qualified appraisal of the qualified real property interest (irrespective of the claimed value of such interest) and attach the appraisal with the taxpayer's return, photographs of the entire exterior of the building, and descriptions of all current restrictions on development of the building, including, for example, zoning laws, ordinances, neighborhood association rules, restrictive covenants, and other similar restrictions. Failure to obtain and attach an appraisal or to include the required information results in disallowance of the deduction. In addition, the donor and the donee must enter into a written agreement certifying, under penalty of perjury, that the donee is a qualified organization, with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and that the donee has the resources to manage and enforce the restriction and a commitment to do so.

Taxpayers claiming a deduction for a qualified conservation contribution with respect to the exterior of a building located in a registered historic district in excess of the greater of three percent of the fair market value of the underlying property or $10,000 must pay a $500 fee to the Internal Revenue Service or the deduction is not allowed. Amounts paid are required to be dedicated to Internal Revenue Service enforcement of qualified conservation contributions.

*Effective date.*—The provision relating to deductions for contributions relating to structures and land areas is effective for contributions made after the date of enactment. The limitation on the amount that may be deducted and the filing fee is effective for contributions made 180 days after the date of enactment. The rest of the provision is effective for contributions made after November 15, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Reform rules relating to charitable contributions of taxidermy and recapture tax benefit on property not used for an exempt use (secs. 215 and 216 of the Senate amendment and secs. 170, 6050L, and new sec. 6720B of the Code)

PRESENT LAW

*Deductibility of charitable contributions*

*In general*

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity.[160] The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[161] In general, more generous charitable contribution deduction rules apply to gifts made to public charities than to gifts made to private foundations. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift tax purposes. By contrast, contributions to nongovernmental, non-charitable tax-exempt organizations generally are not deductible by the donor,[162] though such organizations are eligible for the exemption from Federal income tax with respect to such donations.

*Contributions of property*

The amount of the deduction for charitable contributions of capital gain property generally equals the fair market value of the contributed property on the date of the contribution. Capital gain property means any capital asset, or property used in the taxpayer's trade or business, the sale of which

[145] Sec. 170(h)(4)(A).

[146] Treas. Reg. sec. 1.170A–14(e)(2).

[147] Treas. Reg. sec. 1.170A–14(e)(2).

[148] Sec. 170(f)(11)(C).

[149] In the case of a deduction first claimed or reported on an amended return, the deadline is the date on which the amended return is filed.

[150] Treas. Reg. sec. 1.170A–13(c)(3).

[151] Treas. Reg. sec. 1.170A–14(h)(3).

[152] Treas. Reg. sec. 1.170A–14(h)(3)(i).

[153] Id.

[154] Id.

[155] Treas. Reg. sec. 1.170A–14(h)(3)(ii).

[156] Sec. 170(h)(4)(B).

[157] Treas. Reg. sec. 1.170A–14(d)(5)(iii).

[158] Treas. Reg. sec. 1.170A–14(d)(5)(i).

[159] *Hillborn* v. *Commissioner*, 85 T.C. 677 (1985) (holding the fair market value of a facade donation generally is determined by applying the ''before and after'' valuation approach); *Richmond* v. *U.S.*, 699 F. Supp. 578 (E.D. La. 1988); Priv. Ltr. Rul. 199933029 (May 24, 1999) (ruling that a preservation and conservation easement relating to the facade and certain interior portions of a fraternity house was a qualified conservation contribution).

[160] The deduction also is allowed for purposes of calculating alternative minimum taxable income.

[161] Secs. 170(b) and (e).

[162] Exceptions to the general rule of non-deductibility include certain gifts made to a veterans' organization or to a domestic fraternal society. In addition, contributions to certain nonprofit cemetery companies are deductible for Federal income tax purposes, but generally are not deductible for Federal estate and gift tax purposes. Secs. 170(c)(3), 170(c)(4), 170(c)(5), 2055(a)(3), 2055(a)(4), 2106(a)(2)(A)(iii), 2522(a)(3), and 2522(a)(4).

at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property are subject to different percentage limitations (*i.e.*, limitations based on the donor's income) than other contributions of property.

For certain contributions of property, the deductible amount is reduced from the fair market value of the contributed property by the amount of any gain, generally resulting in a deduction equal to the taxpayer's basis. This rule applies to contributions of: (1) ordinary income property, *e.g.*, property that, at the time of contribution, would not have resulted in long-term capital gain if the property was sold by the taxpayer on the contribution date;[163] (2) tangible personal property that is used by the donee in a manner unrelated to the donee's exempt (or governmental) purpose; and (3) property to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)).

Charitable contributions of taxidermy are subject to the tangible personal property rule (number (2) above). For example, for appreciated taxidermy, if the property is used to further the donee's exempt purpose, the deduction is fair market value. But if the property is not used to further the donee's exempt purpose, the deduction is the donor's basis. If the taxidermy is depreciated, i.e., the value is less than the taxpayer's basis in such property, taxpayers generally deduct the fair market value of such contributions, regardless of whether the property is used for exempt or unrelated purposes by the donee.

*Substantiation*

No charitable deduction is allowed for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization.[164] Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee provided any goods or services in consideration for the contribution (and a good faith estimate of the value of any such goods or services).

In general, if the total charitable deduction claimed for non-cash property is more than $500, the taxpayer must attach a completed Form 8283 (Noncash Charitable Contributions) to the taxpayer's return or the deduction is not allowed.[165] C corporations (other than personal service corporations and closely-held corporations) are required to file Form 8283 only if the deduction claimed is more than $5,000. Information required on the Form 8283 includes, among other things, a description of the property, the appraised fair market value (if an appraisal is required), the donor's basis in the property, how the donor acquired the property, a declaration by the appraiser regarding the appraiser's general qualifications, an acknowledgement by the donee that it is eligible to receive deductible contributions, and an indication by the donee whether the property is intended for an unrelated use.

Taxpayers are required to obtain a qualified appraisal for donated property with a value of more than $5,000, and to attach an appraisal summary to the tax return.[166] Under Treasury regulations, a qualified appraisal means an appraisal document that, among other things: (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170;[167] (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[168] In the case of contributions of art valued at more than $20,000 and other contributions of more than $500,000, taxpayers are required to attach the appraisal to the tax return. Taxpayers may request a Statement of Value from the Internal Revenue Service in order to substantiate the value of art with an appraised value of $50,000 or more for income, estate, or gift tax purposes.[169] The fee for such a Statement is $2,500 for one, two, or three items or art plus $250 for each additional item.

If a donee organization sells, exchanges, or otherwise disposes of contributed property with a claimed value of more than $5,000 (other than publicly traded securities) within two years of the property's receipt, the donee is required to file a return (Form 8282) with the Secretary, and to furnish a copy of the return to the donor, showing the name, address, and taxpayer identification number of the donor, a description of the property, the date of the contribution, the amount received on the disposition, and the date of the disposition.[170]

HOUSE BILL

No provision.

SENATE AMENDMENT

*Contributions of taxidermy*

For contributions of taxidermy property with a claimed value of more than $500, the individual must include with the individual's return a photograph of the taxidermy and comparable sales data for similar items. It is intended that valuation must be based on comparable sales and that a deduction is not allowable if sufficient comparable sales are not provided.

For claims of more than $5,000, the taxpayer must notify the IRS of the deduction and include with the taxpayer's return a statement of value from the IRS, similar to that available under present law for items of art, or a request for such a statement and a fee of $500. The provision defines taxidermy property as a mounted work of art which contains any part of a dead animal.

It is intended that for purposes of the charitable contribution deduction, a taxpayer may not include in the taxpayer's basis of the contributed taxidermy any costs attributable to travel.

*Recapture of tax benefit upon subsequent disposition of tangible personal property intended for an exempt use*

In general, the provision recovers the tax benefit for charitable contributions of tangible personal property with respect to which a fair market value deduction is claimed and which is not used for exempt purposes. The provision applies to appreciated tangible personal property that is identified by the donee organization as for a use related to the purpose or function constituting the donee's basis for tax exemption, and for which a deduction of more than $5,000 is claimed (''applicable property'').[171]

Under the provision, if a donee organization disposes of applicable property within three years of the contribution of the property, the donor is subject to an adjustment of the tax benefit. If the disposition occurs in the tax year of the donor in which the contribution is made, the donor's deduction generally is basis and not fair market value.[172] If the disposition occurs in a subsequent year, the donor must include as ordinary income for its taxable year in which the disposition occurs an amount equal to the excess (if any) of (i) the amount of the deduction previously claimed by the donor as a charitable contribution with respect to such property, over (ii) the donor's basis in such property at the time of the contribution.

There is no adjustment of the tax benefit if the donee organization makes a certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization. The statement must either (1) certify that the use of the property by the donee was related to the purpose or function constituting the basis for the donee's exemption, and describe how the property was used and how such use furthered such purpose or function; or (2) state the intended use of the property by the donee at the time of the contribution and certify that such use became impossible or infeasible to implement. The organization must furnish a copy of the certification to the donor.

A penalty of $10,000 applies to a person that identifies applicable property as having a use that is related to a purpose or function constituting the basis for the donee's exemption knowing that it is not intended for such a use.[173]

*Reporting of exempt use property contributions*

The provision modifies the present-law information return requirements that apply upon the disposition of contributed property by a charitable organization (Form 8282, sec. 6050L). The return requirement is extended to dispositions made within three years after receipt (from two years). The donee organization also must provide, in addition to the information already required to be provided on the return, a description of the donee's use of the property, a statement of whether use of the property was related to the purpose or function constituting the basis for the donee's exemption, and, if applicable, a certification of any such use (described above).

*Effective date*

With respect to contributions of taxidermy property, the provision is effective for contributions made after November 15, 2005. With respect to exempt use property generally, the provision is effective for contributions made and returns filed after June 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

[163] For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (*i.e.*, basis plus one half of fair market value in excess of basis) or (2) two times basis. Sec. 170(e)(3), 170(e)(4), 170(e)(6).

[164] Sec. 170(f)(8).

[165] Sec. 170(f)(11).

[166] Id.

[167] In the case of a deduction first claimed or reported on an amended return, the deadline is the date on which the amended return is filed.

[168] Treas. Reg. sec. 1.170A–13(c)(3). Sec. 170(f)(11)(E).

[169] Rev. Proc. 96–15, 1996–1 C.B. 627.

[170] Sec. 6050L(a)(1).

[171] Present law rules continue to apply to any contribution of exempt use property for which a deduction of $5,000 or less is claimed.

[172] The disposition proceeds are regarded as relevant to a determination of fair market value.

[173] Other present-law penalties also may apply, such as the penalty for aiding and abetting the understatement of tax liability under section 6701.

6. Limit charitable deduction for contributions of clothing and household items and modify recordkeeping and substantiation requirements for certain charitable contributions (secs. 217 and 218 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

*Deductibility of charitable contributions*

*In general*

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity.[174] The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.[175] In general, more generous charitable contribution deduction rules apply to gifts made to public charities than to gifts made to private foundations. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift tax purposes. By contrast, contributions to nongovernmental, non-charitable tax-exempt organizations generally are not deductible by the donor,[176] though such organizations are eligible for the exemption from Federal income tax with respect to such donations.

*Contributions of property*

The amount of the deduction for charitable contributions of capital gain property generally equals the fair market value of the contributed property on the date of the contribution. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property are subject to different percentage limitations than other contributions of property.

For certain contributions of property, the deductible amount is reduced from the fair market value of the contributed property by the amount of any gain, generally resulting in a deduction equal to the taxpayer's basis. This rule applies to contributions of: (1) ordinary income property, e.g., property that, at the time of contribution, would not have resulted in long-term capital gain if the property was sold by the taxpayer on the contribution date;[177] (2) tangible personal property that is used by the donee in a manner unrelated to the donee's exempt (or governmental) purpose; and (3) property to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)).

Charitable contributions of clothing and household items are subject to the tangible personal property rule (number (2) above). If such contributed property is appreciated property in the hands of the taxpayer, and is not used to further the donee's exempt purpose, the deduction is basis. In general, however, the value of clothing and household items is less than the taxpayer's basis in such property, with the result that taxpayers generally deduct the fair market value of such contributions, regardless of whether the property is used for exempt or unrelated purposes by the donee.

*Substantiation*

A donor who claims a deduction for a charitable contribution must maintain reliable written records regarding the contribution, regardless of the value or amount of such contribution. For a contribution of money, the donor generally must maintain one of the following: (1) a cancelled check; (2) a receipt (or a letter or other written communication) from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution; or (3) in the absence of a cancelled check or a receipt, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution. For a contribution of property other than money, the donor generally must maintain a receipt from the donee organization showing the name of the donee, the date and location of the contribution, and a detailed description (but not the value) of the property.[178] A donor of property other than money need not obtain a receipt, however, if circumstances make obtaining a receipt impracticable. Under such circumstances, the donor must maintain reliable written records regarding the contribution. The required content of such a record varies depending upon factors such as the type and value of property contributed.[179]

In addition to the foregoing recordkeeping requirements, substantiation requirements apply in the case of charitable contributions with a value of $250 or more. No charitable deduction is allowed for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization. Such acknowledgement must include the amount of cash and a description (but not value) of any property other than cash contributed, whether the donee provided any goods or services in consideration for the contribution, and a good faith estimate of the value of any such goods or services.[180] In general, if the total charitable deduction claimed for non-cash property is more than $500, the taxpayer must attach a completed Form 8283 (Noncash Charitable Contributions) to the taxpayer's return or the deduction is not allowed.[181] In general, taxpayers are required to obtain a qualified appraisal for donated property with a value of more than $5,000, and to attach an appraisal summary to the tax return.

HOUSE BILL

No provision.

SENATE AMENDMENT

*General rule relating to clothing and household items*

The provision requires the Secretary to prepare and publish an itemized list of clothing and household items and to assign an amount to each item on the list. The assigned amount is treated as the fair market value of the item for purposes of the charitable contribution deduction and is based on an assumption that the item is in good used condition or better. Any deduction for a charitable contribution of each such item may not exceed the item's assigned amount. Any deduction for an item not in good used condition or better may not exceed 20 percent of the item's assigned amount. Any deduction for an item that is not functional with respect to the use for which it was designed is not allowed. The list must be published by the Secretary at least once each calendar year and is applicable to contributions of clothing and household items made while the list is effective. The Secretary has discretion to determine the effective dates for each published list. The list should be prepared in consultation with donee organizations that accept charitable contributions of clothing and household items. In assigning amounts to particular items, the Secretary should take into account the sales price of such contributed item when sold by the donee organizations, whether through an exempt program of such organizations or otherwise. If an item of clothing or household item is not included on the list published by the Secretary, present law rules apply to the contribution of the item.

The provision does not apply to contributions for which the donor has obtained a qualified appraisal. The provision also does not apply to contributions for which a deduction of more than $500 is claimed if (1) the donee sells the contributed item before the earlier of the due date (including extensions) for filing the return of tax for the taxable year of the donor in which the contribution was made or the date such return was filed; (2) the donee reports the sales price of the contributed item to the donor; and (3) the amount claimed as a deduction with respect to the contributed item does not exceed the amount of the sales price reported to the donor.

The provision does not apply to contributions by C corporations. The provision applies to new and used items. Household items include furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry and gems, and collections are excluded from the provision.

*Substantiation*

*Clothing and household items*

As under present law, for contributions with a claimed value of $250 or more, the taxpayer must obtain contemporaneous substantiation from the donee organization, which must include a description of the property contributed. The provision provides that, as part of such substantiation, the taxpayer obtain an indication of the condition of the item(s), a description of the type of item, and either a copy of the published list or instructions as to how to find such list.

Under present law, if a taxpayer claims that the total value of charitable contributions of noncash property is more than $500, the taxpayer must include with the taxpayer's return a description of the property contributed and such other information as the Secretary may require in order to claim a charitable deduction (sec. 170(f)(11)(B)). This requirement presently is satisfied through completion by the taxpayer of the Form 8283 and attachment of the form to the taxpayer's return. The provision requires that the donor include the information about the contribution that is contained in the contemporaneous substantiation obtained from the donee organization (for gifts of $250 or more) as part of such requirement.

*Contributions of cash*

In addition, in the case of a charitable contribution of money, regardless of the amount, applicable recordkeeping requirements are satisfied under the provision only

[174] The deduction also is allowed for purposes of calculating alternative minimum taxable income.

[175] Secs. 170(b) and (e).

[176] Exceptions to the general rule of non-deductibility include certain gifts made to a veterans' organization or to a domestic fraternal society. In addition, contributions to certain nonprofit cemetery companies are deductible for Federal income tax purposes, but generally are not deductible for Federal estate and gift tax purposes. Secs. 170(c)(3), 170(c)(4), 170(c)(5), 2055(a)(3), 2055(a)(4), 2106(a)(2)(A)(iii), 2522(a)(3), and 2522(a)(4).

[177] For certain contributions of inventory and other property, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item's appreciation (i.e., basis plus one half of fair market value in excess of basis) or (2) two times basis. Sec. 170(e)(3), 170(e)(4), 170(e)(6).

[178] Treas. Reg. sec. 1.170A–13(a).

[179] Treas. Reg. sec. 1.170A–13(b).

[180] Sec. 170(f)(8).

[181] Sec. 170(f)(11).

if the donor maintains a cancelled check or a receipt (or a letter or other written communication) from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. The recordkeeping requirements may not be satisfied by maintaining other written records.

*Effective date*

The provision relating to clothing and household items is effective for contributions made after December 31, 2006. The provision relating to substantiation more generally is effective for contributions made in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Contributions of fractional interests in tangible personal property (sec. 219 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

In general, a charitable deduction is not allowable for a contribution of a partial interest in property, such as an income interest, a remainder interest, or a right to use property.[182] A gift of an undivided portion of a donor's entire interest in property generally is not treated as a nondeductible gift of a partial interest in property.[183] For this purpose, an undivided portion of a donor's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the donor in such property and must extend over the entire term of the donor's interest in such property.[184] A gift generally is treated as a gift of an undivided portion of a donor's entire interest in property if the donee is given the right, as a tenant in common with the donor, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property.[185]

Consistent with these requirements, a charitable contribution deduction generally is not allowable for a contribution of a future interest in tangible personal property.[186] For this purpose, a future interest is one "in which a donor purports to give tangible personal property to a charitable organization, but has an understanding, arrangement, agreement, etc., whether written or oral, with the charitable organization which has the effect of reserving to, or retaining in, such donor a right to the use, possession, or enjoyment of the property."[187] Treasury regulations provide that section 170(a)(3), which generally denies a deduction for a contribution of a future interest in tangible personal property, "[has] no application in respect of a transfer of an undivided present interest in property. For example, a contribution of an undivided one-quarter interest in a painting with respect to which the donee is entitled to possession during three months of each year shall be treated as made upon the receipt by the donee of a formally executed and acknowledged deed of gift. However, the period of initial possession by the donee may not be deferred in time for more than one year."[188]

HOUSE BILL

No provision.

SENATE AMENDMENT

*Require consistent valuation of fractional interests in the same item of property*

In general, under present law and the provision a donor may take a deduction for a charitable contribution of a fractional interest in tangible personal property (such as an artwork), provided the donor satisfies the requirements for deductibility (including the requirements concerning contributions of partial interests and future interests in property), and in subsequent years make additional charitable contributions of interests in the same property.[189] Under the provision, a donor's charitable deduction for the initial contribution of a fractional interest in an item of tangible personal property (or collection of such items) shall be determined as under current law (e.g., based upon the fair market value of the artwork at the time of the contribution of the fractional interest and considering whether the use of the artwork will be related to the donee's exempt purposes). For purposes of determining the deductible amount of each additional contribution of an interest (whether or not a fractional interest) in the same item of property, under the provision, the fair market value of the item shall be the lesser of: (1) the value used for purposes of determining the charitable deduction for the initial fractional contribution; or (2) the fair market value of the item at the time of the subsequent contribution. This portion of the provision applies for income, gift, and estate tax purposes.

*Require actual possession by the donee*

The provision provides for recapture of the income tax charitable deduction or gift tax charitable deduction under certain circumstances. Specifically, if, during any one-year period following a contribution of a fractional interest in an item of tangible personal property, the donee fails to take actual possession of the item for a period of time corresponding substantially to the donee's then-existing percentage interest in the item, then the donee's charitable deduction for all previous contributions of interests in the item shall be recaptured (plus interest).

Under the provision, the Secretary of the Treasury is authorized to promulgate rules to prevent the circumvention of the provision by, for example, engaging in a transaction in which a donor first transfers one or more items of tangible personal property to a separate entity in exchange for ownership interests in the entity, and subsequently makes charitable contributions of such ownership interests.

*Effective date*

The provision is applicable for contributions, bequests, and gifts made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Provisions relating to substantial and gross overstatement of valuations of property (Sec. 220 of the Senate amendment and secs. 6662 and 6664 of the Code)

PRESENT LAW

*Taxpayer penalties*

Present law imposes accuracy-related penalties on a taxpayer in cases involving a substantial valuation misstatement or gross valuation misstatement relating to an underpayment of income tax.[190] For this purpose, a substantial valuation misstatement generally means a value claimed that is at least twice (200 percent or more) the amount determined to be the correct value, and a gross valuation misstatement generally means a value claimed that is at least four times (400 percent or more) the amount determined to be the correct value.

The penalty is 20 percent of the underpayment of tax resulting from a substantial valuation misstatement and rises to 40 percent for a gross valuation misstatement. No penalty is imposed unless the portion of the underpayment attributable to the valuation misstatement exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company). Under present law, no penalty is imposed with respect to any portion of the understatement attributable to any item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return and there is a reasonable basis for the tax treatment. Special rules apply to tax shelters.

In addition, the accuracy-related penalty does not apply if a taxpayer shows there was reasonable cause for an underpayment and the taxpayer acted in good faith.[191]

*Penalty for aiding and abetting understatement of tax*

A penalty is imposed on a person who: (1) aids or assists in or advises with respect to a tax return or other document; (2) knows (or has reason to believe) that such document will be used in connection with a material tax matter; and (3) knows that this would result in an understatement of tax of another person. In general, the amount of the penalty is $1,000. If the document relates to the tax return of a corporation, the amount of the penalty is $10,000.

*Qualified appraisals*

Present law requires a taxpayer to obtain a qualified appraisal for donated property with a value of more than $5,000, and to attach an appraisal summary to the tax return.[192] Treasury Regulations state that a qualified appraisal means an appraisal document that, among other things: (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170; (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[193]

*Qualified appraisers*

Treasury Regulations define a qualified appraiser as a person who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis, is qualified to make appraisals of the type of property being valued (as determined by the appraiser's background, experience, education and membership, if any, in professional appraisal associations), is independent, and understands that an intentionally false or fraudulent overstatement of the value of the appraised property may subject the appraiser to civil penalties.[194]

[182] Secs. 170(f)(3)(A) (income tax), 2055(e)(2) (estate tax), and 2522(c)(2) (gift tax).
[183] Sec. 170(f)(3)(B)(ii).
[184] Treas. Reg. sec. 1.170A–7(b)(1).
[185] Treas. Reg. sec. 1.170A–7(b)(1).
[186] Sec. 170(a)(3).
[187] Treas. Reg. sec. 1.170A–5(a)(4).
[188] Treas. Reg. sec. 1.170A–5(a)(2).
[189] See, e.g., *Winokur* v. *Commissioner*, 90 T.C. 733 (1988).
[190] Sec. 6662(b)(3) and (h).
[191] Sec. 6664(c).
[192] Sec. 170(f)(11).
[193] Treas. Reg. sec. 1.170A–13(c)(3).
[194] Treas. Reg. sec. 1.170A–13(c)(5)(i).

*Appraiser oversight*

The Secretary is authorized to regulate the practice of representatives of persons before the Department of the Treasury (''Department'').[195] After notice and hearing, the Secretary is authorized to suspend or disbar from practice before the Department or the Internal Revenue Service (''IRS'') a representative who is incompetent, who is disreputable, who violates the rules regulating practice before the Department or the IRS, or who (with intent to defraud) willfully and knowingly misleads or threatens the person being represented (or a person who may be represented).

The Secretary also is authorized to bar from appearing before the Department or the IRS, for the purpose of offering opinion evidence on the value of property or other assets, any individual against whom a civil penalty for aiding and abetting the understatement of tax has been assessed. Thus, an appraiser who aids or assists in the preparation or presentation of an appraisal will be subject to disciplinary action if the appraiser knows that the appraisal will be used in connection with the tax laws and will result in an understatement of the tax liability of another person. The Secretary has authority to provide that the appraisals of an appraiser who has been disciplined have no probative effect in any administrative proceeding before the Department or the IRS.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Taxpayer penalties*

The provision lowers the thresholds for imposing accuracy-related penalties on a taxpayer who claims a deduction for donated property for which a qualified appraisal is required. Under the provision, a substantial valuation misstatement exists when the claimed value of donated property is 150 percent or more of the amount determined to be the correct value. A gross valuation misstatement occurs when the claimed value of donated property is 200 percent or more the amount determined to be the correct value. Under the provision, the reasonable cause exception to the accuracy-related penalty does not apply in the case of gross valuation misstatements.

*Appraiser oversight*

*Appraiser penalties*

The provision establishes a civil penalty on any person who prepares an appraisal that is to be used to support a tax position if such appraisal results in a substantial or gross valuation misstatement. The penalty is equal to the greater of $1,000 or 10 percent of the understatement of tax resulting from a substantial or gross valuation misstatement, up to a maximum of 125 percent of the gross income derived from the appraisal. Under the provision, the penalty does not apply if the appraiser establishes that it was ''more likely than not'' that the appraisal was correct.

*Disciplinary proceeding*

The provision eliminates the requirement that the Secretary assess against an appraiser the civil penalty for aiding and abetting the understatement of tax before such appraiser may be subject to disciplinary action. Thus, the Secretary is authorized to discipline appraisers after notice and hearing. Disciplinary action may include, but is not limited to, suspending or barring an appraiser from: preparing or presenting appraisals on the value of property or other assets to the Department or the IRS; appearing before the Department or the IRS for the purpose of offering opinion evidence on the value of property or other assets; and providing that the appraisals of an appraiser who have been disciplined have no probative effect in any administrative proceeding before the Department or the IRS.

*Qualified appraisers*

The provision defines a qualified appraiser as an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements to be determined by the IRS in regulations; (2) regularly performs appraisals for which he or she receives compensation; (3) can demonstrate verifiable education and experience in valuing the type of property for which the appraisal is being performed; (4) has not been prohibited from practicing before the IRS by the Secretary at any time during the three years preceding the conduct of the appraisal; and (5) is not excluded from being a qualified appraiser under applicable Treasury regulations.

*Qualified appraisals*

The provision defines a qualified appraisal as an appraisal of property prepared by a qualified appraiser (as defined by the provision) in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

*Effective date*

The provision amending the accuracy-related penalty applies to returns filed after the date of enactment. The provision establishing a civil penalty that may be imposed on any person who prepares an appraisal that is to be used to support a tax position if such appraisal results in a substantial or gross valuation misstatement applies to appraisals prepared with respect to returns or submissions filed after the date of enactment. The provisions relating to appraiser oversight apply to appraisals prepared with respect to returns or submissions filed after the date of enactment. With respect to any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(ii) (currently designated section 170(h)(4)(B)(ii), relating to certain property located in a registered historic district and certified as being of historic significance to the district), and any appraisal with respect to such contribution, the provision generally applies to returns filed after December 16, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Establish additional exemption standards for credit counseling organizations (Sec. 221 of the Senate amendment and secs. 501 and 513 of the Code)

PRESENT LAW

Under present law, a credit counseling organization may be exempt as a charitable or educational organization described in section 501(c)(3), or as a social welfare organization described in section 501(c)(4). The IRS has issued two revenue rulings holding that certain credit counseling organizations are exempt as charitable or educational organizations or as social welfare organizations.

In Revenue Ruling 65–299,[196] an organization whose purpose was to assist families and individuals with financial problems, and help reduce the incidence of personal bankruptcy, was determined to be a social welfare organization described in section 501(c)(4). The organization counseled people in financial difficulties, advised applicants on payment of debts, and negotiated with creditors and set up debt repayment plans. The organization did not restrict its services to the poor, made no charge for counseling services, and made a nominal charge for certain services to cover postage and supplies. For financial support, the organization relied on voluntary contributions from local businesses, lending agencies, and labor unions.

In Revenue Ruling 69–441,[197] the IRS ruled an organization was a charitable or educational organization exempt under section 501(c)(3) by virtue of aiding low-income people who had financial problems and providing education to the public. The organization in that ruling had two functions: (1) educating the public on personal money management, such as budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications; and (2) providing individual counseling to low-income individuals and families without charge. As part of its counseling activities, the organization established debt management plans for clients who required such services, at no charge to the clients.[198] The organization was supported by contributions primarily from creditors, and its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

In 1976, the IRS denied exempt status to an organization, Consumer Credit Counseling Service of Alabama, whose activities were distinguishable from those in Revenue Ruling 69–441 in that (1) it did not restrict its services to the poor, and (2) it charged a nominal fee for its debt management plans.[199] The organization provided free information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the use of consumer credit. It also provided counseling to debt-distressed individuals, not necessarily poor or low-income, and provided debt management plans at the cost of $10 per month, which was waived in cases of financial hardship. Its debt management activities were a relatively small part of its overall activities. The district court determined the organization qualified as charitable and educational within section 501(c)(3), finding the debt management plans to be an integral part of the agency's counseling function, and that its debt management activities were incidental to its principal functions, as only approximately 12 percent of the counselors' time was applied to such programs and the charge for the service was nominal. The court also considered the facts that the agency was publicly supported, and that it had a board dominated by members of the general public, as factors indicating a charitable operation.[200]

A recent estimate shows the number of credit counseling organizations increased from approximately 200 in 1990 to over 1,000 in 2002.[201] During the period from 1994 to late

[195] 31 U.S.C. sec. 330.

[196] Rev. Rul. 65–299, 1965–2 C.B. 165.

[197] Rev. Rul. 65–441, 1969–2 C.B. 115.

[198] Debt management plans are debt payment arrangements, including debt consolidation arrangements, entered into by a debtor and one or more of the debtor's creditors, generally structured to reduce the amount of a debtor's regular ongoing payment by modifying the interest rate, minimum payment, maturity or other terms of the debt. Such plans frequently are promoted as a means for a debtor to restructure debt without filing for bankruptcy.

[199] *Consumer Credit Counseling Services of Alabama, Inc.* v. *U.S.*, 44 A.F.T.R. 2d (RIA) 5122 (D.D.C. 1978). The case involved 24 agencies throughout the United States.

[200] See also, *Credit Counseling Centers of Oklahoma, Inc.* v. *U.S.*, 45 A.F.T.R. 2d (RIA) 1401 (D.D.C. 1979) (holding the same on virtually identical facts).

[201] Opening Statement of The Honorable Max Sandlin, Hearing on Non-Profit Credit Counseling Organizations, House Ways and Means Committee, Subcommittee on Oversight (November 20, 2003).

2003, 1,215 credit counseling organizations applied to the IRS for tax exempt status under section 501(c)(3), including 810 during 2000 to 2003.[202] The IRS has recognized more than 850 credit counseling organizations as tax exempt under section 501c)((3).[203] Few credit counseling organizations have sought section 501(c)(4) status, and the IRS reports it has not seen any significant increase in the number or activity of such organizations operating as social welfare organizations.[204] As of late 2003, there were 872 active tax-exempt credit counseling agencies operating in the United States.[205]

A credit counseling organization described in section 501(c)(3) is exempt from certain Federal and State consumer protection laws that provide exemptions for organizations described therein.[206] Some believe that these exclusions from Federal and State regulation may be a primary motivation for the recent increase in the number of organizations seeking and obtaining exempt status under section 501(c)(3).[207] Such regulatory exemptions generally are not available for social welfare organizations described in section 501(c)(4).

Congress recently conducted hearings investigating the activities of credit counseling organizations under various consumer protection laws,[208] such as the Federal Trade Commission Act.[209] In addition, the IRS has commenced a broad examination and compliance program with respect to the credit counseling industry, pursuant to which the IRS has initiated audits of 50 credit counseling organizations, including nine of the 15 largest in terms of gross receipts.[210]

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, an individual generally may not be a debtor in bankruptcy unless such individual has, within 180 days of filing a petition for bankruptcy, received from an approved nonprofit budget and credit counseling agency an individual or group briefing that outlines the opportunities for available credit counseling and assists the individual in performing a related budget analysis.[211] The clerk of the court must maintain a publicly available list of nonprofit budget and credit counseling agencies approved by the U.S. Trustee (or bankruptcy administrator). In general, the U.S. Trustee (or bankruptcy administrator) shall only approve an agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides. The minimum qualifications for approval of such an agency include: (1) in general, having an independent board of directors; (2) charging no more than a reasonable fee, and providing services without regard to ability to pay; (3) adequate provision for safekeeping and payment of client funds; (4) provision of full disclosures to clients; (5) provision of adequate counseling with respect to a client's credit problems; (6) trained counselors who receive no commissions or bonuses based on the outcome of the counseling services; (7) experience and background in providing credit counseling; and (8) adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan. An individual debtor must file with the court a certificate from the approved nonprofit budget and credit counseling agency that provided the required services describing the services provided, and a copy of the debt management plan, if any, developed through the agency.[212]

HOUSE BILL

No provision.

SENATE AMENDMENT

*Requirements for exempt status of credit counseling organizations*

Under the provision, an organization that provides credit counseling services as a substantial purpose of the organization (''credit counseling organization'') is eligible for exemption from Federal income tax only as a charitable or educational organization under section 501(c)(3) or as a social welfare organization under section 501(c)(4), and only if (in addition to present-law requirements) the credit counseling organization is organized and operated in accordance with the following:

1. The organization provides credit counseling services tailored to the specific needs and circumstances of the consumer;

2. The organization makes no loans to debtors and does not negotiate the making of loans on behalf of debtors;

3. The organization generally does not promote, or charge any separate fee for any service for the purpose of improving any consumer's credit record, credit history, or credit rating;

4. The organization does not refuse to provide credit counseling services to a consumer due to inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of a consumer to enroll in a debt management plan;

5. The organization establishes and implements a fee policy to require that any fees charged to a consumer for its services are reasonable, and prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or on the projected or actual savings to the consumer resulting from enrolling in a debt management plan;

6. The organization at all times has a board of directors or other governing body (a) that is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders; (b) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates) and (c) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees);

7. The organization receives no amount for providing referrals to others for financial services (including debt management services) or credit counseling services to be provided to consumers, and pays no amount to others for obtaining referrals of consumers; and

8. The organization does not own more than 35 percent of the total combined voting power of a corporation (or profits or beneficial interest in the case of a partnership or trust or estate) that is in the business of lending money, repairing credit, or providing debt management plan services, payment processing, and similar services.

The Secretary may require any credit counseling organization to submit such information as the Secretary requires to verify that such organization meets the requirements of the provision.

[202] United States Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling, Report Prepared by the Majority & Minority Staffs of the Permanent Subcommittee on Investigations and Released in Conjunction with the Permanent Subcommittee Investigations' Hearing on March 24, 2004, p. 3 (citing letter dated December 18, 2003, to the Subcommittee from IRS Commissioner Everson).

[203] Testimony of Commissioner Mark Everson before the House Ways and Means Committee, Subcommittee on Oversight (November 20, 2003).

[204] Testimony of Commissioner Mark Everson before the House Ways and Means Committee, Subcommittee on Oversight (November 20, 2003).

[205] United States Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling, Report Prepared by the Majority & Minority Staffs of the Permanent Subcommittee on Investigations and Released in Conjunction with the Permanent Subcommittee Investigations' Hearing on March 24, 2004, p. 3 (citing letter dated December 18, 2003 to the Subcommittee from IRS Commissioner Everson).

[206] E.g., The Credit Repair Organizations Act, 15 U.S.C. section 1679 et seq., effective April 1, 1997 (imposing restrictions on credit repair organizations that are enforced by the Federal Trade Commission, including forbidding the making of untrue or misleading statements and forbidding advance payments; section 501(c)(3) organizations are explicitly exempt from such regulation). Testimony of Commissioner Mark Everson before the House Ways and Means Committee, Subcommittee on Oversight (November 20, 2003) (California's consumer protections laws that impose strict standards on credit service organizations and the credit repair industry do not apply to nonprofit organizations that have received a final determination from the IRS that they are exempt from tax under section 501(c)(3) and are not private foundations).

[207] Testimony of Commissioner Mark Everson before the House Ways and Means Committee, Subcommittee on Oversight (November 20, 2003).

[208] United States Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling, Report Prepared by the Majority & Minority Staffs of the Permanent Subcommittee on Investigations and Released in Conjunction with the Permanent Subcommittee Investigations' Hearing on March 24, 2004.

[209] 15 U.S.C. sec. 45(a) (prohibiting unfair and deceptive acts or practices in or affecting commerce; although the Federal Trade Commission generally lacks jurisdiction to enforce consumer protection laws against bona fide nonprofit organizations, it may assert jurisdiction over a nonprofit, including a credit counseling organization, if it demonstrates the organization is organized to carry on business for profit, is a mere instrumentality of a for-profit entity, or operates through a common enterprise with one or more for-profit entities).

[210] United States Senate Permanent Subcommittee on Investigations, Committee on Governmental Affairs, Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling, Report Prepared by the Majority & Minority Staffs of the Permanent Subcommittee on Investigations and Released in Conjunction with the Permanent Subcommittee Investigations' Hearing on March 24, 2004, p. 31.

[211] This requirement does not apply in certain circumstances, such as: (1) in general, where a debtor resides in a district for which the U.S. Trustee has determined that the approved counseling agencies for such district are not reasonably able to provide adequate services to additional individuals; (2) where exigent circumstances merit a waiver, the individual seeking bankruptcy protection files an appropriate certification with the court, and the certification is acceptable to the court; and (3) in general, where a court determines, after notice and hearing, that the individual is unable to complete the requirement because of incapacity, disability, or active military duty in a military combat zone.

[212] The Act also requires that, prior to discharge of indebtedness under chapter 7 or chapter 13, a debtor complete an approved instructional course concerning personal financial management, which course need not be conducted by a nonprofit agency.

*Additional requirements for charitable and educational organizations*

Under the provision, a credit counseling organization is described in section 501(c)(3) only if, in addition to satisfying the above requirements, the organization is organized and operated such that the organization (1) charges no fees (other than nominal fees) for debt management plan services and waives any fees if the consumer is unable to pay such fees; (2) does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization; (3) normally limits debt management plan services (in the aggregate) to 25 percent of the organization's total activities (determined by taking into account time, resources, source of revenues or effort expended by the organization, and any other measures prescribed by the Secretary).[213]

*Additional requirements for social welfare organizations*

Under the provision, a credit counseling organization is described in section 501(c)(4) only if, in addition to satisfying the above requirements applicable to such organizations, it is organized and operated such that the organization charges no fees (other than nominal fees) for its credit counseling services, and waives any fees if the consumer is unable to pay such fees. In addition, a credit counseling organization shall not be treated as an organization described in section 501(c)(4) unless such organization notifies the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition as a credit counseling organization.

*Debt management plan services treated as an unrelated trade or business*

Under the provision, debt management plan services are treated as an unrelated trade or business for purposes of the tax on income from an unrelated trade or business to the extent such services are not substantially related to the provision of credit counseling services to a consumer or are provided by an organization that is not a credit counseling organization.

*Definitions*

*Credit counseling services*

Credit counseling services are (a) the provision of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (b) the assisting of individuals and families with financial problems by providing them with counseling; or (c) any combination of such activities.

*Debt management plan services*

Debt management plan services are services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

*Effective date*

In general the provision applies to taxable years beginning after the date of enactment. For a credit counseling organization that is described in section 501(c)(3) or 501(c)(4) on the date of enactment, the provision is effective for taxable years beginning after the date that is one year after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Expand the base of the tax on private foundation net investment income (sec. 222 of the Senate amendment and sec. 4940 of the Code)

PRESENT LAW

*In general*

Under section 4940(a) of the Code, private foundations that are recognized as exempt from Federal income tax under section 501(a) of the Code are subject to a two-percent excise tax on their net investment income. Private foundations that are not exempt from tax, such as certain charitable trusts,[214] also are subject to an excise tax under section 4940(b) based on net investment income and unrelated business income. The two-percent rate of tax is reduced to one-percent if certain requirements are met in a taxable year.[215] Unlike certain other excise taxes imposed on private foundations, the tax based on investment income does not result from a violation of substantive law by the private foundation; it is solely an excise tax.

The tax on taxable private foundations under section 4940(b) is equal to the excess of the sum of the excise tax that would have been imposed under section 4940(a) if the foundation were tax exempt and the amount of the unrelated business income tax that would have been imposed if the foundation were tax exempt, over the income tax imposed on the foundation under subtitle A of the Code.

*Net investment income*

*Internal Revenue Code*

In general, net investment income is defined as the amount by which the sum of gross investment income and capital gain net income exceeds the deductions relating to the production of gross investment income.[216]

Gross investment income is the gross amount of income from interest, dividends, rents, payments with respect to securities loans, and royalties. Gross investment income does not include any income that is included in computing a foundation's unrelated business taxable income.[217]

Capital gain net income takes into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the unrelated business income tax (except to the extent the gain or loss is taken into account for purposes of such tax). Losses from sales or other dispositions of property are allowed only to the extent of gains from such sales or other dispositions, and no capital loss carryovers are allowed.[218]

*Treasury Regulations and case law*

The Treasury regulations elaborate on the Code definition of net investment income. The regulations cite items of investment income listed in the Code, and in addition clarify that net investment income includes interest, dividends, rents, and royalties derived from all sources, including from assets devoted to charitable activities. For example, interest received on a student loan is includible in the gross investment income of a foundation making the loan.[219]

The regulations further provide that gross investment income includes certain items of investment income that are described in the unrelated business income tax regulations.[220] Such additional items include payments with respect to securities loans (an item added to the Code in 1978), annuities, income from notional principal contracts, and other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner.[221] These latter three categories of income are not enumerated as net investment income in the Code.

The Treasury regulations also elaborate on the Code definition of capital gain net income. The regulations provide that the only capital gains and losses that are taken into account are (1) gains and losses from the sale or other disposition of property held by a private foundation for investment purposes (other than program related investments), and (2) property used for the production of income included in computing the unrelated business income tax (except to the extent the gain or loss is taken into account for purposes of such tax).

This definition of capital gain net income builds on the definition provided in the Code by providing an exception for gain and loss from program related investments and by stating, in addition, that ''gains and losses from the sale or other disposition of property used for the exempt purposes of the private foundation are excluded.''[222] As an example, the regulations provide that gain or loss on the sale of buildings used for the foundation's exempt activities are not taken into account for purposes of the section 4940 tax. If a foundation uses exempt income for exempt purposes and (other than incidentally) for investment purposes, then the portion of the gain or loss received upon sale or other disposition that is allocable to the investment use is taken into account for purposes of the tax.

The regulations further provide that ''property shall be treated as held for investment purposes even though such property is disposed of by the foundation immediately upon its receipt, if it is property of a type which generally produces interest, dividends, rents, royalties, or capital gains through appreciation (for example, rental real estate, stock, bonds, mineral interest, mortgages, and securities).''[223]

This regulation has been challenged in the courts. The regulation says that property is treated as held for investment purposes if it is of a type that ''generally produces'' certain types of income. By contrast, the Code provides that the property be ''used'' to produce such income. In *Zemurray Foundation* v. *United States*, 687 F.2d 97 (5th Cir. 1982), the taxpayer foundation challenged the Treasury's attempt to tax under section 4940 capital gain on the sale of timber property. The taxpayer asserted that the property was not actually used to produce investment income, and that the Treasury Regulation was invalid because the regulation would subject to tax property that is of a type that could generally be used to produce investment income. On this issue, the court upheld the Treasury regulation, reasoning that the regulation's use of the phrase ''generally used,'' though permitting taxation ''so long as the property sold is usable to produce the applicable types of income, regardless of whether

[213] If, under any such measure, the organization's debt management plan services exceed 25 percent of the organization's total activities, the organization is treated as exceeding the 25-percent limit. For example, an organization that devotes 30 percent of its total staff time to debt management plan services is regarded as exceeding the 25-percent limit, even if the organization devotes less than 15 percent of its total financial resources to debt management plan services.

[214] See sec. 4947(a)(1).

[215] Sec. 4940(e).

[216] Sec. 4940(c)(1). Net investment income also is determined by applying section 103 (generally providing an exclusion for interest on certain State and local bonds) and section 265 (generally disallowing the deduction for interest and certain other expenses with respect to tax-exempt income). Sec. 4940(c)(5).

[217] Sec. 4940(c)(2).

[218] Sec. 4940(c)(4).

[219] Treas. Reg. sec. 53.4940–1(d)(1).

[220] Id.

[221] Treas. Reg. sec. 1.512(b)–1(a)(1).

[222] Treas. Reg. sec. 53.4940–1(f)(1).

[223] Id.

the property is actually used to produce income or not'' was not unreasonable or plainly inconsistent with the statute.[224] However, on remand to the district court, the district court concluded that the timber property at issue, though a type of property generally used to produce investment income, was not susceptible for such use.[225] Thus, the district court concluded that the Treasury could not tax the gain under this portion of the regulation.

The question then turned to the taxpayer's second challenge to the regulation. At issue was the meaning of the regulatory phrase ''capital gains through appreciation.'' The regulation provides that if property is of a type that generally produces capital gains through appreciation, then the gain is subject to tax. The Treasury argued that the timber property at issue, although held by the court not to be property (in this case) susceptible for use to produce interest, dividends, rents, or royalties, still was held by the taxpayer to produce capital gain through appreciation and therefore the gain should be subject to tax under the regulation.

On this issue, the court held for the taxpayer, reasoning that the language of the Code clearly is limited to certain gains and losses, e.g., the court cited the Code language providing that ''there shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties. . . .''[226] The court noted that ''capital gains through appreciation'' is not enumerated in the statute. The court used as an example a jade figurine held by a foundation. Jade figurines do not generally produce interest, dividends, rents, or royalties, but gain on the sale of such a figurine would be taxable under the ''capital gains through appreciation'' standard, yet such standard does not appear in the statute. After Zemurray, the Treasury generally conceded this issue.[227]

With respect to capital losses, the Code provides that carryovers are not permitted, whereas the regulations state that neither carryovers nor carrybacks are permitted.[228]

*Application of Zemurray to the Code and the regulations*

Applying the Zemurray case to the Code and regulations results in a general principle for purposes of present law: private foundations are subject to tax under section 4940 only on the items of income and only on gains and losses specifically enumerated therein. Under this principle, private foundations generally are not subject to the section 4940 tax on other substantially similar types of income from ordinary and routine investments, notwithstanding Treasury regulations to the contrary. In addition, the regulations provide that gain or loss from the sale or other disposition of assets used for exempt purposes, with specific reference to program-related investments, is excluded. The Code provides for no such blanket exclusion; thus, under the language of the Code and the reasoning of Zemurray, if a foundation provided office space at below market rent to a charitable organization for use in the organization's exempt purposes, gain on the sale of the building by the foundation should be subject to the section 4940 tax despite the Treasury regulations.[229]

In addition, under the logic of Zemurray, capital loss carrybacks arguably are permitted, notwithstanding Treasury regulations to the contrary, because the Code mentions only a bar on use of carryovers and says nothing about carrybacks.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision amends the definition of gross investment income (including for purposes of capital gain net income) to include items of income that are similar to the items presently enumerated in the Code. Such similar items include income from notional principal contracts, annuities, and other substantially similar income from ordinary and routine investments, and, with respect to capital gain net income, capital gains from appreciation, including capital gains and losses from the sale or other disposition of assets used to further an exempt purpose.

The provision provides that there are no carrybacks of losses from sales or other dispositions of property.

*Effective date.*—The provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Definition of convention or association of churches (sec. 223 of the Senate amendment and sec. 7701 of the Code)

PRESENT LAW

Under present law, an organization that qualifies as a ''convention or association of churches'' (within the meaning of sec. 170(b)(1)(A)(i)) is not required to file an annual return,[230] is subject to the church tax inquiry and church tax examination provisions applicable to organizations claiming to be a church,[231] and is subject to certain other provisions generally applicable to churches.[232] The Internal Revenue Code does not define the term ''convention or association of churches.''

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that an organization that otherwise is a convention or association of churches does not fail to so qualify merely because the membership of the organization includes individuals as well as churches, or because individuals have voting rights in the organization.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

12. Notification requirement for exempt entities not currently required to file an annual information return (sec. 224 of the Senate amendment and secs. 6033, 6104, 6652, and 7428 of the Code)

PRESENT LAW

Under present law, the requirement that an exempt organization file an annual information return does not apply to several categories of exempt organizations. Organizations excepted from the filing requirement include organizations (other than private foundations), the gross receipts of which in each taxable year normally are not more than $25,000.[233] Also exempt from the requirement are churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; section 501(c)(1) instrumentalities of the United States; section 501(c)(21) trusts; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; certain state institutions whose income is excluded from gross income under section 115; certain governmental units and affiliates of governmental units; and other organizations that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that organizations that are excused from filing an information return by reason of normally having gross receipts below a certain specified amount (generally, under $25,000) shall furnish to the Secretary annually the legal name of the organization, any name under which the organization operates or does business, the organization's mailing address and Internet web site address (if any), the organization's taxpayer identification number, the name and address of a principal officer, and evidence of the organization's continuing basis for its exemption from the generally applicable information return filing requirements. Upon such organization's termination of existence, the organization is required to furnish notice of such termination.

The provision provides that if an organization fails to provide the required notice for three consecutive years, the organization's tax-exempt status is revoked. In addition, if an organization that is required to file an annual information return under section 6033(a) (Form 990) fails to file such an information return for three consecutive years, the organization's tax-exempt status is revoked. If an organization fails to meet its filing obligation to the IRS for three consecutive years in cases where the organization is subject to the information return filing requirement in one or more years during a three-year period and also is subject to the notice requirement for one or more years during the same three-year period, the organization's tax-exempt status is revoked.

A revocation under the provision is effective from the date that the Secretary determines was the last day the organization could have timely filed the third required information return or notice. To again be recognized as tax-exempt, the organization must apply to the Secretary for recognition

[224] *Zemurray Foundation* v. *United States*, 687 F.2d 97, 100 (5th Cir. 1982).

[225] *Zemurray Foundation* v. *United States*, 53 A.F.T.R. 2d (RIA) 842 (E. D. La. 1983).

[226] *Zemurray Foundation* v. *United States*, 755 F.2d 404 (5th Cir. 1985), 413 (citing Code sec. 4940(c)(4)(A).

[227] G.C.M. 39538 (July 23, 1986).

[228] Treas. Reg. sec. 53.4940–1(f)(3).

[229] See also the example in Treas. Reg. sec. 53.4940–1(f)(1).

[230] Sec. 6033(a)(2)(A)(i).

[231] Sec. 7611(h)(1)(B).

[232] See, e.g., Sec. 402(g)(8)(B) (limitation on elective deferrals); sec. 403(b)(9)(B) (definition of retirement income account); sec. 410(d) (election to have participation, vesting, funding, and certain other provisions apply to church plans); sec. 414(e) (definition of church plan); sec. 415(c)(7) (certain contributions by church plans); sec. 501(h)(5) (disqualification of certain organizations from making the sec. 501(h) election regarding lobbying expenditure limits); sec. 501(m)(3) (definition of commercial-type insurance); sec. 508(c)(1)(A) (exception from requirement to file application seeking recognition of exempt status); sec. 512(b)(12) (allowance of up to $1,000 deduction for purposes of determining unrelated business taxable income); sec. 514(b)(3)(E) (definition of debt-financed property); sec. 3121(w)(3)(A) (election regarding exemption from social security taxes); sec. 3309(b)(1) (application of federal unemployment tax provisions to services performed in the employ of certain organizations); sec. 6043(b)(1) (requirement to file a return upon liquidation or dissolution of the organization); and sec. 7702(j)(3)(A) (treatment of certain death benefit plans as life insurance).

[233] Sec. 6033(a)(2); Treas. Reg. sec. 1.6033–2(a)(2)(i); Treas. Reg. sec. 1.6033–2(g)(1). Sec. 6033(a)(2)(A)(ii) provides a $5,000 annual gross receipts exception from the annual reporting requirements for certain exempt organizations. In Announcement 82–88, 1982–25 I.R.B. 23, the IRS exercised its discretionary authority under section 6033 to increase the gross receipts exception to $25,000, and enlarge the category of exempt organizations that are not required to file Form 990.

of tax-exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally.

If upon application for tax-exempt status after a revocation under the provision, the organization shows to the satisfaction of the Secretary reasonable cause for failing to file the required annual notices or returns, the organization's tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of revocation. An organization may not challenge under the Code's declaratory judgment procedures (section 7428) a revocation of tax-exemption made pursuant to the provision.

There is no monetary penalty for failure to file the notice. The provision does not require that the notices be made available to the public under the public disclosure and inspection rules generally applicable to exempt organizations. The provision does not affect an organization's obligation under present law to file required information returns or existing penalties for failure to file such returns.

The Secretary is required to notify in a timely manner every organization that is subject to the notice filing requirement of the new filing obligation. Notification by the Secretary shall be by mail, in the case of any organization the identity and address of which is included in the list of exempt organizations maintained by the Secretary, and by Internet or other means of outreach, in the case of any other organization. In addition, the Secretary is required to publicize in a timely manner in appropriate forms and instructions and other means of outreach the new penalty imposed for consecutive failures to file the information return.

The Secretary is authorized to publish a list of organizations whose exempt status is revoked under the provision.

*Effective date.*—The provision is effective for notices and returns with respect to annual periods beginning after 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

13. Disclosure to state officials of proposed actions related to section 501(c) organizations (sec. 225 of the Senate amendment and secs. 6103, 6104, 7213, 7213A, and 7431 of the Code)

PRESENT LAW

In the case of organizations that are described in section 501(c)(3) and exempt from tax under section 501(a) or that have applied for exemption as an organization so described, present law (sec. 6104(c)) requires the Secretary to notify the appropriate State officer of (1) a refusal to recognize such organization as an organization described in section 501(c)(3), (2) a revocation of a section 501(c)(3) organization's tax-exempt status, and (3) the mailing of a notice of deficiency for any tax imposed under section 507, chapter 41, or chapter 42.[234] In addition, at the request of such appropriate State officer, the Secretary is required to make available for inspection and copying, such returns, filed statements, records, reports, and other information relating to the above-described disclosures, as are relevant to any State law determination. An appropriate State officer is the State attorney general, State tax officer, or any State official charged with overseeing organizations of the type described in section 501(c)(3).

In general, returns and return information (as such terms are defined in section 6103(b)) are confidential and may not be disclosed or inspected unless expressly provided by law.[235] Present law requires the Secretary to keep records of disclosures and requests for inspection[236] and requires that persons authorized to receive returns and return information maintain various safeguards to protect such information against unauthorized disclosure.[237] Willful unauthorized disclosure or inspection of returns or return information is subject to a fine and/or imprisonment.[238] The knowing or negligent unauthorized inspection or disclosure of returns or return information gives the taxpayer a right to bring a civil suit.[239] Such present-law protections against unauthorized disclosure or inspection of returns and return information do not apply to the disclosures or inspections, described above, that are authorized by section 6104(c).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that upon written request by an appropriate State officer, the Secretary may disclose: (1) a notice of proposed refusal to recognize an organization as a section 501(c)(3) organization; (2) a notice of proposed revocation of tax-exemption of a section 501(c)(3) organization; (3) the issuance of a proposed deficiency of tax imposed under section 507, chapter 41, or chapter 42; (4) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as section 501(c)(3) organizations; and (5) returns and return information of organizations with respect to which information has been disclosed under (1) through (4) above.[240] Disclosure or inspection is permitted for the purpose of, and only to the extent necessary in, the administration of State laws regulating section 501(c)(3) organizations, such as laws regulating tax-exempt status, charitable trusts, charitable solicitation, and fraud. Such disclosure or inspection may be made only to or by an appropriate State officer or to an officer or employee of the State who is designated by the appropriate State officer, and may not be made by or to a contractor or agent. The Secretary also is permitted to disclose or open to inspection the returns and return information of an organization that is recognized as tax-exempt under section 501(c)(3), or that has applied for such recognition, to an appropriate State officer if the Secretary determines that disclosure or inspection may facilitate the resolution of Federal or State issues relating to the tax-exempt status of the organization. For this purpose, appropriate State officer means the State attorney general, the State tax official, or any other State official charged with overseeing organizations of the type described in section 501(c)(3).

In addition, the provision provides that upon the written request by an appropriate State officer, the Secretary may make available for inspection or disclosure returns and return information of an organization described in section 501(c)(2) (certain title holding companies), 501(c)(4) (certain social welfare organizations), 501(c)(6) (certain business leagues and similar organizations), 501(c)(7) (certain recreational clubs), 501(c)(8) (certain fraternal organizations), 501(c)(10) (certain domestic fraternal organizations operating under the lodge system), and 501(c)(13) (certain cemetery companies). Such returns and return information are available for inspection or disclosure only for the purpose of, and to the extent necessary in, the administration of State laws regulating the solicitation or administration of the charitable funds or charitable assets of such organizations. Such disclosure or inspection may be made only to or by an appropriate State officer or to an officer or employee of the State who is designated by the appropriate State officer, and may not be made by or to a contractor or agent. For this purpose, appropriate State officer means the State attorney general, the State tax officer, and the head of an agency designated by the State attorney general as having primary responsibility for overseeing the solicitation of funds for charitable purposes of such organizations.

In addition, the provision provides that any returns and return information disclosed under section 6104(c) may be disclosed in civil administrative and civil judicial proceedings pertaining to the enforcement of State laws regulating the applicable tax-exempt organization in a manner prescribed by the Secretary. Returns and return information are not to be disclosed under section 6104(c), or in such an administrative or judicial proceeding, to the extent that the Secretary determines that such disclosure would seriously impair Federal tax administration. The provision makes disclosures of returns and return information under section 6104(c) subject to the disclosure, recordkeeping, and safeguard provisions of section 6103, including the requirements that the Secretary maintain a permanent system of records of requests for disclosure (sec. 6103(p)(3)), and that the appropriate State officer maintain various safeguards that protect against unauthorized disclosure (sec. 6103(p)(4)). The provision provides that the willful unauthorized disclosure of returns or return information described in section 6104(c) is a felony subject to a fine of up to $5,000 and/or imprisonment of up to five years (sec. 7213(a)(2)), the willful unauthorized inspection of returns or return information described in section 6104(c) is subject to a fine of up to $1,000 and/or imprisonment of up to one year (sec. 7213A), and provides the taxpayer the right to bring a civil action for damages in the case of knowing or negligent unauthorized disclosure or inspection of such information (sec. 7431(a)(2)).

*Effective date.*—The provision is effective on the date of enactment but does not apply to requests made before such date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

14. Improve accountability of donor advised funds (secs. 231 through 234 of the Senate amendment and secs. 170 and 4958 and new secs. 4967, 4968, and 4969 of the Code)

PRESENT LAW

*Requirements for section 501(c)(3) tax-exempt status*

Charitable organizations, i.e., organizations described in section 501(c)(3), generally are exempt from Federal income tax and are eligible to receive tax deductible contributions. A charitable organization must operate primarily in pursuance of one or more tax-exempt purposes constituting the basis

[234] The applicable taxes include the termination tax on private foundations; taxes on public charities for certain excess lobbying expenses; taxes on a private foundation's net investment income, self-dealing activities, undistributed income, excess business holdings, investments that jeopardize charitable purposes, and taxable expenditures (some of these taxes also apply to certain non-exempt trusts); taxes on the political expenditures and excess benefit transactions of section 501(c)(3) organizations; and certain taxes on black lung benefit trusts and foreign organizations.

[235] Sec. 6103(a).

[236] Sec. 6103(p)(3).

[237] Sec. 6103(p)(4).

[238] Secs. 7213 and 7213A.

[239] Sec. 7431.

[240] Such returns and return information also may be open to inspection by an appropriate State officer.

of its tax exemption.[241] In order to qualify as operating primarily for a purpose described in section 501(c)(3), an organization must satisfy the following operational requirements: (1) the net earnings of the organization may not inure to the benefit of any person in a position to influence the activities of the organization; (2) the organization must operate to provide a public benefit, not a private benefit;[242] (3) the organization may not be operated primarily to conduct an unrelated trade or business;[243] (4) the organization may not engage in substantial legislative lobbying; and (5) the organization may not participate or intervene in any political campaign.

*Classification of section 501(c)(3) organizations*

Section 501(c)(3) organizations are classified either as ''public charities'' or ''private foundations.''[244] Private foundations generally are defined under section 509(a) as all organizations described in section 501(c)(3) other than an organization granted public charity status by reason of: (1) being a specified type of organization (i.e., churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; or (3) providing support to another section 501(c)(3) entity that is not a private foundation. In contrast to public charities, private foundations generally are funded from a limited number of sources (e.g., an individual, family, or corporation). Donors to private foundations and persons related to such donors together often control the operations of private foundations.

Because private foundations receive support from, and typically are controlled by, a small number of supporters, private foundations are subject to a number of anti-abuse rules and excise taxes not applicable to public charities.[245] For example, the Code imposes excise taxes on acts of ''self-dealing'' between disqualified persons (generally, an enumerated class of foundation insiders[246]) and a private foundation. Acts of self-dealing include, for example, sales or exchanges, or leasing, of property; lending of money; or the furnishing of goods, services, or facilities between a disqualified person and a private foundation.[247] In addition, private non-operating foundations are required to pay out a minimum amount each year as qualifying distributions. In general, a qualifying distribution is an amount paid to accomplish one or more of the organization's exempt purposes, including reasonable and necessary administrative expenses.[248] Certain expenditures of private foundations are also subject to tax.[249] In general, taxable expenditures are expenditures: (1) for lobbying; (2) to influence the outcome of a public election or carry on a voter registration drive (unless certain requirements are met); (3) as a grant to an individual for travel, study, or similar purposes unless made pursuant to procedures approved by the Secretary; (4) as a grant to an organization that is not a public charity or exempt operating foundation unless the foundation exercises expenditure responsibility[250] with respect to the grant; or (5) for any non-charitable purpose. Additional excise taxes may also apply in the event a private foundation holds certain business interests (''excess business holdings'')[251] or makes an investment that jeopardizes the foundation's exempt purposes.[252]

*Supporting organizations*

The Code provides that certain ''supporting organizations'' (in general, organizations that provide support to another section 501(c)(3) organization that is not a private foundation) are classified as public charities rather than private foundations.[253] To qualify as a supporting organization, an organization must meet all three of the following tests: (1) it must be organized and at all times operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more ''publicly supported organizations''[254] (the ''organizational and operational tests'');[255] (2) it must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations (the ''relationship test'');[256] and (3) it must not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations (the ''lack of outside control test'').[257]

To satisfy the relationship test, a supporting organization must hold one of three statutorily described close relationships with the supported organization. The organization must be: (1) operated, supervised, or controlled by a publicly supported organization (commonly referred to as ''Type I'' supporting organizations); (2) supervised or controlled in connection with a publicly supported organization (''Type II'' supporting organizations); or (3) operated in connection with a publicly supported organization (''Type III'' supporting organizations).[258]

*Type I supporting organizations*

In the case of supporting organizations that are operated, supervised, or controlled by one or more publicly supported organizations (Type I supporting organizations), one or more supported organizations must exercise a substantial degree of direction over the policies, programs, and activities of the supporting organization.[259] The relationship between the Type I supporting organization and the supported organization generally is comparable to that of a parent and subsidiary. The requisite relationship may be established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.[260]

*Type II supporting organizations*

Type II supporting organizations are supervised or controlled in connection with one or more publicly supported organizations. Rather than the parent-subsidiary relationship characteristic of Type I organizations, the relationship between a Type II organization and its supported organizations is more analogous to a brother-sister relationship. In order to satisfy the Type II relationship requirement, generally there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations.[261] An organization generally is not considered to be ''supervised or controlled in connection with'' a publicly supported organization merely because the supporting organization makes payments to the publicly supported organization, even if the obligation to make payments is enforceable under state law.[262]

*Type III supporting organizations*

Type III supporting organizations are ''operated in connection with'' one or more publicly supported organizations. To satisfy the ''operated in connection with'' relationship, Treasury regulations require that the supporting organization be responsive to, and significantly involved in the operations of, the publicly supported organization. This relationship is deemed to exist where the supporting organization meets both a ''responsiveness test'' and an ''integral part test.''[263] In general, the responsiveness test requires that the Type III supporting organization be responsive to the needs or demands of the publicly supported organizations. In general, the integral part test requires that the Type III supporting organization maintain significant involvement in the operations of one or more publicly supported organizations, and that such publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides.

*Charitable contributions*

Contributions to organizations described in section 501(c)(3) are deductible, subject to certain limitations, as an itemized deduction from Federal income taxes.[264] Such contributions also generally are deductible for estate and gift tax purposes.[265] However, if the taxpayer retains control over the assets transferred to charity, the transfer may not qualify as a completed gift for purposes of claiming an income, estate, or gift tax deduction.

Public charities enjoy certain advantages over private foundations regarding the deductibility of contributions. For example, contributions of appreciated capital gain property to a private foundation generally are deductible only to the extent of the donor's cost basis.[266] In contrast, contributions

[241] Treas. Reg. sec. 1.501(c)(3)–1(c)(1). The Code specifies such purposes as religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international amateur sports competition, or for the prevention of cruelty to children or animals. In general, an organization is organized and operated for charitable purposes if it provides relief for the poor and distressed or the underprivileged. Treas. Reg. sec. 1.501(c)(3)–1(d)(2).

[242] Treas. Reg. sec. 1.501(c)(3)–1(d)(1)(ii).

[243] Treas. Reg. sec. 1.501(c)(3)–1(e)(1). Conducting a certain level of unrelated trade or business activity will not jeopardize tax-exempt status.

[244] Sec. 509(a). Private foundations are either private operating foundations or private non-operating foundations. In general, private operating foundations operate their own charitable programs in contrast to private non-operating foundations, which generally are grant-making organizations. Most private foundations are non-operating foundations.

[245] Secs. 4940–4945.

[246] See sec. 4946(a).

[247] Sec. 4941.

[248] Sec. 4942(g)(1)(A). A qualifying distribution also includes any amount paid to acquire an asset used (or held for use) directly in carrying out one or more of the organization's exempt purposes and certain amounts set-aside for exempt purposes. Sec. 4942(g)(1)(B) and 4942(g)(2).

[249] Sec. 4945. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[250] In general, expenditure responsibility requires that a foundation make all reasonable efforts and establish reasonable procedures to ensure that the grant is spent solely for the purpose for which it was made, to obtain reports from the grantee on the expenditure of the grant, and to make reports to the Secretary regarding such expenditures. Sec. 4945(h).

[251] Sec. 4943.

[252] Sec. 4944.

[253] Sec. 509(a)(3).

[254] In general, supported organizations of a supporting organization must be publicly supported charities described in sections 509(a)(1) or (a)(2).

[255] Sec. 509(a)(3)(A).

[256] Sec. 509(a)(3)(B).

[257] Sec. 509(a)(3)(C).

[258] Treas. Reg. sec. 1.509(a)–4(f)(2).

[259] Treas. Reg. sec. 1.509(a)–4(g)(1)(i).

[260] Id.

[261] Treas. Reg. sec. 1.509(a)–4(h)(1).

[262] Treas. Reg. sec. 1.509(a)–4(h)(2).

[263] Treas. Reg. sec. 1.509(a)–4(i)(1).

[264] Sec. 170.

[265] Secs. 2055 and 2522.

[266] A special rule in section 170(e)(5) provides that taxpayers are allowed a deduction equal to the fair market value of certain contributions of appreciated, publicly traded stock contributed to a private foundation.

to public charities generally are deductible in an amount equal to the property's fair market value, except for gifts of inventory and other ordinary income property, short-term capital gain property, and tangible personal property the use of which is unrelated to the donee organization's exempt purpose. In addition, under present law, a taxpayer's deductible contributions generally are limited to specified percentages of the taxpayer's contribution base, which generally is the taxpayer's adjusted gross income for a taxable year. The applicable percentage limitations vary depending upon the type of property contributed and the classification of the donee organization. In general, contributions to non-operating private foundations are limited to a smaller percentage of the donor's contribution base (up to 30 percent) than contributions to public charities (up to 50 percent).[267]

In general, taxpayers who make contributions and claim a charitable deduction must satisfy recordkeeping and substantiation requirements.[268] The requirements vary depending on the type and value of property contributed. A deduction generally may be denied if the donor fails to satisfy applicable recordkeeping or substantiation requirements.

*Intermediate sanctions (excess benefit transaction tax)*

The Code imposes excise taxes on excess benefit transactions between disqualified persons and public charities.[269] An excess benefit transaction generally is a transaction in which an economic benefit is provided by a public charity directly or indirectly to or for the use of a disqualified person, if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

For purposes of the excess benefit transaction rules, a disqualified person is any person in a position to exercise substantial influence over the affairs of the public charity at any time in the five-year period ending on the date of the transaction at issue.[270] Persons holding certain powers, responsibilities, or interests (e.g., officers, directors, or trustees) are considered to be in a position to exercise substantial influence over the affairs of the public charity.

An excess benefit transaction tax is imposed on the disqualified person and, in certain cases, on the organization managers, but is not imposed on the public charity. An initial tax of 25 percent of the excess benefit amount is imposed on the disqualified person that receives the excess benefit. An additional tax on the disqualified person of 200 percent of the excess benefit applies if the violation is not corrected within a specified period. A tax of 10 percent of the excess benefit (not to exceed $10,000 with respect to any excess benefit transaction) is imposed on an organization manager that knowingly participated in the excess benefit transaction, if the manager's participation was willful and not due to reasonable cause, and if the initial tax was imposed on the disqualified person.

*Community foundations*

Community foundations generally are broadly supported section 501(c)(3) public charities that make grants to other charitable organizations located within a community foundation's particular geographic area. Donors sometimes make contributions to a community foundation through transfers to a separate trust or fund, the assets of which are held and managed by a bank or investment company.

Certain community foundations are subject to special rules that permit them to treat the separate funds or trusts maintained by the community foundation as a single entity for tax purposes. This ''single entity'' status allows the community foundation to be classified as a public charity. One of the requirements that community foundations must meet is that funds maintained by the community foundation may not be subject by the donor to any material restrictions or conditions. The prohibition against material restrictions or conditions is designed to prevent a donor from encumbering a fund in a manner that prevents the community foundation from freely distributing the assets and income from it in furtherance of the community foundation's charitable purposes. Under Treasury regulations, whether a particular restriction or condition placed by the donor on the transfer of assets is material must be determined from all of the facts and circumstances of the transfer. The regulations set out some of the more significant facts and circumstances to be considered in making a determination, including: (1) whether the transferee public charity is the fee owner of the assets received; (2) whether the assets are held and administered by the public charity in a manner consistent with its own exempt purposes; (3) whether the governing body of the public charity has the ultimate authority and control over the assets and the income derived from them; and (4) whether the governing body of the public charity is independent from the donor. The regulations provide several non-adverse factors for determining whether a particular restriction or condition placed by the donor on the transfer of assets is material. In addition, the regulations list numerous factors and subfactors that indicate that the community foundation is prevented from freely and effectively employing the donated assets and the income thereon.

*Donor advised funds*

Some charitable organizations (including community foundations) establish accounts to which donors may contribute and thereafter provide nonbinding advice or recommendations with regard to distributions from the fund or the investment of assets in the fund. Such accounts are commonly referred to as ''donor advised funds.'' Donors who make contributions to charities for maintenance in a donor advised fund generally claim a charitable contribution deduction at the time of the contribution. Although sponsoring charities frequently permit donors (or other persons appointed by donors) to provide nonbinding recommendations concerning the distribution or investment of assets in a donor advised fund, sponsoring charities generally must have legal ownership and control of such assets following the contribution. If the sponsoring charity does not have such control (or permits a donor to exercise control over amounts contributed), the donor's contributions may not qualify for a charitable deduction, and, in the case of a community foundation, the contribution may be treated as being subject to a material restriction or condition by the donor.

In recent years, a number of financial institutions have formed charitable corporations for the principal purpose of offering donor advised funds, sometimes referred to as ''commercial'' donor advised funds. In addition, some established charities have begun operating donor advised funds in addition to their primary activities. The IRS has recognized several organizations that sponsor donor advised funds, including ''commercial'' donor advised funds, as section 501(c)(3) public charities. The term ''donor advised fund'' is not defined in statute or regulations.

Under the Katrina Emergency Tax Relief Act of 2005, certain of the above-described percent limitations on contributions to public charities are temporarily suspended for purposes of certain ''qualified contributions'' to public charities. Under the Act, qualified contributions do not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Definitions*

*Donor advised fund*

The provision defines a ''donor advised fund'' as a fund or account that is: (1) separately identified by reference to contributions of a donor or donors[271] (2) owned and controlled by a sponsoring organization and (3) with respect to which a donor (or any person appointed or designated by such donor (a ''donor advisor'')) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in the separately identified fund or account by reason of the donor's status as a donor.

Notwithstanding the foregoing, the term ''donor advised fund'' does not include a fund or account from which are made grants to individuals for travel, study, or other similar purposes by such individual, provided that (1) a donor's or donor advisor's advisory privileges are performed exclusively by such donor or donor advisor in such person's capacity as a member of a committee appointed by the sponsoring organization, (2) no combination of a donor and persons related to or appointed by such donor, control, directly or indirectly, such committee, and (3) all grants from such fund or account satisfy requirements similar to those described in section 4945(g) (concerning grants to individuals by private foundations). In addition, the Secretary may exempt a fund or account from treatment as a donor advised fund if such fund or account (1) is advised by a committee not directly or indirectly controlled by a donor, donor advisor, or persons related to a donor or donor advisor or (2) will benefit a single identified organization or governmental entity or a single identified charitable purpose.

*Sponsoring organization*

The provision defines a ''sponsoring organization'' as an organization that: (1) is described in section 170(c)[272] (other than a governmental entity described in section

[267] Sec. 170(b).

[268] Sec. 170(f)(8).

[269] Sec. 4958. The excess benefit transaction tax is commonly referred to as ''intermediate sanctions,'' because it imposes penalties generally considered to be less punitive than revocation of the organization's exempt status. The tax also applies to transactions between disqualified persons and social welfare organizations (as described in section 501(c)(4)).

[270] Sec. 4958(f)(1). A disqualified person also includes certain family members of such a person, and certain entities that satisfy a control test with respect to such persons.

[271] The requirement that a donor advised fund be separately identified by reference to contributions of a donor or donors is intended to exclude from the definition of ''donor advised fund'' certain types of funds or accounts maintained by community foundations and other charities, such as field-of-interest funds and scholarship funds, provided such funds or accounts are not separately identified by reference to contributions of a donor or donors.

[272] Section 170(c) describes organizations to which charitable contributions that are deductible for income tax purposes can be made.

170(c)(1), and without regard to any requirement that the organization be organized in the United States[273]); and (2) maintains one or more donor advised funds.

*Investment advisor*

Under the provision, the term ''investment advisor'' means, with respect to any sponsoring organization, any person (other than an employee of the sponsoring organization) compensated by the sponsoring organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds owned by the sponsoring organization.

*Deductibility of contributions to a sponsoring organization for maintenance in a donor advised fund*

*Contributions to certain sponsoring organizations for maintenance in a donor advised fund not eligible for a charitable deduction*

Under the provision, contributions to a sponsoring organization for maintenance in a donor advised fund are not eligible for a charitable deduction for income tax purposes if the sponsoring organization is a veterans' organization described in section 170(c)(3), a fraternal society described in section 170(c)(4), or a cemetery company described in section 170(c)(5); for gift tax purposes if the sponsoring organization is a fraternal society described in section 2522(a)(3) or a veterans' organization described in section 2522(a)(4); or for estate tax purposes if the sponsoring organization is a fraternal society described in section 2055(a)(3) or a veterans' organization described in section 2055(a)(4). In addition, contributions to a sponsoring organization for maintenance in a donor advised fund are not eligible for a charitable deduction if the sponsoring organization is a Type III supporting organization; a deduction is allowed for such a contribution to a Type I or Type II supporting organization to the extent not prohibited by regulations. Regulations generally shall prohibit such a deduction where the donor of the contribution directly or indirectly controls a supported organization of the Type I or Type II supporting organization.

*Additional substantiation requirements*

In addition to satisfying present-law substantiation requirements under section 170(f), a donor must obtain, with respect to each charitable contribution to a sponsoring organization to be maintained in a donor advised fund, a contemporaneous written acknowledgment from the sponsoring organization providing that the sponsoring organization has exclusive legal control over the assets contributed.

*Minimum distributions*

*Aggregate distribution requirement*

Under the provision, a sponsoring organization is required, for each taxable year of the organization, to make qualifying distributions, from the assets of donor advised funds maintained by the organization, equivalent to the applicable percentage of the aggregate asset value of donor advised funds maintained by the sponsoring organization as determined on the last day of the immediately preceding taxable year. Such qualifying distributions generally must be made by the first day of the second taxable year following the taxable year. The provision excludes from the computation of the required distributable amount for a taxable year the assets of donor advised funds that have been in existence for less than one full year as of the end of the immediately preceding taxable year.[274] The aggregate payout rule does not apply in the case of a donor advised fund maintained by a private foundation that is subject to the requirements of section 4942. The applicable percentage is three percent for the first taxable year beginning after the date of enactment, four percent for the second such taxable year, and five percent for any such taxable year thereafter.

*Generally applicable account-level activity requirement*

Under the provision, a sponsoring organization must distribute from each of its donor advised funds at least a certain amount in qualifying distributions during any applicable three-year period by the 181st day of the first taxable year following such period. The required distributable amount is the greater of (1) $250 or (2) two and one-half percent of the sponsoring organization's average required minimum initial contribution amount for such period[275] (or average required minimum balance, if greater) for the type of donor[276] at issue. An applicable three-year period must correspond with three consecutive taxable years of the sponsoring organization. The first applicable three-year period for a donor advised fund begins only after the fund has been in existence for one full year.[277]

*Account-level distribution requirement for accounts that hold illiquid assets*

If, as of the end of any taxable year of the sponsoring organization, a donor advised fund holds assets other than cash and marketable securities (i.e., ''illiquid assets'') that equal more than 10 percent of the total value of assets in the fund (determined using the valuation procedures described below), the donor advised fund is considered to be an ''illiquid asset donor advised fund'' for the subsequent taxable year of the sponsoring organization. A sponsoring organization must distribute from each illiquid asset donor advised fund as qualifying distributions by the 181st day of the second taxable year following such subsequent taxable year an amount equal to the applicable percentage of the value of the assets in the donor advised fund as of the end of such year (the ''illiquid asset payout requirement''). The applicable percentage is three percent for the first taxable year beginning after the date of enactment, four percent for the second such taxable year, and five percent for any such taxable year thereafter.

If, as of the end of a taxable year of the sponsoring organization, an illiquid asset in a donor advised fund has not been held for a period of 12 months, such asset is not considered an illiquid asset for such year. However, if an illiquid asset has been exchanged for another illiquid asset, then the holding period for any such other illiquid asset includes the period during which the illiquid asset that was exchanged was held. The Secretary is authorized to promulgate anti-abuse rules to prevent the circumvention of the provision through transactions designed to avoid application of illiquid asset payout requirement, such as through exchanges of illiquid assets for other assets.

*Qualifying distributions*

For purposes of all of the distribution requirements described in the provision, qualifying distributions are amounts paid to organizations described in section 170(b)(1)(A) (other than Type III supporting organizations or a sponsoring organization if the amount is for maintenance in a donor advised fund). Distributions to Type I or Type II supporting organizations may be qualifying distributions if not prohibited by regulations.[278] Distributions to the sponsoring organization generally are qualifying distributions; however, a distribution to the sponsoring organization in satisfaction of the aggregate distribution requirement is a qualifying distribution only if the distribution is designated for use in connection with a charitable program of the sponsoring organization (e.g., if funds are transferred to a scholarship fund (that does not meet the definition of donor advised fund because, for example, the scholarship fund is not separately identified by reference to donors) for the awarding of scholarships consistent with the sponsoring organization's exempt purposes). Amounts permanently set aside for purposes, and under procedures similar to those, described in section 4942(g) are treated as qualifying distributions. Qualifying distributions also include amounts paid during a taxable year for reasonable and necessary administrative expenses charged to a donor advised fund by a sponsoring organization.

*Valuation*

Special valuation rules apply for purposes of determining the required distributable amount for a taxable year under the aggregate payout requirement and the account-level payout requirement applicable to accounts that hold illiquid assets. For such purposes, the fair market values of cash and of securities for which market quotations are readily available are determined on a monthly basis. All other assets (''illiquid assets'') transferred by a donor to a sponsoring organization for maintenance in a donor advised fund are valued at the sum of (1) the value claimed by the donor for purposes of determining the donor's charitable deduction for the contribution of such assets to the sponsoring organization,[279] and (2) an assumed annual rate of return of five percent. If a donor advised fund purchases an illiquid asset, such asset is valued at the sum of (1) the purchase price paid for the assets, and (2) an assumed annual rate of return of five percent. The Secretary of the Treasury is authorized to specify the requirements for making such computations. Under the provision, the Secretary of the Treasury is also

[273] See sec. 170(c)(2)(A).

[274] Assume, for example, that a sponsoring organization initially maintained 10 donor advised funds, each established in Year 1. In Year 3, a new donor advised fund is established. For purposes of determining the sponsoring organization's aggregate payout requirement for Year 4, the donor advised fund established in Year 3 is excluded, because it was in existence for less than a year as of the end of Year 3. For these purposes, a donor advised fund is considered created when the account is first established (rather than, for example, when a donor achieves the minimum account balance required under the sponsoring organization's rules to begin grantmaking).

[275] For purposes of the provision, the required minimum initial contribution amount is the minimum contribution amount required by the sponsoring organization in order to open a donor advised fund.

[276] Under some circumstances, for example, a sponsoring organization may establish higher minimum initial contribution amounts for corporate donors than for individual donors.

[277] Applicable three-year periods for any donor advised fund run consecutively, such that the second three-year period begins immediately after the first three-year period ends. For example, assume donor advised fund X is established on March 30 of Year 1, and the sponsoring organization's taxable year corresponds to the calendar year. As of the end of Year 1, X has not been in existence for one full year; therefore, X's first applicable three-year period does not begin in Year 2. Instead, the first such period begins on January 1 of Year 3 and runs through December 31 of Year 5. X's second applicable three-year period begins on January 1 of Year 6 and ends on December 31 of Year 8.

[278] Regulations generally shall prohibit such a distribution where the donor or donor advisor of the amounts distributed directly or indirectly controls a supported organization of the Type I or Type II supporting organization.

[279] The donor is required to report to the sponsoring organization the value of the asset claimed by the donor for charitable deduction purposes either by supplying to the sponsoring organization a copy of the donor's completed Form 8283 related to the deduction (if applicable) or by following any alternative procedures specified by the Secretary.

authorized to promulgate rules permitting adjustments in the value of an illiquid asset in situations where the asset declines significantly in value following a contribution or purchase of the asset.

*Treatment of qualifying distributions*

Distributions made in satisfaction of any of the above-described distribution requirements are counted for purposes of all payout requirements described in the provision. For purposes of any distribution requirement described in this provision, the taxpayer may designate a qualifying distribution as being made out of the undistributed amount remaining from any prior taxable year or as being made in satisfaction of the distribution requirement for the current taxable year. Amounts distributed in excess of the undistributed amount for the current year and all previous taxable years may be carried forward for up to five taxable years following the taxable year in which the excess payment is made.

*Excise tax for failure to distribute*

In the event of a failure to distribute the required amount in connection with any of the above-described distribution requirements within the prescribed time period, the provision imposes excise taxes similar to the private foundation excise taxes under section 4942. Specifically, a first-tier excise tax equal to 30 percent of the undistributed amount is imposed. If the failure is not corrected within the taxable period (as defined in existing section 4942(j)(1)), a second-tier tax equal to 100 percent of the undistributed amount is imposed. The first and second tier taxes are subject to abatement under generally applicable present law rules. Taxable period means, with respect to any undistributed amount for any taxable year or applicable 3-year period, the period beginning with the first day of the taxable year or applicable period and ending on the earlier of the date of mailing of a notice of deficiency with respect to the imposition of the initial tax or the date on which such tax is assessed.

*Disqualified persons, excess benefit transactions, and other sanctions*

*Disqualified persons*

The provision provides that donors, donor advisors, and investment advisors to donor advised funds (as well as persons related to the foregoing persons[280]) are treated as disqualified persons with respect to the sponsoring organization under section 4958 or under section 4946(a).

*Excess benefit transactions*

The provision also provides that distributions from a donor advised fund to a person that with respect to such fund is a donor, donor adviser, or a person related to a donor or donor adviser (though not an investment advisor) is treated as an excess benefit transaction under section 4958, with the entire amount paid to any such person treated as the amount of the excess benefit. This rule applies regardless of whether the sponsoring organization is a public charity or a private foundation and regardless of whether, but for this rule, the transaction would have been subject to the section 4941 self-dealing rules.[281]

Any amount repaid as a result of correcting such an excess benefit transaction shall not be held in or credited to any donor advised fund.

*Other sanctions*

Under the provision, distributions from a donor advised fund (as opposed to a sponsoring organization's non donor advised funds or accounts) to any person other than the sponsoring organization's non donor advised funds or accounts or organizations described in section 170(b)(1)(A)[282] (other than Type III supporting organizations[283] or sponsoring organizations for maintenance in a donor advised fund) are prohibited.[284] The provision provides for a penalty in the event a distribution is made from a donor advised fund to an ineligible person, such as a private non-operating foundation or a Type III supporting organization. In the event of such a distribution, an excise tax equal to 20 percent of the amount of the distribution is imposed against any donor or donor advisor who advised that such distribution be made. In addition, an excise tax equal to five percent of the amount of the distribution is imposed against any manager of the sponsoring organization (defined in a manner similar to the term ''foundation manager'' under section 4945) who knowingly approved the distribution. The taxes described in this paragraph are subject to abatement under generally applicable present law rules.

Under the provision, if a donor, a donor advisor, or a person related to a donor or donor advisor of a donor advised fund advises as to a distribution that results in any such person receiving, directly or indirectly, a more than incidental benefit, excise taxes are imposed against any donor or donor advisor who advised as to the distribution, and against the recipient of the benefit. The amount of the tax is determined by multiplying the rate of the initial tax imposed against a disqualified person under section 4958 by the amount of the distribution that gave rise to the more-than-incidental benefit. Persons subject to the tax are jointly and severally liable for the entire amount of the tax. In addition, if a manager of the sponsoring organization (defined in a manner similar to the term ''foundation manager'' under section 4945) who agreed to the making of the distribution knowing that the distribution would confer a more than incidental benefit on a donor, a donor advisor, or a person related to a donor or donor advisor of a donor advised fund, the manager also is subject to an excise tax, calculated by multiplying the rate of the initial tax specified under section 4958 with respect to organization managers by the amount of the distribution that gave rise to the more than incidental benefit. The taxes on more than incidental benefit are subject to abatement under generally applicable present law rules.

*Reporting and disclosure*

The provision requires each sponsoring organization to disclose on its information return: (1) the total number of donor advised funds it owns; (2) the aggregate value of assets held in those funds at the end of the organization's taxable year; and (3) the aggregate contributions to and grants made from those funds during the year. The statute of limitations for assessing any tax arising under the provision in any year with respect to which the required information has not been provided shall not expire before three years after the date on which the required information is disclosed to the IRS.

In addition, when seeking recognition of its tax-exempt status, a sponsoring organization must disclose whether it intends to maintain donor advised funds.

*Effective date*

The provision generally is effective for taxable years beginning after the date of enactment. Distribution requirements are effective for taxable years beginning after the date of enactment. Information return requirements are effective for taxable years ending after the date of enactment. The requirements concerning disclosures on an organization's application for tax exemption are effective for organizations applying for recognition of exempt status after the date of enactment. Requirements relating to charitable contributions to donor advised funds are effective for contributions made after 180 days from the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

15. Improve accountability of supporting organizations (secs. 241–246 of the Senate amendment and secs. 509, 4942, 4943, 4945, 4958, and 6033 and new sec. 4959 of the Code)

PRESENT LAW

*Requirements for section 501(c)(3) tax-exempt status*

Charitable organizations, i.e., organizations described in section 501(c)(3), generally are exempt from Federal income tax and are eligible to receive tax deductible contributions. A charitable organization must operate primarily in pursuance of one or more tax-exempt purposes constituting the basis of its tax exemption.[285] In order to qualify as operating primarily for a purpose described in section 501(c)(3), an organization must satisfy the following operational requirements: (1) the net earnings of the organization may not inure to the benefit of any person in a position to influence the activities of the organization; (2) the organization must operate to provide a public benefit, not a private benefit;[286] (3) the organization may not be operated primarily to conduct an unrelated trade or business;[287] (4) the organization may not engage in substantial legislative lobbying; and (5) the organization may not participate or intervene in any political campaign.

Section 501(c)(3) organizations (with certain exceptions) are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023). In response to the application, the IRS issues a

[280] For purposes of the provision, a person is treated as related to another person if (1) such person bears a relationship to such other person similar to the relationships described in sections 4958(f)(1)(B) and 4958(f)(1)(C).

[281] This rule includes any distribution to a donor, donor advisor, or a related person, whether in the form of a grant, loan, compensation arrangement, expense reimbursement, or other payment. If the excess benefit results from the payment of compensation, the entire amount paid as compensation will be deemed the amount of the excess benefit, whether the sponsoring organization is a private foundation or a public charity.

[282] By requiring that distributions from a donor advised fund be made only to certain entities, the provision prohibits distributions from a donor advised fund to a donor or donor advisor (or person related to a donor or donor advisor), whether as compensation, loans, or reimbursement of expenses.

[283] Distributions to Type I and Type II supporting organizations generally are not prohibited unless prohibited under regulations. Regulations generally shall prohibit such distributions where the donor or donor advisor of the amounts distributed directly or indirectly controls a supported organization of the Type I or Type II supporting organization.

[284] Under the provision, distributions from donor advised funds to individuals are prohibited. However, sponsoring organizations may make grants to individuals from amounts not held in donor advised funds and may establish scholarship funds that are not donor advised funds. A donor may choose to make a contribution directly to such a scholarship fund (or advise that a donor advised fund make a distribution to such a scholarship fund).

[285] Treas. Reg. sec. 1.501(c)(3)–1(c)(1). The Code specifies such purposes as religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international amateur sports competition, or for the prevention of cruelty to children or animals. In general, an organization is organized and operated for charitable purposes if it provides relief for the poor and distressed or the underprivileged. Treas. Reg. sec. 1.501(c)(3)–1(d)(2).

[286] Treas. Reg. sec. 1.501(c)(3)–1(d)(1)(ii).

[287] Treas. Reg. sec. 1.501(c)(3)–1(e)(1). Conducting a certain level of unrelated trade or business activity will not jeopardize tax-exempt status.

determination letter or ruling either recognizing the applicant as tax-exempt or not.

In general, organizations exempt from Federal income tax under section 501(a) are required to file an annual information return with the IRS.[288] Under present law, the information return requirement does not apply to several categories of exempt organizations. Organizations exempt from the filing requirement include organizations (other than private foundations), the gross receipts of which in each taxable year normally are not more than $25,000.[289]

*Classification of section 501(c)(3) organizations*

*In general*

Section 501(c)(3) organizations are classified either as ''public charities'' or ''private foundations.''[290] Private foundations generally are defined under section 509(a) as all organizations described in section 501(c)(3) other than an organization granted public charity status by reason of: (1) being a specified type of organization (i.e., churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; or (3) providing support to another section 501(c)(3) entity that is not a private foundation. In contrast to public charities, private foundations generally are funded from a limited number of sources (e.g., an individual, family, or corporation). Donors to private foundations and persons related to such donors together often control the operations of private foundations.

Because private foundations receive support from, and typically are controlled by, a small number of supporters, private foundations are subject to a number of anti-abuse rules and excise taxes not applicable to public charities.[291] For example, the Code imposes excise taxes on acts of ''self-dealing'' between disqualified persons (generally, an enumerated class of foundation insiders[292]) and a private foundation. Acts of self-dealing include, for example, sales or exchanges, or leasing, of property; lending of money; or the furnishing of goods, services, or facilities between a disqualified person and a private foundation.[293] In addition, private non-operating foundations are required to pay out a minimum amount each year as qualifying distributions. In general, a qualifying distribution is an amount paid to accomplish one or more of the organization's exempt purposes, including reasonable and necessary administrative expenses.[294] Certain expenditures of private foundations are also subject to tax.[295] In general, taxable expenditures are expenditures: (1) for lobbying; (2) to influence the outcome of a public election or carry on a voter registration drive (unless certain requirements are met); (3) as a grant to an individual for travel, study, or similar purposes unless made pursuant to procedures approved by the Secretary; (4) as a grant to an organization that is not a public charity or exempt operating foundation unless the foundation exercises expenditure responsibility[296] with respect to the grant; or (5) for any non-charitable purpose. Additional excise taxes may apply in the event a private foundation holds certain business interests (''excess business holdings'')[297] or makes an investment that jeopardizes the foundation's exempt purposes.[298]

Public charities also enjoy certain advantages over private foundations regarding the deductibility of contributions. For example, contributions of appreciated capital gain property to a private foundation generally are deductible only to the extent of the donor's cost basis.[299] In contrast, contributions to public charities generally are deductible in an amount equal to the property's fair market value, except for gifts of inventory and other ordinary income property, short-term capital gain property, and tangible personal property the use of which is unrelated to the donee organization's exempt purpose. In addition, under present law, a taxpayer's deductible contributions generally are limited to specified percentages of the taxpayer's contribution base, which generally is the taxpayer's adjusted gross income for a taxable year. The applicable percentage limitations vary depending upon the type of property contributed and the classification of the donee organization. In general, contributions to non-operating private foundations are limited to a smaller percentage of the donor's contribution base (up to 30 percent) than contributions to public charities (up to 50 percent).[300]

*Supporting organizations (section 509(a)(3))*

The Code provides that certain ''supporting organizations'' (in general, organizations that provide support to another section 501(c)(3) organization that is not a private foundation) are classified as public charities rather than private foundations.[301] To qualify as a supporting organization, an organization must meet all three of the following tests: (1) it must be organized and at all times operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more ''publicly supported organizations''[302] (the ''organizational and operational tests'');[303] (2) it must be operated, supervised, or controlled by or in connection with one or more publicly supported organizations (the ''relationship test'');[304] and (3) it must not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations (the ''lack of outside control test'').[305]

To satisfy the relationship test, a supporting organization must hold one of three statutorily described close relationships with the supported organization. The organization must be: (1) operated, supervised, or controlled by a publicly supported organization (commonly referred to as ''Type I'' supporting organizations); (2) supervised or controlled in connection with a publicly supported organization (''Type II'' supporting organizations); or (3) operated in connection with a publicly supported organization (''Type III'' supporting organizations).[306]

*Type I supporting organizations*

In the case of supporting organizations that are operated, supervised, or controlled by one or more publicly supported organizations (Type I supporting organizations), one or more supported organizations must exercise a substantial degree of direction over the policies, programs, and activities of the supporting organization.[307] The relationship between the Type I supporting organization and the supported organization generally is comparable to that of a parent and subsidiary. The requisite relationship may be established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.[308]

*Type II supporting organizations*

Type II supporting organizations are supervised or controlled in connection with one or more publicly supported organizations. Rather than the parent-subsidiary relationship characteristic of Type I organizations, the relationship between a Type II organization and its supported organizations is more analogous to a brother-sister relationship. In order to satisfy the Type II relationship requirement, generally there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations.[309] An organization generally is not considered to be ''supervised or controlled in connection with'' a publicly supported organization merely because the supporting organization makes payments to the publicly supported organization, even if the obligation to make payments is enforceable under state law.[310]

*Type III supporting organizations*

Type III supporting organizations are ''operated in connection with'' one or more publicly supported organizations. To satisfy the ''operated in connection with'' relationship, Treasury regulations require that the supporting organization be responsive to, and significantly involved in the operations of, the publicly supported organization. This relationship is deemed to exist where the supporting organization meets both a ''responsiveness test'' and an ''integral part test.''[311]

In general, the responsiveness test requires that the Type III supporting organization be responsive to the needs or demands of the publicly supported organizations. The responsiveness test may be satisfied in one of two ways.[312] First, the supporting organization may demonstrate that: (1)(a) one or

[288] Sec. 6033(a)(1).

[289] Sec. 6033(a)(2); Treas. Reg. sec. 1.6033–2(a)(2)(i); Treas. Reg. sec. 1.6033–2(g)(1). Sec. 6033(a)(2)(A)(ii) provides a $5,000 annual gross receipts exception from the annual reporting requirements for certain exempt organizations. In Announcement 82–88, 1982–25 I.R.B. 23, the IRS exercised its discretionary authority under section 6033 to increase the gross receipts exception to $25,000, and enlarge the category of exempt organizations that are not required to file Form 990.

[290] Sec. 509(a). Private foundations are either private operating foundations or private non-operating foundations. In general, private operating foundations operate their own charitable programs in contrast to private non-operating foundations, which generally are grant-making organizations. Most private foundations are non-operating foundations.

[291] Secs. 4940–4945.

[292] See sec. 4946(a).

[293] Sec. 4941.

[294] Sec. 4942(g)(1)(A). A qualifying distribution also includes any amount paid to acquire an asset used (or held for use) directly in carrying out one or more of the organization's exempt purposes and certain amounts set-aside for exempt purposes. Sec. 4942(g)(1)(B) and 4942(g)(2).

[295] Sec. 4945. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

[296] In general, expenditure responsibility requires that a foundation make all reasonable efforts and establish reasonable procedures to ensure that the grant is spent solely for the purpose for which it was made, to obtain reports from the grantee on the expenditure of the grant, and to make reports to the Secretary regarding such expenditures. Sec. 4945(h).

[297] Sec. 4943.

[298] Sec. 4944.

[299] A special rule in section 170(e)(5) provides that taxpayers are allowed a deduction equal to the fair market value of certain contributions of appreciated, publicly traded stock contributed to a private foundation.

[300] Sec. 170(b).

[301] Sec. 509(a)(3).

[302] In general, supported organizations of a supporting organization must be publicly supported charities described in sections 509(a)(1) or (a)(2).

[303] Sec. 509(a)(3)(A).

[304] Sec. 509(a)(3)(B).

[305] Sec. 509(a)(3)(C).

[306] Treas. Reg. sec. 1.509(a)–4(f)(2).

[307] Treas. Reg. sec. 1.509(a)–4(g)(1)(i).

[308] Id.

[309] Treas. Reg. sec. 1.509(a)–4(h)(1).

[310] Treas. Reg. sec. 1.509(a)–4(h)(2).

[311] Treas. Reg. sec. 1.509(a)–4(i)(1).

[312] For an organization that was supporting or benefiting one or more publicly supported organizations

more of its officers, directors, or trustees are elected or appointed by the officers, directors, trustees, or membership of the supported organization; (b) one or more members of the governing bodies of the publicly supported organizations are also officers, directors, or trustees of the supporting organization; or (c) the officers, directors, or trustees of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the publicly supported organizations; and (2) by reason of such arrangement, the officers, directors, or trustees of the supported organization have a significant voice in the investment policies of the supporting organization, the timing and manner of making grants, the selection of grant recipients by the supporting organization, and otherwise directing the use of the income or assets of the supporting organization.[313] Alternatively, the responsiveness test may be satisfied if the supporting organization is a charitable trust under state law, each specified supported organization is a named beneficiary under the trust's governing instrument, and the beneficiary organization has the power to enforce the trust and compel an accounting under state law.[314]

In general, the integral part test requires that the Type III supporting organization maintain significant involvement in the operations of one or more publicly supported organizations, and that such publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides. There are two alternative methods for satisfying the integral part test. The first alternative is to establish that (1) the activities engaged in for or on behalf of the publicly supported organization are activities to perform the functions of, or carry out the purposes of, such organizations; and (2) these activities, but for the involvement of the supporting organization, normally would be engaged in by the publicly supported organizations themselves.[315] The second method for satisfying the integral part test is to establish that: (1) the supporting organization pays substantially all of its income to or for the use of one or more publicly supported organizations;[316] (2) the amount of support received by one or more of the publicly supported organizations is sufficient to insure the attentiveness of the organization or organizations to the operations of the supporting organization (this is known as the ''attentiveness requirement'');[317] and (3) a significant amount of the total support of the supporting organization goes to those publicly supported organizations that meet the attentiveness requirement.[318]

*Intermediate sanctions (excess benefit transaction tax)*

The Code imposes excise taxes on excess benefit transactions between disqualified persons and public charities.[319] An excess benefit transaction generally is a transaction in which an economic benefit is provided by a public charity directly or indirectly to or for the use of a disqualified person, if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

For purposes of the excess benefit transaction rules, a disqualified person is any person in a position to exercise substantial influence over the affairs of the public charity at any time in the five-year period ending on the date of the transaction at issue.[320] Persons holding certain powers, responsibilities, or interests (e.g., officers, directors, or trustees) are considered to be in a position to exercise substantial influence over the affairs of the public charity.

An excess benefit transaction tax is imposed on the disqualified person and, in certain cases, on the organization managers, but is not imposed on the public charity. An initial tax of 25 percent of the excess benefit amount is imposed on the disqualified person that receives the excess benefit. An additional tax on the disqualified person of 200 percent of the excess benefit applies if the violation is not corrected within a specified period. A tax of 10 percent of the excess benefit (not to exceed $10,000 with respect to any excess benefit transaction) is imposed on an organization manager that knowingly participated in the excess benefit transaction, if the manager's participation was willful and not due to reasonable cause, and if the initial tax was imposed on the disqualified person.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Provisions relating to all (Type I, Type II, and Type III) supporting organizations*

*Excess benefit transactions*

Under the provision, if a supporting organization (Type I, Type II, or Type III) makes a grant, loan, payment of compensation, or other similar payment to a substantial contributor (or person related to the substantial contributor) of the supporting organization, for purposes of the excess benefit transaction rules (sec. 4958), the substantial contributor is treated as a disqualified person and the payment is treated as an excess benefit transaction with the entire amount of the payment treated as the excess benefit.

A substantial contributor means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than two percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, a substantial contributor also includes the creator of the trust. A substantial contributor does not include a public charity (other than a supporting organization).

A person is a related person (''related person'') if a person is a member of the family (determined under section 4958(f)(4)) of a substantial contributor, or a 35 percent entity, defined as a corporation, partnership, trust, or estate in which a substantial contributor or family member thereof own more than 35 percent of the total combined voting power, profits interest, or beneficial interest, as the case may be.

In addition, under the provision, loans by any supporting organization (Type I, Type II, or Type III) to a disqualified person (as defined in section 4958) of the supporting organization are treated as an excess benefit transaction under section 4958 and the entire amount of the loan is treated as an excess benefit. For this purpose, a disqualified person does not include a public charity (other than a supporting organization).

*Disclosure requirements*

All supporting organizations are required to file an annual information return (Form 990 series) with the Secretary, regardless of the organization's gross receipts. A supporting organization must indicate on such annual information return whether it is a Type I, Type II, or Type III supporting organization and must identify its supported organizations.

Supporting organizations must demonstrate annually that the organization is not controlled directly or indirectly by one or more disqualified persons (other than foundation managers and other than one or more publicly supported organizations) through a certification on the annual information return.

*Disqualified person*

For purposes of the excess benefit transaction rules (sec. 4958), a disqualified person of a supporting organization is treated as a disqualified person of the supported organization.

*Provisions that apply to Type III supporting organizations*

*Modify payout requirement of Type III supporting organizations*

A Type III supporting organization must pay each taxable year, to or for the use of one or more public charities described in section 509(a)(1) or 509(a)(2) (''qualifying distributions''), the sum of (1) the greater of (i) 85 percent of its adjusted net income (as defined in section 4942(f)) for the preceding taxable year or (ii) the applicable percentage[321] of the aggregate fair market value of all of the assets of the organization other than assets that are used (or held for use) directly in supporting the charitable programs of the supporting organization or one or more supported organizations, determined as of the last day of the preceding taxable year, and (2) any amount received or accrued in such year as repayments of amounts that were taken into account as support provided by the supporting organization in prior years. Qualifying distributions are treated as made first to satisfy the pay out requirement of the immediately preceding taxable year, and then of the taxable year, unless the taxpayer elects to have an amount as satisfying the payout of any prior taxable year. Amounts distributed in excess of the required payout for the current year and all previous taxable years may be carried forward for up to five taxable years following the taxable year in which the excess payment is made.

A supporting organization's administrative expenses count as expenses to or for the use of a supported organization. The holding of

before November 20, 1970, additional facts and circumstances, such as an historic and continuing relationship between organizations, also may be taken into consideration to establish compliance with either of the responsiveness tests. Treas. Reg. sec. 1.509(a)–4(i)(1)(ii).

[313] Treas. Reg. sec. 1.509(a)–4(i)(2)(ii).

[314] Treas. Reg. sec. 1.509(a)–4(i)(2)(iii).

[315] Treas. Reg. sec. 1.509(a)–4(i)(3)(ii).

[316] For this purpose, the IRS has defined the term ''substantially all'' of an organization's income to mean 85 percent or more. Rev. Rul. 76–208, 1976–1 C.B. 161.

[317] Although the regulations do not specify the requisite level of support in numerical or percentage terms, the IRS has suggested that grants that represent less than 10 percent of the beneficiary's support likely would be viewed as insufficient to ensure attentiveness. Gen. Couns. Mem. 36379 (August 15, 1975). As an alternative to satisfying the attentiveness standard by the foregoing method, a supporting organization may demonstrate attentiveness by showing that, in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization. Treas. Reg. sec. 1.509(a)–4(i)(3)(iii)(b).

[318] Treas. Reg. sec. 1.509(a)–4(i)(3)(iii).

[319] Sec. 4958. The excess benefit transaction tax is commonly referred to as ''intermediate sanctions,'' because it imposes penalties generally considered to be less punitive than revocation of the organization's exempt status. The tax also applies to transactions between disqualified persons and social welfare organizations (as described in section 501(c)(4)).

[320] Sec. 4958(f)(1). A disqualified person also includes certain family members of such a person, and certain entities that satisfy a control test with respect to such persons.

[321] The percentage is three percent for the first taxable year beginning after the date of enactment, four percent for the second such taxable year, and five percent for any such taxable year thereafter.

assets for investment purposes, or to operate an unrelated trade or business, is not considered a use or holding for use directly to support a supported organization's charitable programs. The Secretary may provide guidance as to types of uses of assets that are considered to be directly in support of a supported organization's charitable programs similar to guidance provided under Treasury Regulation section 53.4942(a)–2(c)(3)(i).

An organization that fails to meet the payout requirement is subject to an initial tax of 30 percent of the unpaid amount, increased to 100 percent of the unpaid amount if the payout requirement is not met by the earlier of the date of mailing of a notice of deficiency with respect to the initial tax or the date on which the initial tax is assessed.

*Excess business holdings*

The excess business holdings rules of section 4943 are applied to Type III supporting organizations. In applying such rules, the term disqualified person has the meaning provided in section 4958, and also includes substantial contributors and related persons and any organization that is effectively controlled by the same person or persons who control the supporting organization or any organization substantially all of the contributions to which were made by the same person or persons who made substantially all of the contributions to the supporting organization. The excess business holdings rules do not apply if the holdings are held for the benefit of the community pursuant to the direction of a State attorney general or a State official with jurisdiction over the Type III supporting organization. The Secretary has the authority not to impose the excess business holding rules if the organization establishes to the satisfaction of the Secretary that the excess holdings are consistent with the exempt purposes of the organization. Transition rules apply to the present holdings of an organization similar to those of section 4943(c)(4)–(6).

The excess business holdings rules also apply to Type II supporting organizations but only if such organization accepts any gift or contribution from a person (other than a public charity, not including a supporting organization) who (1) controls, directly or indirectly, either alone or together (with persons described below) the governing body of a supported organization of the supporting organization; (2) is a member of the family of such a person; or (3) is a 35 percent controlled entity.

*Organizational and operational requirements*

In general, after the date of enactment of the provision, a Type III supporting organization may not support more than five organizations. A transition rule applies to Type III supporting organizations that support more than five organizations on such date. Such organizations are not required to reduce the number of supported organizations, but may not increase the number of organizations supported above the number of organizations supported on the date of enactment, and may not add new supported organizations as beneficiaries unless no more than five organizations are supported by the supporting organization following such addition.

A Type III supporting organization may not support an organization that is not organized in the United States on any date after the date which is 180 days after the date of enactment,[322] and may not be a donor with respect to a donor advised fund.

*Relationship to supported organization(s)*

A Type III supporting organization must, as part of its exemption application (Form 1023) attach a letter from each supported organization acknowledging that the supported organization has been designated by such organization as a supported organization.

On the annual information return filed by a Type III supporting organization, the organization must indicate that it has obtained letters from organizations that received its support. It is intended that all such letters must be signed by a senior officer or a member of the Board of the supported organization. The letters must show (1) that the supported organization agrees to be supported by the supporting organization, (2) the type of support provided or to be provided, and (3) how such support furthers the supported organization's charitable purposes.

A Type III supporting organization must apprise each organization it supports of information regarding the supporting organization in order to help ensure the supporting organization's responsiveness. Such a showing could be satisfied, for example, through provision of documentation such as a copy of the supporting organization's governing documents, any changes made to the governing documents, the organization's annual information return filed with the Secretary (Form 990 series), any tax return (Form 990–T) filed with the Secretary, and an annual report (including a description of all of the support provided by the supporting organization, how such support was calculated, and a projection of the next year's support). Failure to make a sufficient showing is a factor in determining whether the responsiveness test of present law is met.

A Type III supporting organization that is organized as a trust must, in addition to present law requirements, establish to the satisfaction of the Secretary, that it has a close and continuous relationship with the supported organization such that the trust is responsive to the needs or demands of the supported organization.

*Other provisions*

Under the provision, if a Type I or Type III supporting organization accepts any gift or contribution from a person (other than a public charity, not including a supporting organization) who (1) controls, directly or indirectly, either alone or together (with persons described below) the governing body of a supported organization of the supporting organization; (2) is a member of the family of such a person; or (3) is a 35 percent controlled entity, then the supporting organization is treated as a private foundation for all purposes until such time as the organization can demonstrate to the satisfaction of the Secretary that it qualifies as a public charity other than as a supporting organization.

Under the provision, a non-operating private foundation may not count as a qualifying distribution under section 4942 any amount paid to a supporting organization. In addition, any such amount is treated as a taxable expenditure under section 4945.

*Effective date*

The provision generally is effective on the date of enactment. The distribution requirements are effective for taxable years beginning after the date of enactment. The prohibited transaction rules are effective for transactions occurring after the date of enactment. The excess business holdings requirements are effective for taxable years beginning after the date of enactment. The provision relating to distributions by nonoperating private foundations is effective for distributions and expenditures made after the date of enactment. The return requirements are effective for returns filed for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

## TITLE IV—MISCELLANEOUS PROVISIONS

### A. RESTRUCTURE NEW YORK LIBERTY ZONE TAX INCENTIVES

(Sec. 301 of the Senate amendment)

PRESENT LAW

*In general*

Present law includes a number of incentives to invest in property located in the New York Liberty Zone (''NYLZ''), which is the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York. These incentives were enacted following the terrorist attack in New York City on September 11, 2001.[323]

*Special depreciation allowance for qualified New York Liberty Zone property*

Section 1400L(b) allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified NYLZ property.[324] In order to qualify, property generally must be placed in service on or before December 31, 2006 (December 31, 2009 in the case of nonresidential real property and residential rental property).

The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be property to which the general rules of the Modified Accelerated Cost Recovery System (''MACRS'')[325] apply with (1) an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) certain nonresidential real property and residential rental property, or (4) computer software other than computer software covered by section 197. A special rule precludes the additional first-year depreciation under this provision for (1) qualified NYLZ leasehold improvement property[326] and (2) property eligible for the additional first-year depreciation deduction under section 168(k) (i.e., property is eligible

[322] U.S. charities established principally to provide financial and other assistance to a foreign charity, sometimes referred to as ''friends of'' organizations, may not be established as supporting organizations under the provision. Such organizations may continue to obtain public charity status, however, by virtue of demonstrating broad public support (as described in sections 509(a)(1) and 509(a)(2)).

[323] In addition to the NYLZ provisions described above, other NYLZ incentives are provided: (1) $8 billion of tax-exempt private activity bond financing for certain nonresidential real property, residential rental property and public utility property is authorized to be issued after March 9, 2002, and before January 1, 2010; and (2) $9 billion of additional tax-exempt advance refunding bonds is available after March 9, 2002, and before January 1, 2006, with respect to certain State or local bonds outstanding on September 11, 2001.

[324] The amount of the additional first-year depreciation deduction is not affected by a short taxable year.

[325] A special rule precludes the additional first-year depreciation deduction for property that is required to be depreciated under the alternative depreciation system of MACRS.

[326] Qualified NYLZ leasehold improvement property is defined in another provision. Leasehold improvements that do not satisfy the requirements to be treated as ''qualified NYLZ leasehold improvement property'' maybe eligible for the 30 percent additional first-year depreciation deduction (assuming all other conditions are met).

for only one 30 percent additional first-year depreciation). Second, substantially all of the use of such property must be in the NYLZ. Third, the original use of the property in the NYLZ must commence with the taxpayer on or after September 11, 2001. Finally, the property must be acquired by purchase[327] by the taxpayer after September 10, 2001 and placed in service on or before December 31, 2006. For qualifying nonresidential real property and residential rental property the property must be placed in service on or before December 31, 2009 in lieu of December 31, 2006. Property will not qualify if a binding written contract for the acquisition of such property was in effect before September 11, 2001.[328]

Nonresidential real property and residential rental property is eligible for the additional first-year depreciation only to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned as a result of the terrorist attacks of September 11, 2001.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies for the additional first-year depreciation deduction if the taxpayer begins the manufacture, construction, or production of the property after September 10, 2001, and the property is placed in service on or before December 31, 2006[329] (and all other requirements are met). Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

*Depreciation of New York Liberty Zone leasehold improvements*

Generally, depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease.[330] This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service.[331] If a leasehold improvement constitutes an addition or improvement to nonresidential real property already placed in service, the improvement generally is depreciated using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement is placed in service.[332]

A special rule exists for qualified NYLZ leasehold improvement property, which is recovered over five years using the straight-line method. The term qualified NYLZ leasehold improvement property means property defined in section 168(e)(6) that is acquired and placed in service after September 10, 2001, and before January 1, 2007 (and not subject to a binding contract on September 10, 2001), in the NYLZ. For purposes of the alternative depreciation system, the property is assigned a nine-year recovery period. A taxpayer may elect out of the 5-year (and 9-year) recovery period for qualified NYLZ leasehold improvement property.

*Increased section 179 expensing for qualified New York Liberty Zone property*

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct the cost of qualifying property. For taxable years beginning in 2003 through 2007, a taxpayer may deduct up to $100,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property for this purpose is defined as depreciable tangible personal property (and certain computer software) that is purchased for use in the active conduct of a trade or business. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $100,000 and $400,000 amounts are indexed for inflation.

For taxable years beginning in 2008 and thereafter, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In general, qualifying property for this purpose is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

The amount a taxpayer can deduct under section 179 is increased for qualifying property used in the NYLZ. Specifically, the maximum dollar amount that may be deducted under section 179 is increased by the lesser of (1) $35,000 or (2) the cost of qualifying property placed in service during the taxable year. This amount is in addition to the amount otherwise deductible under section 179.

Qualifying property for purposes of the NYLZ provision means section 179 property[333] purchased and placed in service by the taxpayer after September 10, 2001 and before January 1, 2007, where (1) substantially all of the use of such property is in the NYLZ in the active conduct of a trade or business by the taxpayer in the NYLZ, and (2) the original use of which in the NYLZ commences with the taxpayer after September 10, 2001.[334]

The phase-out range for the section 179 deduction attributable to NYLZ property is applied by taking into account only 50 percent of the cost of NYLZ property that is section 179 property. Also, no general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

The provision is effective for property placed in service after September 10, 2001 and before January 1, 2007.

*Extended replacement period for New York Liberty Zone involuntary conversions*

A taxpayer may elect not to recognize gain with respect to property that is involuntarily converted if the taxpayer acquires within an applicable period (the ''replacement period'') property similar or related in service or use (section 1033). If the taxpayer does not replace the converted property with property similar or related in service or use, then gain generally is recognized. If the taxpayer elects to apply the rules of section 1033, gain on the converted property is recognized only to the extent that the amount realized on the conversion exceeds the cost of the replacement property. In general, the replacement period begins with the date of the disposition of the converted property and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized.[335] The replacement period is extended to three years if the converted property is real property held for the productive use in a trade or business or for investment.[336]

The replacement period is extended to five years with respect to property that was involuntarily converted within the NYLZ as a result of the terrorist attacks that occurred on September 11, 2001. However, the five-year period is available only if substantially all of the use of the replacement property is in New York City. In all other cases, the present-law replacement period rules continue to apply.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Repeal of certain NYLZ incentives*

The provision repeals the four NYLZ incentives relating to the additional first-year depreciation allowance of 30 percent, the five-year depreciation of leasehold improvements, the additional section 179 expensing, and the extended replacement period for involuntary conversions.[337]

*Creation of New York Liberty Zone tax credits*

The provision provides a credit against tax imposed (other than taxes of section 3111(a), 3403, or subtitle D) paid or incurred by any governmental unit of the State of New York and the City of New York equal to the lesser of (1) the total expenditures during such year by such governmental unit for qualifying projects, or (2) the amount allocated to such governmental unit for such calendar year.

Qualifying projects means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone, which is

[327] For purposes of this provision, purchase is defined as under section 179(d).

[328] Property is not precluded from qualifying for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to September 11, 2001.

[329] December 31, 2009 with respect to qualified nonresidential real property and residential rental property.

[330] Sec. 168(i)(8). The Tax Reform Act of 1986 modified the Accelerated Cost Recovery System (''ACRS'') to institute MACRS. Prior to the adoption of ACRS by the Economic Recovery Tax Act of 1981, taxpayers were allowed to depreciate the various components of a building as separate assets with separate useful lives. The use of component depreciation was repealed upon the adoption of ACRS. The Tax Reform Act of 1986 also denied the use of component depreciation under MACRS.

[331] Former sections 168(f)(6) and 178 provided that, in certain circumstances, a lessee could recover the cost of leasehold improvements made over the remaining term of the lease. The Tax Reform Act of 1986 repealed these provisions.

[332] Secs. 168(b)(3), (c), (d)(2), and (i)(6). If the improvement is characterized as tangible personal property, ACRS or MACRS depreciation is calculated using the shorter recovery periods, accelerated methods, and conventions applicable to such property. The determination of whether improvements are characterized as tangible personal property or as nonresidential real property often depends on whether or not the improvements constitute a ''structural component'' of a building (as defined by Treas. Reg. sec. 1.48–1(e)(1)). See, e.g., Metro National Corp v. Commissioner, 52 TCM (CCH) 1440 (1987); King Radio Corp Inc. v. U.S., 486 F.2d 1091 (10th Cir. 1973); Mallinckrodt, Inc. v. Commissioner, 778 F.2d 402 (8th Cir. 1985) (with respect to various leasehold improvements).

[333] As defined in sec. 179(d)(1).

[334] See Rev. Proc. 2002–33, 2002–20 I.R.B. 963 (May 20, 2002), for procedures on claiming the increased section 179 expensing deduction by taxpayers who filed their tax returns before June 1, 2002.

[335] Section 1033(a)(2)(B).

[336] Section 1033(g)(4).

[337] The provision does not change the present-law rules relating to certain NYLZ private activity bond financing and additional advance refunding bonds.

designated as a qualifying project jointly by the Governor of the State of New York and the Mayor of the City of New York.

The Governor of the State of New York and the Mayor of the City of New York shall jointly allocate to a governmental unit the amount of expenditures which may be taken into account for purposes of the credit for any calendar year in the credit period with respect to a qualifying project. The aggregate limit that may be allocated for all calendar years in the credit period is two billion dollars. The annual limit for any calendar year in the credit period shall not exceed the sum of 200 million dollars plus the aggregate amount authorized to be allocated for all preceding calendar years in the credit period which was not allocated. The credit period is the ten-year period beginning on January 1, 2006.

If, at the close of the credit period, the aggregate amounts allocated are less than the 2 billion dollar aggregate limit, the Governor of the State of New York and the Mayor of the City of New York may jointly allocate, for any calendar year following the credit period, for expenditures with respect to qualifying projects, amounts that in sum for all years following the credit period would equal such shortfall.

Under the provision, any expenditure for a qualifying project taken into account for purposes of the credit shall be considered State and local funds for the purpose of any Federal program.

*Effective date*

The provision is effective on the date of enactment, with an exception for property subject to a written binding contract in effect on the date of enactment which is placed in service prior to the original sunset dates under present law. The extended replacement period for involuntarily converted property ends on the earlier of (1) the date of enactment or (2) the last day of the five-year period specified in the Jobs Creation and Worker Assistance Act of 2002 (''JCWAA'').[338]

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

B. MODIFICATION OF S CORPORATION PASSIVE INVESTMENT INCOME RULES

(Sec. 302 of the Senate amendment and secs. 1362 and 1375 of the Code)

PRESENT LAW

An S corporation is subject to corporate-level tax, at the highest corporate tax rate, on its excess net passive income if the corporation has (1) accumulated earnings and profits at the close of the taxable year and (2) gross receipts more than 25 percent of which are passive investment income.

Excess net passive income is the net passive income for a taxable year multiplied by a fraction, the numerator of which is the amount of passive investment income in excess of 25 percent of gross receipts and the denominator of which is the passive investment income for the year. Net passive income is defined as passive investment income reduced by the allowable deductions that are directly connected with the production of that income. Passive investment income generally means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (to the extent of gains). Passive investment income generally does not include interest on accounts receivable, gross receipts that are derived directly from the active and regular conduct of a lending or finance business, gross receipts from certain liquidations, or gain or loss from any section 1256 contract (or related property) of an options or commodities dealer.

In addition, an S corporation election is terminated whenever the S corporation has accumulated earnings and profits at the close of each of three consecutive taxable years and has gross receipts for each of those years more than 25 percent of which are passive investment income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the 25-percent threshold to 60 percent; eliminates gains from the sale or exchange of stock or securities from the definition of passive investment income; and eliminates the rule terminating an S election by reason of having excess passive investment income for three consecutive taxable years.

*Effective date.*—The provision applies to taxable years beginning after December 31, 2006, and before October 1, 2009.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

C. CAPITAL EXPENDITURE LIMITATION FOR QUALIFIED SMALL ISSUE BONDS

(Sec. 303 of the Senate amendment and sec. 144 of the Code)

PRESENT LAW

Qualified small-issue bonds are tax-exempt State and local government bonds used to finance private business manufacturing facilities (including certain directly related and ancillary facilities) or the acquisition of land and equipment by certain farmers. In both instances, these bonds are subject to limits on the amount of financing that may be provided, both for a single borrowing and in the aggregate. In general, no more than $1 million of small-issue bond financing may be outstanding at any time for property of a business (including related parties) located in the same municipality or county. Generally, this $1 million limit may be increased to $10 million if all other capital expenditures of the business in the same municipality or county are counted toward the limit over a six-year period that begins three years before the issue date of the bonds and ends three years after such date. Outstanding aggregate borrowing is limited to $40 million per borrower (including related parties) regardless of where the property is located.

For bonds issued after September 30, 2009, the Code permits up to $10 million of capital expenditures to be disregarded, in effect increasing from $10 million to $20 million the maximum allowable amount of total capital expenditures by an eligible business in the same municipality or county.[339] However, no more than $10 million of bond financing may be outstanding at any time for property of an eligible business (including related parties) located in the same municipality or county. Other limits (e.g., the $40 million per borrower limit) also continue to apply.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision accelerates the application of the $20 million capital expenditure limitation from bonds issued after September 30, 2009, to bonds issued after December 31, 2006.

*Effective date.*—The provision is effective on the date of enactment for bonds issued after December 31, 2006.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision.

D. PREMIUMS FOR MORTGAGE INSURANCE

(Sec. 304 of the Senate amendment and secs. 163(h) and 6050H of the Code)

PRESENT LAW

Present law provides that qualified residence interest is deductible notwithstanding the general rule that personal interest is nondeductible (sec. 163(h)).

Qualified residence interest is interest on acquisition indebtedness and home equity indebtedness with respect to a principal and a second residence of the taxpayer. The maximum amount of home equity indebtedness is $100,000. The maximum amount of acquisition indebtedness is $1 million. Acquisition indebtedness means debt that is incurred in acquiring constructing, or substantially improving a qualified residence of the taxpayer, and that is secured by the residence. Home equity indebtedness is debt (other than acquisition indebtedness) that is secured by the taxpayer's principal or second residence, to the extent the aggregate amount of such debt does not exceed the difference between the total acquisition indebtedness with respect to the residence, and the fair market value of the residence.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision provides that premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus deductible. The amount allowable as a deduction under the provision is phased out ratably by 10 percent for each $1,000 by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction is not allowed if the taxpayer's adjusted gross income exceeds $110,000 ($55,000 in the case of married individual filing a separate return).

For this purpose, qualified mortgage insurance means mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and private mortgage insurance (defined in section 2 of the Homeowners Protection Act of 1998 as in effect on the date of enactment of the Senate amendment provision).

Amounts paid for qualified mortgage insurance that are properly allocable to periods after the close of the taxable year are treated as paid in the period to which they are allocated. No deduction is allowed for the unamortized balance if the mortgage is paid before its term (except in the case of qualified mortgage insurance provided by the Department of Veterans Affairs or Rural Housing Administration).

Reporting rules apply under the provision.

*Effective date.*—The Senate amendment provision is effective for amounts paid or accrued in taxable years beginning after December 31, 2006, and ending before January 1, 2008, and properly allocable to that period, with respect to mortgage insurance contracts issued after December 31, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY

(Sec. 305 of the Senate amendment)

PRESENT LAW

Present law does not provide for the special rules contemplated in the Sense of the Senate provision described below.

[338] Pub. L. No. 107–147, sec. 301 (2002).

[339] Sec. 144(a)(4)(G) as added by sec. 340(a) of the American Jobs Creation Act of 2004, Pub. L. No. 108–357 (2004).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate Amendment provision provides that it is the sense of the Senate that the Federal Emergency Management Agency should (1) rebid certain contracts entered into following Hurricane Katrina for which competing bids were not solicited; (2) implement its planned competitive contracting strategy and, in carrying out that strategy, prioritize local and small disadvantaged businesses in contracting and subcontracting; and (3) immediately after awarding any contract, make public the dollar amount of the contract and whether competing bids were solicited.

*Effective date.*—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

F. SENSE OF CONGRESS REGARDING DOHA ROUND

(Sec. 306 of the Senate amendment)

PRESENT LAW

Present law does not provide a sense of Congress regarding the Doha Round of trade negotiations.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision provides that it is the sense of Congress that the United States should not be a signatory to an agreement or protocol with respect to the Doha Development Round of the World Trade Organization (WTO) negotiations or any other bilateral or multilateral trade negotiations if the agreement or protocol (1) adopts any provision to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions or (2) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws. The provision also provides that it is the sense of Congress that (1) the United States trade laws and international rules appropriately serve the public interest by offsetting injurious unfair trade, and that further balancing modifications or other similar provisions are unnecessary and would add to the complexity and difficulty of achieving relief against injurious unfair trade practices, and (2) the United States should ensure that any new agreement relating to international disciplines on unfair trade or safeguard provisions fully rectifies and corrects decisions by WTO dispute settlement panels or the Appellate Body that have unjustifiably and negatively impacted, or threaten to negatively impact, United States law or practice, including a law or practice with respect to foreign dumping or subsidization.

*Effective date.*—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

G. TREATMENT OF CERTAIN STOCK OPTION PLANS UNDER NONQUALIFIED DEFERRED COMPENSATION RULES

(Sec. 308 of the Senate amendment)

PRESENT LAW

Amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are satisfied.[340] For example, distributions from a nonqualified deferred compensation plan may be allowed only upon certain times and events. Rules also apply for the timing of elections. If the requirements are not satisfied, in addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to a 20-percent additional tax.

The rules governing the tax treatment of nonqualified deferred compensation generally apply to stock options granted to employees. However, exceptions apply to incentive stock options and options granted under employee stock purchase plans.[341]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, the Secretary of the Treasury is directed to modify the regulations relating to nonqualified deferred compensation to extend to applicable foreign option plans the exceptions for incentive stock options and options granted under employee stock purchase plans. The exception for applicable foreign option plans is subject to such terms and conditions as may be prescribed in the regulations.

An applicable foreign option plan means a plan that (1) provides for the issuance of employee stock options; (2) is established under the laws of a foreign jurisdiction; and (3) under such laws or the terms of the plan (or both), is subject to requirements substantially similar to the requirements applicable to incentive stock options and options granted under employee stock purchase plans.

For this purpose, a foreign option plan is not treated as subject to requirements substantially similar to the requirements applicable to incentive stock options and options granted under employee stock purchase plans unless the foreign option plan: (1) is required to cover substantially all employees; (2) in the case of an option under an employee stock purchase plan, is required to provide an option price of not less than the lesser of not less than 80 percent of the fair market value of the stock at the time the option is granted or an amount which, under the terms of the option, cannot be less than 80 percent of the fair market value of the stock at the time the option is exercised; (3) is required to provide coverage of individuals who, but for the exception under the provision, would be subject to tax under the nonqualified deferred compensation rules with respect to the plan; and (4) meets such other requirements as prescribed in regulations issued under the provision.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

H. SENSE OF THE SENATE REGARDING THE DEDICATION OF EXCESS FUNDS

(Sec. 309 of the Senate amendment)

PRESENT LAW

Present law does not provide a sense of the Senate regarding the dedication of Treasury revenues that exceed amounts specified in the reconciliation instructions for this bill.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that it is the sense of the Senate that any Federal revenue increases resulting from the Senate amendment and exceeding the amounts specified in applicable reconciliation instructions are to be dedicated to the Low-Income Home Energy Assistance Program. The amount so dedicated is not to exceed by more than $2.9 billion the funding level established for the program for fiscal year 2005.

*Effective date.*—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

I. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES

(Sec. 310 of the Senate amendment and sec. 7872(g) of the Code)

PRESENT LAW

Present law provides generally that certain loans that bear interest at a below-market rate are treated as loans bearing interest at the market rate, accompanied by imputed payments characterized in accordance with the substance of the transaction (for example, as a gift, compensation, a dividend, or interest).[342]

An exception to this imputation rule is provided for any calendar year for a below-market loan made by a lender to a qualified continuing care facility pursuant to a continuing care contract, if the lender or the lender's spouse attains age 65 before the close of the calendar year.[343]

The exception applies only to the extent the aggregate outstanding loans by the lender (and spouse) to any qualified continuing care facility do not exceed $163,300 (for 2006).[344]

For this purpose, a continuing care contract means a written contract between an individual and a qualified continuing care facility under which: (1) the individual or the individual's spouse may use a qualified continuing care facility for their life or lives; (2) the individual or the individual's spouse will first reside in a separate, independent living unit with additional facilities outside such unit for the providing of meals and other personal care and will not require long-term nursing care, and then will be provided long-term and skilled nursing care as the health of the individual or the individual's spouse requires; and (3) no additional substantial payment is required if the individual or the individual's spouse requires increased personal care services or long-term and skilled nursing care.

For this purpose, a qualified continuing care facility means one or more facilities that are designed to provide services under continuing care contracts, and substantially all of the residents of which are covered by continuing care contracts. A facility is not treated as a qualified continuing care facility unless substantially all facilities that are used to provide services required to be provided under a continuing care contract are owned or operated by the borrower. For these purposes, a nursing home is not a qualified continuing care facility.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision modifies the present-law exception under section 7872(g) relating to loans to continuing care facilities by eliminating the dollar cap on aggregate outstanding loans and making other modifications.

The Senate amendment provision provides an exception to the imputation rule of section 7872 for any calendar year for any

[340] Section 409A.

[341] Sections 422 and 423, respectively.

[342] Sec. 7872.

[343] Sec. 7872(g).

[344] Rev. Rul. 2005–75, 2005–49 I.R.B. 1073.

below-market loan owed by a facility which on the last day of the year is a qualified continuing care facility, if the loan was made pursuant to a continuing care contract and if the lender or the lender's spouse attains age 62 before the close of the year.

For this purpose, a continuing care contract means a written contract between an individual and a qualified continuing care facility under which: (1) the individual or the individual's spouse may use a qualified continuing care facility for their life or lives; (2) the individual or the individual's spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), an assisted living facility or nursing facility, as is available in the continuing care facility, as appropriate for the health of the individual or the individual's spouse; and (3) the individual or the individual's spouse will be provided assisted living or nursing care as the health of the individual or the individual's spouse requires, and as is available in the continuing care facility.

For this purpose, a qualified continuing care facility means one or more facilities: (1) that are designed to provide services under continuing care contracts; (2) that include an independent living unit, plus an assisted living or nursing facility, or both; and (3) substantially all of the independent living unit residents of which are covered by continuing care contracts. For these purposes, a nursing home is not a qualified continuing care facility.

*Effective date.*—The provision is effective for loans made after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with modifications. The conference agreement provision provides that a continuing care contract is a written contract between an individual and a qualified continuing care facility under which: (1) the individual or the individual's spouse may use a qualified continuing care facility for their life or lives; (2) the individual or the individual's spouse will be provided with housing, as appropriate for the health of such individual or individual's spouse, (i) in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), and (ii) in an assisted living facility or a nursing facility, as is available in the continuing care facility; and (3) the individual or the individual's spouse will be provided assisted living or nursing care as the health of the individual or the individual's spouse requires, and as is available in the continuing care facility. The Secretary is required to issue guidance that limits the term ''continuing care contract'' to contracts that provide only facilities, care, and services described in the preceding sentence.

For purposes of defining the terms ''continuing care contract'' and ''qualified continuing care facility'' under the conference agreement provision, the term ''assisted living facility'' is intended to mean a facility at which assistance is provided (1) with activities of daily living (such as eating, toileting, transferring, bathing, dressing, and continence) or (2) in cases of cognitive impairment, to protect the health or safety of an individual. The term ''nursing facility'' is intended to mean a facility that offers care requiring the utilization of licensed nursing staff.

*Effective date.*—The conference agreement provision is generally effective for calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date. The conference agreement provision does not apply to any calendar year after 2010. Thus, the conference agreement provision does not apply with respect to interest imputed after December 31, 2010. After such date, the law as in effect prior to enactment applies.

J. EXCLUSION OF GAIN ON SALE OF A PRINCIPAL RESIDENCE BY A MEMBER OF THE INTELLIGENCE COMMUNITY

(Sec. 311 of the Senate amendment and sec. 121 of the Code)

PRESENT LAW

Under present law, an individual taxpayer may exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or, to the extent provided under regulations, unforeseen circumstances is able to exclude an amount equal to the fraction of the $250,000 ($500,000 if married filing a joint return) that is equal to the fraction of the two years that the ownership and use requirements are met.

Present law also contains special rules relating to members of the uniformed services or the Foreign Service of the United States. An individual may elect to suspend for a maximum of 10 years the five-year test period for ownership and use during certain absences due to service in the uniformed services or the Foreign Service of the United States. The uniformed services include: (1) the Armed Forces (the Army, Navy, Air Force, Marine Corps, and Coast Guard); (2) the commissioned corps of the National Oceanic and Atmospheric Administration; and (3) the commissioned corps of the Public Health Service. If the election is made, the five-year period ending on the date of the sale or exchange of a principal residence does not include any period up to five years during which the taxpayer or the taxpayer's spouse is on qualified official extended duty as a member of the uniformed services or in the Foreign Service of the United States. For these purposes, qualified official extended duty is any period of extended duty while serving at a place of duty at least 50 miles away from the taxpayer's principal residence or under orders compelling residence in Government furnished quarters. Extended duty is defined as any period of duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period. The election may be made with respect to only one property for a suspension period.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, specified employees of the intelligence community may elect to suspend the running of the five-year test period during any period in which they are serving on extended duty. The term ''employee of the intelligence community'' means an employee of the Office of the Director of National Intelligence, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Reconnaissance Office. The term also includes employment with: (1) any other office within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; (2) any of the intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Coast Guard; (3) the Bureau of Intelligence and Research of the Department of State; and (4) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information. To qualify, a specified employee must move from one duty station to another and at least one of such duty stations must be located outside of the Washington, D.C. and Baltimore metropolitan statistical areas, as defined by the Secretary of Commerce. As under present law, the five-year period may not be extended more than 10 years.

*Effective date.*—The provision is effective for sales and exchanges after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

K. SENSE OF THE SENATE REGARDING THE PERMANENT EXTENSION OF EGTRRA AND JGTRRA PROVISIONS RELATING TO THE CHILD TAX CREDIT

(Sec. 312 of the Senate amendment)

PRESENT LAW

Present law provides for the sunset of the child tax credit provisions under Economic Growth and Tax Relief Reconciliation Act of 2001 (''EGTRRA'') and Jobs and Growth Tax Relief Reconciliation Act of 2003 (''JGTRRA'').

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment includes a provision stating that it is the sense of the Senate that the conferees for the Tax Relief Act of 2006 should strive to permanently extend the amendments to the child tax credit made by EGTRRA and JGTRRA.

*Effective date.*—The Senate amendment provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

L. PARTIAL EXPENSING FOR ADVANCED MINE SAFETY EQUIPMENT

(Sec. 313 of the Senate amendment)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the Modified Accelerated Cost Recovery System (''MACRS''), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168).

Personal property is classified under MACRS based on the property's class life unless a different classification is specifically provided in section 168. The class life applicable for personal property is the asset guideline period (midpoint class life as of January 1, 1986). Based on the property's classification, a recovery period is prescribed under MACRS. In general, there are six classes of recovery periods to which personal property can be assigned. For example, personal property that has a class life of four years or less has a recovery period of three years, whereas personal property with a class life greater than four years but less than 10 years has a recovery period of five years. The class lives and recovery periods for most property are contained in Revenue Procedure 87–56.[345]

[345] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or ''expense'') such costs. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2007, is $100,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the taxpayer may elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as a deduction in the taxable year in which the equipment is placed in service.

Advanced mine safety equipment property means any of the following: (1) emergency communication technology or devices used to allow a miner to maintain constant communication with an individual who is not in the mine; (2) electronic identification and location devices that allow individuals not in the mine to track at all times the movements and location of miners working in or at the mine; (3) emergency oxygen-generating, self-rescue devices that provide oxygen for at least 90 minutes; (4) pre-positioned supplies of oxygen providing each miner on a shift the ability to survive for at least 48 hours; and (5) comprehensive atmospheric monitoring systems that monitor the levels of carbon monoxide, methane and oxygen that are present in all areas of the mine and that can detect smoke in the case of a fire in a mine.

To be treated as qualified advanced mine safety equipment property under the provision, the original use of the property must have commenced with the taxpayer, and the taxpayer must have placed the property in service after the date of enactment.

The portion of the cost of any property with respect to which an expensing election under section 179 is made may not be taken into account for purposes of the 50–percent deduction allowed under this provision. For Federal tax purposes, the basis of property is reduced by the portion of its cost that is taken into account for purposes of the 50–percent deduction allowed under the provision.

The provision requires the taxpayer to report information required by the Treasury Secretary with respect to the operation of mines of the taxpayer, in order for the deduction to be allowed for the taxable year.

The provision includes a termination rule providing that it does not apply to property placed in service after the date that is three years after the date of enactment.

*Effective date.*—The provision applies to costs paid or incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

M. MINE RESCUE TEAM TRAINING CREDIT

(Sec. 314 of the Senate amendment and new sec. 45N of the Code)

PRESENT LAW

There is no present law credit for expenditures incurred by a taxpayer to train mine rescue workers. In general, a deduction is allowed for all ordinary and necessary expenses that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business.[346] A taxpayer that employs individuals as miners in underground mines will generally be permitted to deduct as ordinary and necessary expenses the educational expenditures such taxpayer incurs to train its employees in the principles, procedures, and techniques of mine rescue, as well as the wages paid by the taxpayer for the time its employees were engaged in such training.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that a taxpayer which is an eligible employer may claim a credit equal to the lesser of (1) 20 percent of the amount paid or incurred by the taxpayer during the taxable year with respect to the training program costs of each qualified mine rescue team employee (including wages of the employee), or (2) $10,000.[347] An eligible employer is any taxpayer which employs individuals as miners in underground mines in the United States. No deduction is allowed for the amount of the expenses otherwise deductible which is equal to the amount of the credit.

A qualified mine rescue team employee is any full-time employee of the taxpayer who is a miner eligible for more than six months of a taxable year to serve as a mine rescue team member by virtue of either having completed the initial 20–hour course of instruction prescribed by the Mine Safety and Health Administration's Office of Educational Policy and Development, or receiving at least 40 hours of refresher training in such instruction.

*Effective date.*—The provision is effective for taxable years beginning after December 31, 2005, and before January 1, 2009.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

N. FUNDING FOR VETERANS HEALTH CARE AND DISABILITY COMPENSATION AND HOSPITAL INFRASTRUCTURE FOR VETERANS

(Sec. 315 of the Senate amendment)

PRESENT LAW

Within the U.S. Department of Veterans Affairs, the Veterans Health Administration provides a broad spectrum of medical, surgical, and rehabilitative care to veterans. The Veteran Benefits Administration provides services to veterans, including services related to compensation and pensions.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the appropriation of funds for the Department of Veterans Affairs for the Veterans Health Administration for Medical Care as well as the Veterans Benefits Administration for Compensation and Pensions for fiscal years 2006 through 2010 in the amounts listed below. The amounts authorized are in addition to any other amounts authorized for these Administrations under any other provision of law.

| Fiscal year | Veterans health administration | Veterans benefits administration |
|---|---|---|
| 2006 | $900,000,000 | $2,300,000,000 |
| 2007 | 1,300,000,000 | 2,700,000,000 |
| 2008 | 1,500,000,000 | 3,000,000,000 |
| 2009 | 1,600,000,000 | 3,000,000,000 |
| 2010 | 1,600,000,000 | 3,000,000,000 |

The Senate amendment also establishes the Veterans Hospital Improvement Fund, with an initial balance of $1,000,000,000, to be administered by the Secretary of Veterans Affairs. The funds are to be used for improvements of health facilities treating veterans.

*Effective date.*—The Senate amendment is effective upon the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

O. SENSE OF THE SENATE REGARDING PROTECTING MIDDLE-CLASS FAMILIES FROM THE ALTERNATIVE MINIMUM TAX

(Sec. 316 of the Senate amendment)

PRESENT LAW

Present law imposes an alternative minimum tax. The alternative minimum tax is the amount by which the tentative minimum tax exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (''AMTI'') as exceeds an exemption amount. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

Under present law, for taxable years beginning before January 1, 2009, the maximum rate of tax on the adjusted net capital gain of an individual is 15 percent, and dividends received by an individual from domestic corporations and qualified foreign corporations are taxed at the same rates that apply to capital gains. For taxable years beginning after December 31, 2008, the maximum rate of tax on the adjusted net capital gain of an individual is 20 percent, and dividends received by an individual are taxed as ordinary income at rates of up to 35 percent.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that it is the sense of the Senate that protecting middle-class families from the alternative minimum tax should be a higher priority for Congress in 2006 than extending a tax cut that does not expire until the end of 2008.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

TITLE V—REVENUE OFFSET PROVISIONS

A. PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

1. Understatement of taxpayer's liability by income tax return preparer (Sec. 401 of the Senate amendment and sec. 6694 of the Code)

PRESENT LAW

An income tax return preparer who prepares a return with respect to which there is an understatement of tax that is due to an undisclosed position for which there was not a realistic possibility of being sustained on its merits, or a frivolous position, is liable for a penalty of $250, provided the preparer knew or reasonably should have known of the position. An income tax return preparer who prepares a return and engages in specified willful or reckless conduct with respect to preparing such a return is liable for a penalty of $1,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision alters the standards of conduct that must be met to avoid imposition of

[346] Sec. 162(a).

[347] The credit is part of the general business credit (sec. 38).

the first penalty described above by replacing the realistic possibility standard with a requirement that there be a reasonable belief that the tax treatment of the position was more likely than not the proper treatment. The provision also replaces the not-frivolous standard with the requirement that there be a reasonable basis for the tax treatment of the position, increases the present-law $250 penalty to $1,000, and increases the present-law $1,000 penalty to $5,000.

*Effective date.*—The provision is effective for documents prepared after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Frivolous tax submissions (Sec. 402 of the Senate amendment and sec. 6702 of the Code)

PRESENT LAW

The Code provides that an individual who files a frivolous income tax return is subject to a penalty of $500 imposed by the IRS (sec. 6702). The Code also permits the Tax Court[348] to impose a penalty of up to $25,000 if a taxpayer has instituted or maintained proceedings primarily for delay or if the taxpayer's position in the proceeding is frivolous or groundless (sec. 6673(a)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the IRS-imposed penalty by increasing the amount of the penalty to up to $5,000 and by applying it to all taxpayers and to all types of Federal taxes.

The Senate amendment also modifies present law with respect to certain submissions that raise frivolous arguments or that are intended to delay or impede tax administration. The submissions to which the Senate amendment applies are requests for a collection due process hearing, installment agreements, offers-in-compromise, and taxpayer assistance orders. First, the Senate amendment permits the IRS to disregard such requests. Second, the Senate amendment permits the IRS to impose a penalty of up to $5,000 for such requests, unless the taxpayer withdraws the request after being given an opportunity to do so.

The Senate amendment requires the IRS to publish a list of positions, arguments, requests, and submissions determined to be frivolous for purposes of these provisions.

*Effective date.*—The Senate amendment applies to submissions made and issues raised after the date on which the Secretary first prescribes the required list of frivolous positions.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Penalty for promoting abusive tax shelters (Sec. 403 of the Senate amendment and sec. 6700 of the Code)

PRESENT LAW

A penalty is imposed on any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, if in connection with such activity the person makes or furnishes a qualifying false or fraudulent statement or a gross valuation overstatement.[349] A qualified false or fraudulent statement is any statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter. A ''gross valuation overstatement'' means any statement as to the value of any property or services if the stated value exceeds 200 percent of the correct valuation, and the value is directly related to the amount of any allowable income tax deduction or credit.

In the case of a gross valuation overstatement, the amount of the penalty is $1,000 (or, if the person establishes that it is less, 100 percent of the gross income derived or to be derived by the person from such activity). A penalty attributable to a gross valuation misstatement can be waived on a showing that there was a reasonable basis for the valuation and it was made in good faith. In the case of any activity that involves a qualified false or fraudulent statement, the penalty amount is equal to 50 percent of the gross income derived by the person from the activity.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the penalty rate imposed on any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, if in connection with such activity the person makes or furnishes a qualifying false or fraudulent statement or a gross valuation overstatement. The penalty is equal to 100 percent of the gross income derived (or to be derived) from the activity. The penalty amount is calculated with respect to each instance of an activity subject to the penalty, each instance in which income was derived by the person or persons subject to the penalty, and each person who participated in an activity subject to the penalty.

Under the Senate amendment, if more than one person is liable for the penalty, all such persons are jointly and severally liable for the penalty. In addition, the Senate amendment provides that the penalty, as well as amounts paid to settle or avoid the imposition of the penalty, is not deductible for tax purposes.

*Effective date.*—The provision is effective for activities occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Penalty for aiding and abetting the understatement of tax liability (Sec. 404 of the Senate amendment and sec. 6701 of the Code)

PRESENT LAW

A penalty is imposed on a person who: (1) aids or assists in, procures, or advises with respect to a tax return or other document; (2) knows (or has reason to believe) that such document will be used in connection with a material tax matter; and (3) knows that this would result in an understatement of tax of another person. In general, the amount of the penalty is $1,000. If the document relates to the tax return of a corporation, the amount of the penalty is $10,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the scope of the penalty in several ways. First, it applies the penalty to aiding or assisting with respect to tax liability reflected in a tax return. Second, it applies the penalty to each instance of aiding or abetting. Third, it increases the amount of the penalty to a maximum of 100 percent of the gross income derived (or to be derived) from the aiding or abetting. Fourth, if more than one person is liable for the penalty, all such persons are jointly and severally liable for the penalty. Fifth, the penalty, as well as amounts paid to settle or avoid the imposition of the penalty, is not deductible for tax purposes.

*Effective date.*—The provision is effective for activities occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

B. ECONOMIC SUBSTANCE DOCTRINE

1. Clarification of the economic substance doctrine (sec. 411 of the Senate amendment)

PRESENT LAW

*In general*

The Code provides specific rules regarding the computation of taxable income, including the amount, timing, source, and character of items of income, gain, loss and deduction. These rules are designed to provide for the computation of taxable income in a manner that provides for a degree of specificity to both taxpayers and the government. Taxpayers generally may plan their transactions in reliance on these rules to determine the federal income tax consequences arising from the transactions.

In addition to the statutory provisions, courts have developed several doctrines that can be applied to deny the tax benefits of tax motivated transactions, notwithstanding that the transaction may satisfy the literal requirements of a specific tax provision. The common-law doctrines are not entirely distinguishable, and their application to a given set of facts is often blurred by the courts and the IRS. Although these doctrines serve an important role in the administration of the tax system, invocation of these doctrines can be seen as at odds with an objective, ''rule-based'' system of taxation. Nonetheless, courts have applied the doctrines to deny tax benefits arising from certain transactions.[350]

A common-law doctrine applied with increasing frequency is the ''economic substance'' doctrine. In general, this doctrine denies tax benefits arising from transactions that do not result in a meaningful change to the taxpayer's economic position other than a purported reduction in federal income tax.[351]

*Economic substance doctrine*

Courts generally deny claimed tax benefits if the transaction that gives rise to those benefits lacks economic substance independent of tax considerations—notwithstanding that the purported activity actually occurred. The tax court has described the doctrine as follows:

The tax law . . . requires that the intended transactions have economic substance separate and distinct from economic benefit achieved solely by tax reduction. The doctrine of economic substance becomes applicable, and a judicial remedy is warranted,

[348] Because in general the Tax Court is the only pre-payment forum available to taxpayers, it deals with most of the frivolous, groundless, or dilatory arguments raised in tax cases.

[349] Sec. 6700.

[350] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d 231 (3d Cir. 1998), *aff'g* 73 T.C.M. (CCH) 2189 (1997), *cert. denied* 526 U.S. 1017 (1999).

[351] Closely related doctrines also applied by the courts (sometimes interchangeable with the economic substance doctrine) include the ''sham transaction doctrine'' and the ''business purpose doctrine''. See, e.g., *Knetsch* v. *United States*, 364 U.S. 361 (1960) (denying interest deductions on a ''sham transaction'' whose only purpose was to create the deductions).

where a taxpayer seeks to claim tax benefits, unintended by Congress, by means of transactions that serve no economic purpose other than tax savings.[352]

*Business purpose doctrine*

Another common law doctrine that overlays and is often considered together with (if not part and parcel of) the economic substance doctrine is the business purpose doctrine. The business purpose test is a subjective inquiry into the motives of the taxpayer—that is, whether the taxpayer intended the transaction to serve some useful non-tax purpose. In making this determination, some courts have bifurcated a transaction in which independent activities with non-tax objectives have been combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.[353]

*Application by the courts*

*Elements of the doctrine*

There is a lack of uniformity regarding the proper application of the economic substance doctrine.[354] Some courts apply a conjunctive test that requires a taxpayer to establish the presence of both economic substance (i.e., the objective component) and business purpose (i.e., the subjective component) in order for the transaction to survive judicial scrutiny.[355] A narrower approach used by some courts is to conclude that either a business purpose or economic substance is sufficient to respect the transaction).[356] A third approach regards economic substance and business purpose as ''simply more precise factors to consider'' in determining whether a transaction has any practical economic effects other than the creation of tax benefits.[357]

Recently, the Court of Federal Claims questioned the continuing viability of the doctrine.[358] The court also stated that ''the use of the 'economic substance' doctrine to trump 'mere compliance with the Code' would violate the separation of powers.''[359]

*Nontax economic benefits*

There also is a lack of uniformity regarding the type of non-tax economic benefit a taxpayer must establish in order to satisfy economic substance. Several courts have denied tax benefits on the grounds that the subject transactions lacked profit potential.[360] In addition, some courts have applied the economic substance doctrine to disallow tax benefits in transactions in which a taxpayer was exposed to risk and the transaction had a profit potential, but the court concluded that the economic risks and profit potential were insignificant when compared to the tax benefits.[361] Under this analysis, the taxpayer's profit potential must be more than nominal. Conversely, other courts view the application of the economic substance doctrine as requiring an objective determination of whether a ''reasonable possibility of profit'' from the transaction existed apart from the tax benefits.[362] In these cases, in assessing whether a reasonable possibility of profit exists, it is sufficient if there is a nominal amount of pre-tax profit as measured against expected net tax benefits.

*Financial accounting benefits*

In determining whether a taxpayer had a valid business purpose for entering into a transaction, at least one court has concluded that financial accounting benefits arising from tax savings do not qualify as a non-tax business purpose.[363] However, based on court decisions that recognize the importance of financial accounting treatment, taxpayers have asserted that financial accounting benefits arising from tax savings can satisfy the business purpose test.[364]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision clarifies and enhances the application of the economic substance doctrine. Under the provision, in a case in which a court determines that the economic substance doctrine is relevant to a transaction (or a series of transactions), such transaction (or series of transactions) has economic substance (and thus satisfies the economic substance doctrine) only if the taxpayer establishes that (1) the transaction changes in a meaningful way (apart from Federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-tax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.[365]

The provision does not change current law standards used by courts in determining when to utilize an economic substance analysis.[366] Also, the provision does not alter the court's ability to aggregate, disaggregate or otherwise recharacterize a transaction when applying the doctrine.[367] The provision provides a uniform definition of economic substance, but does not alter the flexibility of the courts in other respects.

*Conjunctive analysis*

The provision clarifies that the economic substance doctrine involves a conjunctive analysis—there must be an objective inquiry regarding the effects of the transaction on the taxpayer's economic position, as well as a subjective inquiry regarding the taxpayer's motives for engaging in the transaction. Under the provision, a transaction must satisfy both tests—i.e., it must change in a meaningful way (apart from Federal income tax consequences) the taxpayer's economic position, and the taxpayer must have a substantial non-tax purpose for entering into such transaction (and the transaction is a reasonable means of accomplishing such purpose)—in order to satisfy the economic substance doctrine. This clarification eliminates the disparity that exists among the circuits regarding the application of the doctrine, and modifies its application in those circuits in which either a change in economic position or a non-tax business purpose (without having both) is sufficient to satisfy the economic substance doctrine.

*Non-tax business purpose*

Under the provision, a taxpayer's non-tax purpose for entering into a transaction (the second prong in the analysis) must be ''substantial,'' and the transaction must be ''a reasonable means'' of accomplishing such purpose. Under this formulation, the non-tax purpose for the transaction must bear a reasonable relationship to the taxpayer's normal business operations or investment activities.[368]

---

[352] *ACM Partnership* v. *Commissioner*, 73 T.C.M. at 2215.

[353] *ACM Partnership* v. *Commissioner*, 157 F.3d at 256 n.48.

[354] ''The casebooks are glutted with [economic substance] tests. Many such tests proliferate because they give the comforting illusion of consistency and precision. They often obscure rather than clarify.'' *Collins* v. *Commissioner*, 857 F.2d 1383, 1386 (9th Cir. 1988).

[355] See, e.g., *Pasternak* v. *Commissioner*, 990 F.2d 893, 898 (6th Cir. 1993) (''The threshold question is whether the transaction has economic substance. If the answer is yes, the question becomes whether the taxpayer was motivated by profit to participate in the transaction.'').

[356] See, e.g., *Rice's Toyota World* v. *Commissioner*, 752 F.2d 89, 91–92 (4th Cir. 1985) (''To treat a transaction as a sham, the court must find that the taxpayer was motivated by no business purposes other than obtaining tax benefits in entering the transaction, and, second, that the transaction has no economic substance because no reasonable possibility of a profit exists.''); *IES Industries* v. *United States*, 253 F.3d 350, 358 (8th Cir. 2001) (''In determining whether a transaction is a sham for tax purposes [under the Eighth Circuit test], a transaction will be characterized as a sham if it is not motivated by any economic purpose out of tax considerations (the business purpose test), and if it is without economic substance because no real potential for profit exists (the economic substance test).''). As noted earlier, the economic substance doctrine and the sham transaction doctrine are similar and sometimes are applied interchangeably. For a more detailed discussion of the sham transaction doctrine, see, e.g., Joint Committee on Taxation, *Study of Present-Law Penalty and Interest Provisions as Required by Section 3801 of the Internal Revenue Service Restructuring and Reform Act of 1998 (including Provisions Relating to Corporate Tax Shelters)* (JCS–3–99) at 182.

[357] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d at 247; *James* v. *Commissioner*, 899 F.2d 905, 908 (10th Cir. 1995); *Sacks* v. *Commissioner*, 69 F.3d 982, 985 (9th Cir. 1995) (''Instead, the consideration of business purpose and economic substance are simply more precise factors to consider . . . We have repeatedly and carefully noted that this formulation cannot be used as a 'rigid two-step analysis'.'').

[358] *Coltec Industries, Inc.* v. *United States*, 62 Fed. Cl. 716 (2004) (slip opinion at 123–124). The court also found, however, that the doctrine was satisfied in that case. *Id.* at 128.

[359] *Id.* at 128.

[360] See, e.g., *Knetsch*, 364 U.S. at 361; *Goldstein* v. *Commissioner*, 364 F.2d 734 (2d Cir. 1966) (holding that an unprofitable, leveraged acquisition of Treasury bills, and accompanying prepaid interest deduction, lacked economic substance).

[361] See, e.g., *Goldstein* v. *Commissioner*, 364 F.2d at 739–40 (disallowing deduction even though taxpayer had a possibility of small gain or loss by owning Treasury bills); *Sheldon* v. *Commissioner*, 94 T.C. 738, 768 (1990) (stating that ''potential for gain . . . is infinitesimally nominal and vastly insignificant when considered in comparison with the claimed deductions'').

[362] See, e.g., *Rice's Toyota World* v. *Commissioner*, 752 F.2d at 94 (the economic substance inquiry requires an objective determination of whether a reasonable possibility of profit from the transaction existed apart from tax benefits); *Compaq Computer Corp.* v. *Commissioner*, 277 F.3d at 781 (applied the same test, citing *Rice's Toyota World*); *IES Industries* v. *United States*, 253 F.3d 350, 354 (8th Cir. 2001).

[363] See, *American Electric Power, Inc.* v. *U.S.*, 136 F. Supp. 2d 762, 791–92 (S.D. Ohio 2001); *aff'd* 326 F.3d.737 (6th Cir. 2003).

[364] See, e.g., Joint Committee on Taxation, *Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations* (JSC–3–03) February, 2003 (''Enron Report''), Volume III at C–93, 289. Enron Corporation relied on *Frank Lyon Co. v. United States*, 435 U.S. 561, 577–78 (1978), and *Newman v. Commissioner*, 902 F.2d 159, 163 (2d Cir. 1990) to argue that financial accounting benefits arising from tax savings constitutes a good business purpose.

[365] If the tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority, it is not intended that such tax benefits be disallowed if the only reason for such disallowance is that the transaction fails the economic substance doctrine as defined in this provision.

[366] See, e.g., Treas. Reg. sec. 1.269–2, stating that characteristic of circumstances in which a deduction otherwise allowed will be disallowed are those in which the effect of the deduction, credit, or other allowance would be to distort the liability of the particular taxpayer when the essential nature of the transaction or situation is examined in the light of the basic purpose or plan which the deduction, credit, or other allowance was designed by the Congress to effectuate.

[367] See, e.g., *Minnesota Tea Co.* v. *Helvering*, 302 U.S. 609, 613 (1938) (''A given result at the end of a straight path is not made a different result because reached by following a devious path.'').

[368] See, e.g., Treas. Reg. sec. 1.269–2(b) (stating that a distortion of tax liability indicating the principal purpose of tax evasion or avoidance might be evidenced by the fact that ''the transaction was not undertaken for reasons germane to the conduct of the business of the taxpayer''). Similarly, in *ACM Partnership* v. *Commissioner*, 73 T.C.M. (CCH) 2189 (1997), the court stated:

''Key to [the determination of whether a transaction has economic substance] is that the transaction must be rationally related to a useful nontax purpose that is plausible in light of the taxpayer's conduct and useful in light of the taxpayer's economic situation and intentions. Both the utility of the stated purpose and the rationality of the means chosen to effectuate it must be evaluated in accordance with commercial practices in the relevant industry. A rational relationship between purpose and means ordinarily will not be found unless there was a reasonable expectation that the nontax benefits would be at least commensurate with the transaction costs.'' [citations omitted]

In determining whether a taxpayer has a substantial non-tax business purpose, an objective of achieving a favorable accounting treatment for financial reporting purposes will not be treated as having a substantial non-tax purpose.[369] Furthermore, a transaction that is expected to increase financial accounting income as a result of generating tax deductions or losses without a corresponding financial accounting charge (i.e., a permanent book-tax difference)[370] should not be considered to have a substantial non-tax purpose unless a substantial non-tax purpose exists apart from the financial accounting benefits.[371]

By requiring that a transaction be a ''reasonable means'' of accomplishing its non-tax purpose, the provision reiterates the present-law ability of the courts to bifurcate a transaction in which independent activities with non-tax objectives are combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.[372]

*Profit potential*

Under the provision, a taxpayer may rely on factors other than profit potential to demonstrate that a transaction results in a meaningful change in the taxpayer's economic position; the provision merely sets forth a minimum threshold of profit potential if that test is relied on to demonstrate a meaningful change in economic position. If a taxpayer relies on a profit potential, however, the present value of the reasonably expected pre-tax profit must be substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.[373] Moreover, the profit potential must exceed a risk-free rate of return. In addition, in determining pre-tax profit, fees and other transaction expenses and foreign taxes are treated as expenses.

In applying the profit potential test to a lessor of tangible property, depreciation, applicable tax credits (such as the rehabilitation tax credit and the low income housing tax credit), and any other deduction as provided in guidance by the Secretary are not taken into account in measuring tax benefits.

*Transactions with tax-indifferent parties*

The provision also provides special rules for transactions with tax-indifferent parties. For this purpose, a tax-indifferent party means any person or entity not subject to Federal income tax, or any person to whom an item would have no substantial impact on its income tax liability. Under these rules, the form of a financing transaction will not be respected if the present value of the tax deductions to be claimed is substantially in excess of the present value of the anticipated economic returns to the lender. Also, the form of a transaction with a tax-indifferent party will not be respected if it results in an allocation of income or gain to the tax-indifferent party in excess of the tax-indifferent party's economic gain or income or if the transaction results in the shifting of basis on account of overstating the income or gain of the tax-indifferent party.

*Other rules*

The Secretary may prescribe regulations which provide (1) exemptions from the application of the provision, and (2) other rules as may be necessary or appropriate to carry out the purposes of the provision.

No inference is intended as to the proper application of the economic substance doctrine under present law. In addition, except with respect to the economic substance doctrine, the provision shall not be construed as altering or supplanting any other common law doctrine (including the sham transaction doctrine), and the provision shall be construed as being additive to any such other doctrine.

*Effective date.*—The provision applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Penalty for understatements attributable to transactions lacking economic substance, etc. (Sec. 412 of the Senate amendment)

PRESENT LAW

*General accuracy-related penalty*

An accuracy-related penalty under section 6662 applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 (or, in the case of corporations, by the lesser of (a) 10 percent of the correct tax (or $10,000 if greater) or (b) $10 million), then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement.[374] Except in the case of tax shelters,[375] the amount of any understatement is reduced by any portion attributable to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment. The Treasury Secretary may prescribe a list of positions which the Secretary believes do not meet the requirements for substantial authority under this provision.

The section 6662 penalty generally is abated (even with respect to tax shelters) in cases in which the taxpayer can demonstrate that there was ''reasonable cause'' for the underpayment and that the taxpayer acted in good faith.[376] The relevant regulations provide that reasonable cause exists where the taxpayer ''reasonably relies in good faith on an opinion based on a professional tax advisor's analysis of the pertinent facts and authorities [that] . . . unambiguously concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged'' by the IRS.[377]

*Listed transactions and reportable avoidance transactions*

*In general*

A separate accuracy-related penalty under section 6662A applies to ''listed transactions'' and to other ''reportable transactions'' with a significant tax avoidance purpose (hereinafter referred to as a ''reportable avoidance transaction''). The penalty rate and defenses available to avoid the penalty vary depending on whether the transaction was adequately disclosed.

Both listed transactions and reportable transactions are allowed to be described by the Treasury Department under section 6707A(c), which imposes a penalty for failure adequately to report such transactions under section 6011. A reportable transaction is defined as one that the Treasury Secretary determines is required to be disclosed because it is determined to have a potential for tax avoidance or evasion.[378] A listed transaction is defined as a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of the reporting disclosure requirements.[379]

*Disclosed transactions*

In general, a 20-percent accuracy-related penalty is imposed on any understatement attributable to an adequately disclosed listed transaction or reportable avoidance transaction.[380] The only exception to the penalty is if the taxpayer satisfies a more stringent reasonable cause and good faith exception (hereinafter referred to as the ''strengthened reasonable cause exception''), which is described below. The strengthened reasonable cause exception is available only if the relevant facts affecting the tax treatment are adequately disclosed, there is or was substantial authority for the claimed tax treatment, and the taxpayer reasonably believed that the claimed tax treatment was more likely than not the proper treatment.

*Undisclosed transactions*

If the taxpayer does not adequately disclose the transaction, the strengthened reasonable cause exception is not available (i.e., a strict-liability penalty generally applies), and the taxpayer is subject to an increased penalty equal to 30 percent of the understatement.[381] However, a taxpayer will be

[369] However, if the tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority, such tax benefits should not be disallowed solely because the transaction results in a favorable accounting treatment. An example is the repealed foreign sales corporation rules.

[370] This includes tax deductions or losses that are anticipated to be recognized in a period subsequent to the period the financial accounting benefit is recognized. For example, FAS 109 in some cases permits the recognition of financial accounting benefits prior to the period in which the tax benefits are recognized for income tax purposes.

[371] Claiming that a financial accounting benefit constitutes a substantial non-tax purpose fails to consider the origin of the accounting benefit (i.e., reduction of taxes) and significantly diminishes the purpose for having a substantial non-tax purpose requirement. See, e.g., *American Electric Power, Inc.* v. *U.S.*, 136 F. Supp. 2d 762, 791–92 (S.D. Ohio, 2001) (''AEP's intended use of the cash flows generated by the [corporate-owned life insurance] plan is irrelevant to the subjective prong of the economic substance analysis. If a legitimate business purpose for the use of the tax savings 'were sufficient to breathe substance into a transaction whose only purpose was to reduce taxes, [then] every sham tax-shelter device might succeed,'''') (citing *Winn-Dixie* v. *Commissioner*, 113 T.C. 254, 287 (1999)); aff'd 326 F3d 737 (6th Cir. 2003).

[372] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d at 256 n.48.

[373] Thus, a ''reasonable possibility of profit'' will not be sufficient to establish that a transaction has economic substance.

[374] Sec. 6662.

[375] A tax shelter is defined for this purpose as a partnership or other entity, an investment plan or arrangement, or any other plan or arrangement if a significant purpose of such partnership, other entity, plan, or arrangement is the avoidance or evasion of Federal income tax. Sec. 6662(d)(2)(C).

[376] Sec. 6664(c).

[377] Treas. Reg. sec. 1.6662–4(g)(4)(i)(B); Treas. Reg. sec. 1.6664–4(c).

[378] Sec. 6707A(c)(1).

[379] Sec. 6707A(c)(2).

[380] Sec. 6662A(a).

[381] Sec. 6662A(c).

treated as having adequately disclosed a transaction for this purpose if the IRS Commissioner has separately rescinded the separate penalty under section 6707A for failure to disclose a reportable transaction.[382] The IRS Commissioner is authorized to do this only if the failure does not relate to a listed transaction and only if rescinding the penalty would promote compliance and effective tax administration.[383]

A public entity that is required to pay a penalty for an undisclosed listed or reportable transaction must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear; and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).[384]

*Determination of the understatement amount*

The penalty is applied to the amount of any understatement attributable to the listed or reportable avoidance transaction without regard to other items on the tax return. For purposes of this provision, the amount of the understatement is determined as the sum of: (1) the product of the highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return);[385] and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item.

Except as provided in regulations, a taxpayer's treatment of an item shall not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of when the taxpayer is first contacted regarding an examination of the return or such other date as specified by the Secretary.[386]

*Strengthened reasonable cause exception*

A penalty is not imposed under the provision with respect to any portion of an understatement if it is shown that there was reasonable cause for such portion and the taxpayer acted in good faith. Such a showing requires: (1) adequate disclosure of the facts affecting the transaction in accordance with the regulations under section 6011;[387] (2) that there is or was substantial authority for such treatment; and (3) that the taxpayer reasonably believed that such treatment was more likely than not the proper treatment. For this purpose, a taxpayer will be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief: (1) is based on the facts and law that exist at the time the tax return (that includes the item) is filed; and (2) relates solely to the taxpayer's chances of success on the merits and does not take into account the possibility that (a) a return will not be audited, (b) the treatment will not be raised on audit, or (c) the treatment will be resolved through settlement if raised.[388]

A taxpayer may (but is not required to) rely on an opinion of a tax advisor in establishing its reasonable belief with respect to the tax treatment of the item. However, a taxpayer may not rely on an opinion of a tax advisor for this purpose if the opinion (1) is provided by a ''disqualified tax advisor'' or (2) is a ''disqualified opinion.''

*Disqualified tax advisor*

A disqualified tax advisor is any advisor who: (1) is a material advisor[389] and who participates in the organization, management, promotion or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates; (2) is compensated directly or indirectly[390] by a material advisor with respect to the transaction; (3) has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained; or (4) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

A material advisor is considered as participating in the ''organization'' of a transaction if the advisor performs acts relating to the development of the transaction. This may include, for example, preparing documents: (1) establishing a structure used in connection with the transaction (such as a partnership agreement); (2) describing the transaction (such as an offering memorandum or other statement describing the transaction); or (3) relating to the registration of the transaction with any federal, state or local government body.[391] Participation in the ''management'' of a transaction means involvement in the decision-making process regarding any business activity with respect to the transaction. Participation in the ''promotion or sale'' of a transaction means involvement in the marketing or solicitation of the transaction to others. Thus, an advisor who provides information about the transaction to a potential participant is involved in the promotion or sale of a transaction, as is any advisor who recommends the transaction to a potential participant.

*Disqualified opinion*

An opinion may not be relied upon if the opinion: (1) is based on unreasonable factual or legal assumptions (including assumptions as to future events); (2) unreasonably relies upon representations, statements, findings or agreements of the taxpayer or any other person; (3) does not identify and consider all relevant facts; or (4) fails to meet any other requirement prescribed by the Secretary.

*Coordination with other penalties*

To the extent a penalty on an understatement is imposed under section 6662A, that same amount of understatement is not also subject to the accuracy-related penalty under section 6662(a) or to the valuation misstatement penalties under section 6662(e) or 6662(h). However, such amount of understatement is included for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1) and for purposes of identifying an underpayment under the section 6663 fraud penalty.

The penalty imposed under section 6662A does not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision imposes a new, stronger penalty for an understatement attributable to any transaction that lacks economic substance (referred to in the statute as a ''non-economic substance transaction understatement'').[392] The penalty rate is 40 percent (reduced to 20 percent if the taxpayer adequately discloses the relevant facts in accordance with regulations prescribed under section 6011). No exceptions (including the reasonable cause or rescission rules) to the penalty are available (i.e., the penalty is a strict-liability penalty).

A ''non-economic substance transaction'' means any transaction if (1) the transaction lacks economic substance (as defined in the Senate amendment provision regarding the clarification of the economic substance doctrine),[393] (2) the transaction was not respected under the rules relating to transactions with tax-indifferent parties (as described in the Senate amendment provision regarding the clarification of the economic substance doctrine),[394] or (3) any similar rule of law. For this purpose, a similar rule of law would include, for example, an understatement attributable to a transaction that is determined to be a sham transaction.

For purposes of the bill, the calculation of an ''understatement'' is made in the same manner as in the present law provision relating to accuracy-related penalties for listed and reportable avoidance transactions (sec. 6662A). Thus, the amount of the understatement under the provision would be determined as the sum of (1) the product of the

[382] Sec. 6664(d).

[383] Sec. 6707A(d).

[384] Sec. 6707A(e).

[385] For this purpose, any reduction in the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income. Sec. 6662A(b).

[386] Sec. 6662A(e)(3).

[387] See the previous discussion regarding the penalty for failing to disclose a reportable transaction.

[388] Sec. 6664(d).

[389] The term ''material advisor'' means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and who derives gross income in excess of $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons ($250,000 in any other case). Sec. 6111(b)(1).

[390] This situation could arise, for example, when an advisor has an arrangement or understanding (oral or written) with an organizer, manager, or promoter of a reportable transaction that such party will recommend or refer potential participants to the advisor for an opinion regarding the tax treatment of the transaction.

[391] An advisor should not be treated as participating in the organization of a transaction if the advisor's only involvement with respect to the organization of the transaction is the rendering of an opinion regarding the tax consequences of such transaction. However, such an advisor may be a ''disqualified tax advisor'' with respect to the transaction if the advisor participates in the management, promotion or sale of the transaction (or if the advisor is compensated by a material advisor, has a fee arrangement that is contingent on the tax benefits of the transaction, or as determined by the Secretary, has a continuing financial interest with respect to the transaction).

[392] Thus, unlike the present-law accuracy-related penalty under section 6662A (which applies only to listed and reportable avoidance transactions), the new penalty under the provision applies to any transaction that lacks economic substance.

[393] That Senate amendment provision generally provides that in any case in which a court determines that the economic substance doctrine is relevant, a transaction has economic substance only if: (1) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and (2) the taxpayer has a substantial non-tax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose. Specific other rules also apply. See ''Explanation of Provision'' for the immediately preceding Senate amendment provision, ''Clarification of the economic substance doctrine.''

[394] That Senate amendment provision provides that the form of a transaction that involves a tax-indifferent party will not be respected in certain circumstances. See ''Explanation of Provision'' for the immediately preceding Senate amendment provision, ''Clarification of the economic substance doctrine.''

highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return),[395] and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item. In essence, the penalty will apply to the amount of any understatement attributable solely to a non-economic substance transaction.

As in the case of the understatement penalty for reportable and listed transactions under present law section 6662A(e)(3), except as provided in regulations, the taxpayer's treatment of an item will not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted regarding an examination of such return or such other date as specified by the Secretary.

As in the case of the understatement penalty for undisclosed reportable transactions under present law section 6707A, a public entity that is required to pay a penalty under the provision (but in this case, regardless of whether the transaction was disclosed) must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

Regardless of whether the transaction was disclosed, once a penalty under the provision has been included in the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals, the penalty cannot be compromised for purposes of a settlement without approval of the Commissioner personally. Furthermore, the IRS is required to keep records summarizing the application of this penalty and providing a description of each penalty compromised under the provision and the reasons for the compromise.

Any understatement on which a penalty is imposed under the provision will not be subject to the accuracy-related penalty under section 6662 or under 6662A (accuracy-related penalties for listed and reportable avoidance transactions). However, an understatement under the provision is taken into account for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1). The penalty imposed under the provision will not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

*Effective date.*—The provision applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

3. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions (sec. 413 of the Senate amendment and sec. 163(m) of the Code)

PRESENT LAW

No deduction for interest is allowed for interest paid or accrued on any underpayment of tax which is attributable to the portion of any reportable transaction understatement with respect to which the relevant facts were not adequately disclosed.[396] The Secretary of the Treasury is authorized to define reportable transactions for this purpose.[397]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision extends the disallowance of interest deductions to interest paid or accrued on any underpayment of tax which is attributable to any noneconomic substance underpayment (whether or not disclosed).

*Effective date.*—The provision applies to transactions after the date of enactment in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. IMPROVEMENTS IN EFFICIENCY AND SAFEGUARDS IN INTERNAL REVENUE SERVICE COLLECTIONS

1. Waiver of user fee for installment agreements using automated withdrawals (Sec. 421 of the Senate amendment and sec. 6159 of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments if the IRS determines that doing so will facilitate collection of the amounts owed.[398] An installment agreement does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

The IRS charges a user fee if a request for an installment agreement is approved.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment waives the user fee for installment agreements in which the parties agree to the use of automated installment payments (such as automated debits from a bank account).

*Effective date.*—The provision is effective with respect to agreements entered into on or after the date which is 180 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Termination of installment agreements (Sec. 422 of the Senate amendment and sec. 6159 of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments, if the IRS determines that doing so will facilitate collection of the amounts owed.[399] An installment agreement does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

Under present law, the IRS is permitted to terminate an installment agreement only if: (1) the taxpayer fails to pay an installment at the time the payment is due; (2) the taxpayer fails to pay any other tax liability at the time when such liability is due; (3) the taxpayer fails to provide a financial condition update as required by the IRS; (4) the taxpayer provides inadequate or incomplete information when applying for an installment agreement; (5) there has been a significant change in the financial condition of the taxpayer; or (6) the collection of the tax is in jeopardy.[400]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment grants the IRS authority to terminate installment agreement when a taxpayer fails to timely make a required Federal tax deposit or fails to timely file a tax return (including extensions). Under the provision, the IRS may terminate an installment agreement even if the taxpayer remained current with payments under the installment agreement.

*Effective date.*—The provision is effective for failures occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Partial payments required with submissions of offers-in-compromise (Sec. 423 of the Senate amendment and sec. 7122 of the Code)

PRESENT LAW

The IRS has the authority to compromise any civil or criminal case arising under the internal revenue laws.[401] In general, taxpayers initiate this process by making an offer-in-compromise, which is an offer by the taxpayer to settle an outstanding tax liability for less than the total amount due. The IRS currently imposes a user fee of $150 on most offers, payable upon submission of the offer to the IRS. Taxpayers may justify their offers on the basis of doubt as to collectibility or liability or on the basis of effective tax administration. In general, enforcement action is suspended during the period that the IRS evaluates an offer. In some instances, it may take the IRS 12 to 18 months to evaluate an offer.[402] Taxpayers are permitted (but not required) to make a deposit with their offer; if the offer is rejected, the deposit is generally returned to the taxpayer. There are two general categories[403] of offers-in-compromise, lump-sum offers and periodic payment offers. Taxpayers making lump-sum offers propose to make one lump-sum payment of a specified dollar amount in settlement of their outstanding liability.

[395] For this purpose, any reduction in the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses that would (without regard to section 1211) be allowed for such year, would be treated as an increase in taxable income.

[396] Sec. 163(m). Under section 6664(d)(2)(A), in such a case of nondisclosure, the taxpayer also is not entitled to the "reasonable cause and good faith" exception to the section 6662A penalty for a reportable transaction understatement.

[397] See the description of present law with respect to the immediately preceding Senate amendment provision, "Penalty for understatements attributable to transactions lacking economic substance, etc."

[398] Sec. 6159.

[399] Sec. 6159.

[400] Sec. 6159(b)(2), (3), and (4).

[401] Sec. 7122.

[402] Olsen v. United States, 326 F. Supp. 2d 184 (D. Mass. 2004).

[403] The IRS categorizes payment plans with more specificity, which is generally not significant for purposes of the provision. See Form 656, Offer in Compromise, page 6 of instruction booklet (revised July 2004).

Taxpayers making periodic payment offers propose to make a series of payments over time (either short-term or long-term) in settlement of their outstanding liability.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires a taxpayer to make partial payments to the IRS while the taxpayer's offer is being considered by the IRS. For lump-sum offers, taxpayers must make a down payment of 20 percent of the amount of the offer with any application. For purposes of this provision, a lump-sum offer includes single payments as well as payments made in five or fewer installments. For periodic payment offers, the provision requires the taxpayer to comply with the taxpayer's own proposed payment schedule while the offer is being considered. Offers submitted to the IRS that do not comport with these payment requirements are returned to the taxpayer as unprocessable and immediate enforcement action is permitted. The provision eliminates the user fee requirement for offers submitted with the appropriate partial payment.

The provision also provides that an offer is deemed accepted if the IRS does not make a decision with respect to the offer within two years from the date the offer was submitted.

The Senate amendment authorizes the Secretary to issue regulations providing exceptions to the partial payment requirements in the case of offers from certain low-income taxpayers and offers based on doubt as to liability.

*Effective date.*—The provision is effective for offers-in-compromise submitted on and after the date which is 60 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with the following modifications. Under the conference agreement, any user fee imposed by the IRS for participation in the offer-in-compromise program must be submitted with the appropriate partial payment. The user fee is applied to the taxpayer's outstanding tax liability. In addition, under the conference agreement, offers submitted to the IRS that do not comport with the payment requirements may be returned to the taxpayer as unprocessable.

D. PENALTIES AND FINES

1. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud (Sec. 431 of the Senate amendment and secs. 7201, 7203, and 7206 of the Code)

PRESENT LAW

*Attempt to evade or defeat tax*

In general, section 7201 imposes a criminal penalty on persons who willfully attempt to evade or defeat any tax imposed by the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than five years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000.

*Willful failure to file return, supply information, or pay tax*

In general, section 7203 imposes a criminal penalty on persons required to make estimated tax payments, pay taxes, keep records, or supply information under the Code who willfully fails to do so. Upon conviction, the Code provides that the penalty is up to $25,000 or imprisonment of not more than one year (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $100,000.

*Fraud and false statements*

In general, section 7206 imposes a criminal penalty on persons who make fraudulent or false statements under the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than three years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000.

*Uniform sentencing guidelines*

Under the uniform sentencing guidelines established by 18 U.S.C. 3571, a defendant found guilty of a criminal offense is subject to a maximum fine that is the greatest of: (a) the amount specified in the underlying provision, (b) for a felony[404] $250,000 for an individual or $500,000 for an organization, or (c) twice the gross gain if a person derives pecuniary gain from the offense. This Title 18 provision applies to all criminal provisions in the United States Code, including those in the Internal Revenue Code. For example, for an individual, the maximum fine under present law upon conviction of violating section 7206 is $250,000 or, if greater, twice the amount of gross gain from the offense.

HOUSE BILL

No provision.

SENATE AMENDMENT

*Attempt to evade or defeat tax*

The provision increases the criminal penalty under section 7201 of the Code for individuals to $500,000 and for corporations to $1,000,000. The provision increases the maximum prison sentence to ten years.

*Willful failure to file return, supply information, or pay tax*

The provision increases the criminal penalty under section 7203 of the Code for individuals from $25,000 to $50,000 and, in the case of an ''aggravated failure to file'' (defined as a failure to file a return for a period of three or more consecutive taxable years if the aggregated tax liability for such period is at least $100,000), changes the crime from a misdemeanor to a felony and increases the maximum prison sentence to ten years.

*Fraud and false statements*

The provision increases the criminal penalty for making fraudulent or false statements to $500,000 for individuals and $1,000,000 for corporations. The provision increases the maximum prison sentence for making fraudulent or false statements to five years. The provision provides that in no event shall the amount of the monetary penalty under the provision be less than the amount of the underpayment or overpayment attributable to fraud.

*Effective date*

The provision is effective for actions and failures to act occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements (Sec. 432 of the Senate amendment)

PRESENT LAW

*In general*

The Code contains numerous civil penalties, such as the delinquency, accuracy-related, fraud, and assessable penalties. These civil penalties are in addition to any interest that may be due as a result of an underpayment of tax. If all or any part of a tax is not paid when due, the Code imposes interest on the underpayment, which is assessed and collected in the same manner as the underlying tax and is subject to the respective statutes of limitations for assessment and collection.

*Delinquency penalties*

*Failure to file.*—Under present law, a taxpayer who fails to file a tax return on a timely basis is generally subject to a penalty equal to 5 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of five months or 25 percent. An exception from the penalty applies if the failure is due to reasonable cause. In the case of fraudulent failure to file, the penalty is increased to 15 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of five months or 75 percent. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax.

*Failure to pay.*—Taxpayers who fail to pay their taxes are subject to a penalty of 0.5 percent per month on the unpaid amount, up to a maximum of 25 percent. If a penalty for failure to file and a penalty for failure to pay tax shown on a return both apply for the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax shown on a return. If an income tax return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file below the lesser of $100 or 100 percent of the amount required to be shown on the return. For any month in which an installment payment agreement with the IRS is in effect, the rate of the penalty is half the usual rate (0.25 percent instead of 0.5 percent), provided that the taxpayer filed the tax return in a timely manner (including extensions).

*Failure to make timely deposits of tax.*—The penalty for the failure to make timely deposits of tax consists of a four-tiered structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. A depositor is subject to a penalty equal to 2 percent of the amount of the underpayment if the failure is corrected on or before the date that is five days after the prescribed due date. A depositor is subject to a penalty equal to 5 percent of the amount of the underpayment if the failure is corrected after the date that is five days after the prescribed due date but on or before the date that is 15 days after the prescribed due date. A depositor is subject to a penalty equal to 10 percent of the amount of the underpayment if the failure is corrected after the date that is 15 days after the due date but on or before the date that is 10 days after the date of the first delinquency notice to the taxpayer (under sec. 6303). Finally, a depositor is subject to a penalty equal to 15 percent of the amount of the underpayment if the failure is not corrected on or before earlier of 10 days after the date of the first delinquency notice to the taxpayer and 10 days after the date on which notice and demand for immediate payment of tax is given in cases of jeopardy.

An exception from the penalty applies if the failure is due to reasonable cause. In addition, the Secretary may waive the penalty for an inadvertent failure to deposit any tax by specified first-time depositors.

*Accuracy-related penalties*

*In general.*—The accuracy-related penalties are imposed at a rate of 20 percent of the portion of any underpayment that is attributable, in relevant part, to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, and (4) any reportable transaction understatement. The penalty for a

[404] Section 7206 states that making fraudulent or false statements under the Code is a felony. In addition, this offense is a felony pursuant to the classification guidelines of 18 U.S.C. 3559(a)(5).

substantial valuation misstatement is doubled for certain gross valuation misstatements. In the case of a reportable transaction understatement for which the transaction is not disclosed, the penalty rate is 30 percent. These penalties are coordinated with the fraud penalty. This statutory structure operates to eliminate any stacking of the penalties.

No penalty is to be imposed if it is shown that there was reasonable cause for an underpayment and the taxpayer acted in good faith, and in the case of a reportable transaction understatement the relevant facts of the transaction have been disclosed, there is or was substantial authority for the taxpayer's treatment of such transaction, and the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

*Negligence or disregard for the rules or regulations.*—If an underpayment of tax is attributable to negligence, the negligence penalty applies only to the portion of the underpayment that is attributable to negligence. Negligence means any failure to make a reasonable attempt to comply with the provisions of the Code. Disregard includes any careless, reckless, or intentional disregard of the rules or regulations.

*Substantial understatement of income tax.*—Generally, an understatement is substantial if the understatement exceeds the greater of (1) 10 percent of the tax required to be shown on the return for the tax year, or (2) $5,000. In determining whether a substantial understatement exists, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return.

*Substantial valuation misstatement.*—A penalty applies to the portion of an underpayment that is attributable to a substantial valuation misstatement. Generally, a substantial valuation misstatement exists if the value or adjusted basis of any property claimed on a return is 200 percent or more of the correct value or adjusted basis. The amount of the penalty for a substantial valuation misstatement is 20 percent of the amount of the underpayment if the value or adjusted basis claimed is 200 percent or more but less than 400 percent of the correct value or adjusted basis. If the value or adjusted basis claimed is 400 percent or more of the correct value or adjusted basis, then the overvaluation is a gross valuation misstatement.

*Reportable transaction understatement.*—A penalty applies to any item that is attributable to any listed transaction, or to any reportable transaction (other than a listed transaction) if a significant purpose of such reportable transaction is tax avoidance or evasion.

*Fraud penalty*

The fraud penalty is imposed at a rate of 75 percent of the portion of any underpayment that is attributable to fraud. The accuracy-related penalty does not apply to any portion of an underpayment on which the fraud penalty is imposed.

*Assessable penalties*

In addition to the penalties described above, the Code imposes a number of additional penalties, including, for example, penalties for failure to file (or untimely filing of) information returns with respect to foreign trusts, and penalties for failure to disclose any required information with respect to a reportable transaction.

*Interest provisions*

Taxpayers are required to pay interest to the IRS whenever there is an underpayment of tax. An underpayment of tax exists whenever the correct amount of tax is not paid by the last date prescribed for the payment of the tax. The last date prescribed for the payment of the income tax is the original due date of the return.

Different interest rates are provided for the payment of interest depending upon the type of taxpayer, whether the interest relates to an underpayment or overpayment, and the size of the underpayment or overpayment. Interest on underpayments is compounded daily.

*Offshore Voluntary Compliance Initiative*

In January 2003, Treasury announced the Offshore Voluntary Compliance Initiative (''OVCI'') to encourage the voluntary disclosure of previously unreported income placed by taxpayers in offshore accounts and accessed through credit card or other financial arrangements. A taxpayer had to comply with various requirements in order to participate in the OVCI, including sending a written request to participate in the program by April 15, 2003. This request had to include information about the taxpayer, the taxpayer's introduction to the credit card or other financial arrangements and the names of parties that promoted the transaction. A taxpayer entering into a closing agreement under the OVCI is not liable for the civil fraud penalty, the fraudulent failure to file penalty, or the civil information return penalties. Such a taxpayer is responsible for back taxes, interest, and certain accuracy-related and delinquency penalties.[405]

*Voluntary disclosure policy*

A taxpayer's timely, voluntary disclosure of a substantial unreported tax liability has long been an important factor in deciding whether the taxpayer's case should ultimately be referred for criminal prosecution. The voluntary disclosure must be truthful, timely, and complete. The taxpayer must show a willingness to cooperate (as well as actual cooperation) with the IRS in determining the correct tax liability. The taxpayer must make good-faith arrangements with the IRS to pay in full the tax, interest, and any penalties determined by the IRS to be applicable. A voluntary disclosure does not guarantee immunity from prosecution. It creates no substantive or procedural rights for taxpayers.[406] The IRS treats participation in the OVCI as a voluntary disclosure.[407]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment doubles the amounts of civil penalties, interest, and fines related to taxpayers' underpayments of U.S. income tax liability through the direct or indirect use of certain offshore financial arrangements. The provision applies to taxpayers who did not (or do not) voluntarily disclose such arrangements through the OVCI or otherwise. Under the Senate amendment, the determination of whether any civil penalty is to be applied to such underpayment is made without regard to whether a return has been filed, whether there was reasonable cause for such underpayment, and whether the taxpayer acted in good faith.

The proscribed financial arrangements include, but are not limited to, the use of certain foreign leasing corporations for providing domestic employee services,[408] certain arrangements whereby the taxpayer may hold securities trading accounts through offshore banks or other financial intermediaries, certain arrangements whereby the taxpayer may access funds through the use of offshore credit, debit, or charge cards, and offshore annuities or trusts.

The Secretary of the Treasury is granted the authority to waive the application of the provision if the use of the offshore financial arrangements is incidental to the transaction and, in the case of a trade or business, such use is conducted in the ordinary course of the type of trade or business in which the taxpayer is engaged.

*Effective date.*—The provision generally is effective with respect to a taxpayer's open tax years on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Denial of deduction for certain fines, penalties, and other amounts (Sec. 433 of the Senate Amendment and sec. 162 of the Code)

PRESENT LAW

Under present law, no deduction is allowed as a trade or business expense under section 162(a) for the payment of a fine or similar penalty to a government for the violation of any law (sec. 162(f)). The enactment of section 162(f) in 1969 codified existing case law that denied the deductibility of fines as ordinary and necessary business expenses on the grounds that ''allowance of the deduction would frustrate sharply defined national or State policies proscribing the particular types of conduct evidenced by some governmental declaration thereof.''[409]

Treasury regulation section 1.162–21(b)(1) provides that a fine or similar penalty includes an amount: (1) paid pursuant to conviction or a plea of guilty or nolo contendere for a crime (felony or misdemeanor) in a criminal proceeding; (2) paid as a civil penalty imposed by Federal, State, or local law, including additions to tax and additional amounts and assessable penalties imposed by chapter 68 of the Code; (3) paid in settlement of the taxpayer's actual or potential liability for a fine or penalty (civil or criminal); or (4) forfeited as collateral posted in connection with a proceeding which could result in imposition of such a fine or penalty. Treasury regulation section 1.162–21(b)(2) provides, among other things, that compensatory damages (including damages under section 4A of the Clayton Act (15 U.S.C. 15a), as amended) paid to a government do not constitute a fine or penalty.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision modifies the rules regarding the determination whether payments are nondeductible payments of fines or penalties under section 162(f). In particular, the provision generally provides that amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government in relation to the violation of any law or the investigation or inquiry into the potential violation of any law[410] are nondeductible under

[405] Rev. Proc. 2003–11, 2003–4 C.B. 311.

[406] Internal Revenue News Release 2002–135, IR–2002–135 (December 11, 2002).

[407] Rev. Proc. 2003–11, 2003–4 C.B. 311.

[408] These arrangements were described and classified as listed transactions in Notice 2003–22, 2003–1 C.B. 851.

[409] S. Rep. No. 91–552, 91st Cong, 1st Sess., 273–74 (1969), referring to *Tank Truck Rentals, Inc.* v. *Commissioner*, 356 U.S. 30 (1958).

[410] The provision does not affect amounts paid or incurred in performing routine audits or reviews such as annual audits that are required of all organizations or individuals in a similar business sector, or profession, as a requirement for being allowed to conduct business. However, if the government or regulator raised an issue of compliance and a payment is required in settlement of such issue, the provision would affect that payment.

any provision of the income tax provisions.[411] The provision applies to deny a deduction for any such payments, including those where there is no admission of guilt or liability and those made for the purpose of avoiding further investigation or litigation. An exception applies to payments that the taxpayer establishes are either restitution (including remediation of property), or amounts required to come into compliance with any law that was violated or involved in the investigation or inquiry, and that are identified in the court order or settlement as restitution, remediation, or required to come into compliance.[412] The IRS remains free to challenge the characterization of an amount so identified; however, no deduction is allowed unless the identification is made.[413]

An exception also applies to any amount paid or incurred as taxes due.[414]

The provision is intended to apply only where a government (or other entity treated in a manner similar to a government under the amendment) is a complainant or investigator with respect to the violation or potential violation of any law.[415]

It is intended that a payment will be treated as restitution (including remediation of property) only if substantially all of the payment is required to be paid to the specific persons, or in relation to the specific property, actually harmed by the conduct of the taxpayer that resulted in the payment. Thus, a payment to or with respect to a class substantially broader than the specific persons or property that were actually harmed (e.g., to a class including similarly situated persons or property) does not qualify as restitution or included remediation of property.[416] Restitution and included remediation of property is limited to the amount that bears a substantial quantitative relationship to the harm caused by the past conduct or actions of the taxpayer that resulted in the payment in question. If the party harmed is a government or other entity, then restitution and included remediation of property includes payment to such harmed government or entity, provided the payment bears a substantial quantitative relationship to the harm. However, restitution or included remediation of property does not include reimbursement of government investigative or litigation costs, or payments to whistleblowers.

It is intended that a payment will be treated as an amount required to come into compliance only if it directly corrects a violation with respect to a particular requirement of law that was under investigation. For example, if the law requires a particular emission standard to be met or particular machinery to be used, amounts required to be paid under a settlement agreement to meet the required standard or install the machinery are deductible to the extent otherwise allowed. Similarly, if the law requires certain practices and procedures to be followed and a settlement agreement requires the taxpayer to pay to establish such practices or procedures, such amounts would be deductible. However, amounts paid for other purposes not directly correcting a violation of law are not deductible. For example, amounts paid to bring other machinery that is already in compliance up to a standard higher than required by the law, or to create other benefits (such as a park or other action not previously required by law), are not deductible if required under a settlement agreement. Similarly, amounts paid to educate consumers or customers about the risks of doing business with the taxpayer or about the field in which the taxpayer does business generally, which education efforts are not specifically required under the law, are not deductible if required under a settlement agreement.

The provision requires government agencies to report to the IRS and to the taxpayer the amount of each settlement agreement or order entered where the aggregate amount required to be paid or incurred to or at the direction of the government under such settlement agreements and orders with respect to the violation, investigation, or inquiry is least $600 (or such other amount as may be specified by the Secretary of the Treasury as necessary to ensure the efficient administration of the Internal Revenue laws). The reports must be made within 30 days of the date the court order is issued or the settlement agreement is entered into, or such other time as may be required by Secretary. The report must separately identify any amounts that are restitution or remediation of property, or correction of noncompliance.[417]

The IRS is encouraged to require taxpayers to identify separately on their tax returns the amounts of any such settlements with respect to which reporting is required under the provision, including separate identification of the nondeductible amount and of any amount deductible as restitution, remediation, or required to correct noncompliance.[418]

Amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, any self-regulatory entity that regulates a financial market or other market that is a qualified board or exchange under section 1256(g)(7), and that is authorized to impose sanctions (e.g., the National Association of Securities Dealers) are likewise subject to the provision if paid in relation to a violation, or investigation or inquiry into a potential violation, of any law (or any rule or other requirement of such entity). To the extent provided in regulations, amounts paid or incurred to, or at the direction of, any other nongovernmental entity that exercises self-regulatory powers as part of performing an essential governmental function are similarly subject to the provision. The exception for payments that the taxpayer establishes are paid or incurred for restitution, remediation of property, or coming into compliance and that are identified as such in the order or settlement agreement likewise applies in these cases. The requirement of reporting to the IRS and the taxpayer also applies in these cases.

No inference is intended as to the treatment of payments as nondeductible fines or penalties under present law. In particular, the provision is not intended to limit the scope of present-law section 162(f) or the regulations thereunder.

*Effective date.*—The provision is effective for amounts paid or incurred on or after the date of enactment; however the provision does not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Any order or agreement requiring court approval is not a binding order or agreement for this purpose unless such approval was obtained before the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

4. Denial of deduction for punitive damages (Sec. 434 of the Senate amendment and sec. 162 of the Code)

PRESENT LAW

In general, a deduction is allowed for all ordinary and necessary expenses that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business.[419] However, no deduction is allowed for any payment that is made to an official of any governmental agency if the payment constitutes an illegal bribe or kickback or if the payment is to an official or employee of a foreign government and is illegal under Federal law.[420] In addition, no deduction is allowed under present law for any fine or similar payment made to a government for violation of any law.[421] Furthermore, no deduction is permitted for two-thirds of any damage payments made by a taxpayer who is convicted of a violation of the Clayton antitrust law or any related antitrust law.[422]

In general, gross income does not include amounts received on account of personal physical injuries and physical sickness.[423] However, this exclusion does not apply to punitive damages.[424]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision denies any deduction for punitive damages that are paid or incurred by the taxpayer as a result of a judgment or in settlement of a claim. If the liability for punitive damages is covered by insurance, any such punitive damages paid by the insurer are included in gross income of the insured person and the insurer is required to report such amounts to both the insured person and the IRS.

*Effective date.*—The provision is effective for punitive damages that are paid or incurred on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

[411] The provision provides that such amounts are nondeductible under chapter 1 of the Internal Revenue Code.

[412] The provision does not affect the treatment of antitrust payments made under section 4 of the Clayton Act, which continue to be governed by the provisions of section 162(g).

[413] If a settlement agreement does not specify a specific amount to be paid for the purpose of coming into compliance but instead simply requires the taxpayer to come into compliance, it is sufficient identification to so state. Amounts expended by the taxpayer for that purpose would then be considered identified. However, if an agreement specifies a specific dollar amount that must be paid or incurred, the amount would not be eligible to be deducted without a specification that it is for restitution (including remediation of property), or coming into compliance.

[414] Thus, amounts paid or incurred as taxes due are not affected by the provision (e.g., State taxes that are otherwise deductible). The reference to taxes due is also intended to include interest with respect to such taxes (but not interest, if any, with respect to any penalties imposed with respect to such taxes).

[415] Thus, for example, the provision would not apply to payments made by one private party to another in a lawsuit between private parties, merely because a judge or jury acting in the capacity as a court directs the payment to be made. The mere fact that a court enters a judgment or directs a result in a private dispute does not cause a payment to be made ''at the direction of a government'' for purposes of the provision.

[416] Similarly, a payment to a charitable organization benefiting a broader class than the persons or property actually harmed, or to be paid out without a substantial quantitative relationship to the harm caused, would not qualify as restitution. Under the provision, such a payment not deductible under section 162 would also not be deductible under section 170.

[417] As in the case of the identification requirement, if the agreement does not specify a specific amount to be expended to come into compliance but simply requires that to occur, it is expected that the report may state simply that the taxpayer is required to come into compliance but no specific dollar amount has been specified for that purpose in the settlement agreement.

[418] For example, the IRS might require such reporting as part of the schedule M–3, whether or not the particular amounts create a book-tax difference.

[419] Sec. 162(a).

[420] Sec. 162(c).

[421] Sec. 162(f).

[422] Sec. 162(g).

[423] Sec. 104(a).

[424] Sec. 104(a)(2).

5. Increase in penalty for bad checks and money orders (Sec. 435 of the Senate amendment and sec. 6657 of the Code)

PRESENT LAW

The Code[425] imposes a penalty for bad checks and money orders on the person who tendered it. The penalty is two percent of the amount of the bad check or money order. For checks that are less than $750, the minimum penalty is $15 (or, if less, the amount of the check).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision increases the minimum penalty to $25 (or, if less, the amount of the check), applicable to checks that are less than $1,250.

*Effective date.*—The provision is effective with respect to checks or money orders received after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. PROVISIONS TO DISCOURAGE EXPATRIATION

1. Tax treatment of inverted corporate entities (Sec. 441 of the Senate amendment and sec. 7874 of the Code)

PRESENT LAW

*Determination of corporate residence*

The U.S. tax treatment of a multinational corporate group depends significantly on whether the parent corporation of the group is domestic or foreign. For purposes of U.S. tax law, a corporation is treated as domestic if it is incorporated under the law of the United States or of any State. Other corporations (i.e., those incorporated under the laws of foreign countries or U.S. possessions) generally are treated as foreign.

*U.S. taxation of domestic corporations*

The United States employs a ''worldwide'' tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the double taxation that may arise from taxing the foreign-source income of a domestic corporation, a foreign tax credit for income taxes paid to foreign countries is provided to reduce or eliminate the U.S. tax owed on such income, subject to certain limitations.

Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income generally is deferred, and U.S. tax is imposed on such income when repatriated. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F (secs. 951–964) and the passive foreign investment company rules (secs. 1291–1298). A foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on this foreign-source income, whether such income is repatriated as an actual dividend or included under one of the anti-deferral regimes.

*U.S. taxation of foreign corporations*

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income that is ''effectively connected'' with the conduct of a trade or business in the United States. Such ''effectively connected income'' generally is taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable tax treaty may limit the imposition of U.S. tax on business operations of a foreign corporation to cases in which the business is conducted through a ''permanent establishment'' in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30-percent rate on the receipt of interest, dividends, rents, royalties, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax generally is collected by means of withholding by the person making the payment. This tax may be reduced or eliminated under an applicable tax treaty.

*U.S. tax treatment of inversion transactions prior to the American Jobs Creation Act of 2004*

Prior to the American Jobs Creation Act of 2004 (''AJCA''), a U.S. corporation could reincorporate in a foreign jurisdiction and thereby replace the U.S. parent corporation of a multinational corporate group with a foreign parent corporation. These transactions were commonly referred to as inversion transactions. Inversion transactions could take many different forms, including stock inversions, asset inversions, and various combinations of and variations on the two. Most of the known transactions were stock inversions. In one example of a stock inversion, a U.S. corporation forms a foreign corporation, which in turn forms a domestic merger subsidiary. The domestic merger subsidiary then merges into the U.S. corporation, with the U.S. corporation surviving, now as a subsidiary of the new foreign corporation. The U.S. corporation's shareholders receive shares of the foreign corporation and are treated as having exchanged their U.S. corporation shares for the foreign corporation shares. An asset inversion could be used to reach a similar result, but through a direct merger of the top-tier U.S. corporation into a new foreign corporation, among other possible forms. An inversion transaction could be accompanied or followed by further restructuring of the corporate group. For example, in the case of a stock inversion, in order to remove income from foreign operations from the U.S. taxing jurisdiction, the U.S. corporation could transfer some or all of its foreign subsidiaries directly to the new foreign parent corporation or other related foreign corporations.

In addition to removing foreign operations from U.S. taxing jurisdiction, the corporate group could seek to derive further advantage from the inverted structure by reducing U.S. tax on U.S.-source income through various earnings stripping or other transactions. This could include earnings stripping through payment by a U.S. corporation of deductible amounts such as interest, royalties, rents, or management service fees to the new foreign parent or other foreign affiliates. In this respect, the post-inversion structure could enable the group to employ the same tax-reduction strategies that are available to other multinational corporate groups with foreign parents and U.S. subsidiaries, subject to the same limitations (e.g., secs. 163(j) and 482).

Inversion transactions could give rise to immediate U.S. tax consequences at the shareholder and/or the corporate level, depending on the type of inversion. In stock inversions, the U.S. shareholders generally recognized gain (but not loss) under section 367(a), based on the difference between the fair market value of the foreign corporation shares received and the adjusted basis of the domestic corporation stock exchanged. To the extent that a corporation's share value had declined, and/or it had many foreign or tax-exempt shareholders, the impact of this section 367(a) ''toll charge'' was reduced. The transfer of foreign subsidiaries or other assets to the foreign parent corporation also could give rise to U.S. tax consequences at the corporate level (e.g., gain recognition and earnings and profits inclusions under secs. 1001, 311(b), 304, 367, 1248 or other provisions). The tax on any income recognized as a result of these restructurings could be reduced or eliminated through the use of net operating losses, foreign tax credits, and other tax attributes.

In asset inversions, the U.S. corporation generally recognized gain (but not loss) under section 367(a) as though it had sold all of its assets, but the shareholders generally did not recognize gain or loss, assuming the transaction met the requirements of a reorganization under section 368.

*U.S. tax treatment of inversion transactions under AJCA*

*In general*

AJCA added new section 7874 to the Code, which defines two different types of corporate inversion transactions and establishes a different set of consequences for each type. Certain partnership transactions also are covered.

*Transactions involving at least 80 percent identity of stock ownership*

The first type of inversion is a transaction in which, pursuant to a plan[426] or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity in a transaction completed after March 4, 2003; (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 80 percent or more (by vote or value) of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50 percent ownership (i.e., the ''expanded affiliated group''), does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. The provision denies the intended tax benefits of this type of inversion by deeming the top-tier foreign corporation to be a domestic corporation for all purposes of the Code.[427]

In determining whether a transaction meets the definition of an inversion under the provision, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the former top-tier U.S. corporation receives stock of the foreign incorporated entity (e.g., so-called ''hook'' stock), the stock would not be considered in determining whether the transaction meets the definition. Similarly, if a U.S. parent corporation converts an existing wholly owned U.S. subsidiary into a new wholly owned controlled foreign corporation, the stock of the

[425] Sec. 6657.

[426] Acquisitions with respect to a domestic corporation or partnership are deemed to be ''pursuant to a plan'' if they occur within the four-year period beginning on the date which is two years before the ownership threshold under the provision is met with respect to such corporation or partnership.

[427] Since the top-tier foreign corporation is treated for all purposes of the Code as domestic, the shareholder-level ''toll charge'' of sec. 367(a) does not apply to these inversion transactions.

new foreign corporation would be disregarded, with the result that the transaction would not meet the definition of an inversion under the provision. Stock sold in a public offering related to the transaction also is disregarded for these purposes.

Transfers of properties or liabilities as part of a plan a principal purpose of which is to avoid the purposes of the provision are disregarded. In addition, the Treasury Secretary is to provide regulations to carry out the provision, including regulations to prevent the avoidance of the purposes of the provision, including avoidance through the use of related persons, pass-through or other noncorporate entities, or other intermediaries, and through transactions designed to qualify or disqualify a person as a related person or a member of an expanded affiliated group. Similarly, the Treasury Secretary has the authority to treat certain non-stock instruments as stock, and certain stock as not stock, where necessary to carry out the purposes of the provision.

*Transactions involving at least 60 percent but less than 80 percent identity of stock ownership*

The second type of inversion is a transaction that would meet the definition of an inversion transaction described above, except that the 80-percent ownership threshold is not met. In such a case, if at least a 60-percent ownership threshold is met, then a second set of rules applies to the inversion. Under these rules, the inversion transaction is respected (i.e., the foreign corporation is treated as foreign), but any applicable corporate-level ''toll charges'' for establishing the inverted structure are not offset by tax attributes such as net operating losses or foreign tax credits. Specifically, any applicable corporate-level income or gain required to be recognized under sections 304, 311(b), 367, 1001, 1248, or any other provision with respect to the transfer of controlled foreign corporation stock or the transfer or license of other assets by a U.S. corporation as part of the inversion transaction or after such transaction to a related foreign person is taxable, without offset by any tax attributes (e.g., net operating losses or foreign tax credits). This rule does not apply to certain transfers of inventory and similar property. These measures generally apply for a 10-year period following the inversion transaction.

*Other rules*

Under section 7874, inversion transactions include certain partnership transactions. Specifically, the provision applies to transactions in which a foreign-incorporated entity acquires substantially all of the properties constituting a trade or business of a domestic partnership, if after the acquisition at least 60 percent (or 80 percent, as the case may be) of the stock of the entity is held by former partners of the partnership (by reason of holding their partnership interests), provided that the other terms of the basic definition are met. For purposes of applying this test, all partnerships that are under common control within the meaning of section 482 are treated as one partnership, except as provided otherwise in regulations. In addition, the modified ''toll charge'' rules apply at the partner level.

A transaction otherwise meeting the definition of an inversion transaction is not treated as an inversion transaction if, on or before March 4, 2003, the foreign-incorporated entity had acquired directly or indirectly more than half of the properties held directly or indirectly by the domestic corporation, or more than half of the properties constituting the partnership trade or business, as the case may be.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment makes several changes to the inversions regime of section 7874. First, the provision applies the rules of section 7874 to transactions completed after March 20, 2002 (as opposed to March 4, 2003 under present law). A transaction otherwise meeting the definition of an inversion transaction under the provision is not treated as an inversion transaction if, on or before March 20, 2002, the foreign-incorporated entity had acquired directly or indirectly more than half the properties held directly or indirectly by the domestic corporation, or more than half the properties constituting the partnership trade or business, as the case may be.

The Senate amendment also lowers the present-law 60-percent ownership threshold for the second category of inversion transactions to greater-than-50-percent, and increases the accuracy-related penalties and tightens the earnings stripping rules of section 163(j) with respect to companies involved in this type of transaction. Specifically, the 20-percent penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, and substantial valuation misstatement is increased to 30 percent with respect to the inverting entity and taxpayers related to the inverting entity, and the 40-percent penalty for gross valuation misstatement is increased to 50 percent with respect to such taxpayers. In applying section 163(j) to taxpayers related to the inverted entity, the generally applicable debt-equity threshold is eliminated, and the 50-percent thresholds for ''excess interest expense'' and ''excess limitation'' are lowered to 25 percent.

The Senate amendment also excludes from the inversions regime the acquisition of a U.S. corporation in cases in which none of the stock of the U.S. corporation was readily tradable on an established securities market at any time during the four-year period ending on the date of the acquisition, except as provided in regulations.

*Effective date.*—The provision in the Senate amendment is effective for taxable years ending after March 20, 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Revision of tax rules on expatriation of individuals (Sec. 442 of the Senate amendment and secs. 102, 877, 2107, 2501, 7701, and 6039G of the Code)

PRESENT LAW

*In general*

U.S. citizens and residents generally are subject to U.S. income taxation on their worldwide income. The U.S. tax may be reduced or offset by a credit allowed for foreign income taxes paid with respect to foreign source income. Nonresident aliens are taxed at a flat rate of 30 percent (or a lower treaty rate) on certain types of passive income derived from U.S. sources, and at regular graduated rates on net profits derived from a U.S. trade or business. The estates of nonresident aliens generally are subject to estate tax on U.S.-situated property (e.g., real estate and tangible property located within the United States and stock in a U.S. corporation). Nonresident aliens generally are subject to gift tax on transfers by gift of U.S.-situated property (e.g., real estate and tangible property located within the United States), but excluding intangibles, such as stock, regardless of where they are located.

*Income tax rules with respect to expatriates*

For the 10 taxable years after an individual relinquishes his or her U.S. citizenship or terminates his or her U.S. long-term residency, unless certain conditions are met, the individual is subject to an alternative method of income taxation than that generally applicable to nonresident aliens (the ''alternative tax regime''). Generally, the individual is subject to income tax for the 10-year period at the rates applicable to U.S. citizens, but only on U.S.-source income.[428]

A ''long-term resident'' is a noncitizen who is a lawful permanent resident of the United States for at least eight taxable years during the period of 15 taxable years ending with the taxable year during which the individual either ceases to be a lawful permanent resident of the United States or commences to be treated as a resident of a foreign country under a tax treaty between such foreign country and the United States (and does not waive such benefits).

A former citizen or former long-term resident is subject to the alternative tax regime for a 10-year period following citizenship relinquishment or residency termination, unless the former citizen or former long-term resident: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed $124,000 (adjusted for inflation after 2004) and his or her net worth is less than $2 million, or alternatively satisfies limited, objective exceptions for certain dual citizens and minors who have had no substantial contacts with the United States; and (2) certifies under penalties of perjury that he or she has complied with all U.S. Federal tax obligations for the preceding five years and provides such evidence of compliance as the Secretary of the Treasury may require.

Anti-abuse rules are provided to prevent the circumvention of the alternative tax regime.

*Estate tax rules with respect to expatriates*

Special estate tax rules apply to individuals who die during a taxable year in which he or she is subject to the alternative tax regime. Under these special rules, certain closely-held foreign stock owned by the former citizen or former long-term resident is includible in his or her gross estate to the extent that the foreign corporation owns U.S.-situated assets. The special rules apply if, at the time of death: (1) the former citizen or former long-term resident directly or indirectly owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation; and (2) directly or indirectly, is considered to own more than 50 percent of (a) the total combined voting power of all classes of stock entitled to vote in the foreign corporation, or (b) the total value of the stock of such corporation. If this stock ownership test is met, then the gross estate of the former citizen or former long-term resident includes that proportion of the fair market value of the foreign stock owned by the individual at the time of death, which the fair market value of any assets owned by such foreign corporation and situated in the United States (at the time of death) bears to the total fair market value of all assets owned by such foreign corporation (at the time of death).

*Gift tax rules with respect to expatriates*

Special gift tax rules apply to individuals who make gifts during a taxable year in which he or she is subject to the alternative tax regime. The individual is subject to gift tax on gifts of U.S.-situated intangibles made during the 10 years following citizenship relinquishment or residency termination. In addition, gifts of stock of certain closely-held foreign corporations by a former

[428] For this purpose, however, U.S.-source income has a broader scope than it does typically in the Code.

citizen or former long-term resident are subject to gift tax, if the gift is made during the time that such person is subject to the alternative tax regime. The operative rules with respect to these gifts of closely-held foreign stock are the same as described above relating to the estate tax, except that the relevant testing and valuation date is the date of gift rather than the date of death.

*Termination of U.S. citizenship or long-term resident status for U.S. Federal income tax purposes*

An individual continues to be treated as a U.S. citizen or long-term resident for U.S. Federal tax purposes, including for purposes of section 7701(b)(10), until the individual: (1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, respectively; and (2) provides a statement to the Secretary of the Treasury in accordance with section 6039G.

*Sanction for individuals subject to the individual tax regime who return to the United States for extended periods*

The alternative tax regime does not apply to any individual for any taxable year during the 10-year period following citizenship relinquishment or residency termination if such individual is present in the United States for more than 30 days in the calendar year ending in such taxable year. Such individual is treated as a U.S. citizen or resident for such taxable year and, therefore, is taxed on his or her worldwide income.

Similarly, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any calendar year ending during the 10-year period following citizenship relinquishment or residency termination, and the individual dies during that year, he or she is treated as a U.S. resident, and the individual's worldwide estate is subject to U.S. estate tax. Likewise, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any year during the 10-year period following citizenship relinquishment or residency termination, the individual is subject to U.S. gift tax on any transfer of his or her worldwide assets by gift during that taxable year.

For purposes of these rules, an individual is treated as present in the United States on any day if such individual is physically present in the United States at any time during that day. The present-law exceptions from being treated as present in the United States for residency purposes[429] generally do not apply for this purpose. However, for individuals with certain ties to countries other than the United States[430] and individuals with minimal prior physical presence in the United States,[431] a day of physical presence in the United States is disregarded if the individual is performing services in the United States on such day for an unrelated employer (within the meaning of sections 267 and 707(b)), who meets the requirements the Secretary of the Treasury may prescribe in regulations. No more than 30 days may be disregarded during any calendar year under this rule.

*Annual return*

Former citizens and former long-term residents are required to file an annual return for each year following citizenship relinquishment or residency termination in which they are subject to the alternative tax regime. The annual return is required even if no U.S. Federal income tax is due. The annual return requires certain information, including information on the permanent home of the individual, the individual's country of residence, the number of days the individual was present in the United States for the year, and detailed information about the individual's income and assets that are subject to the alternative tax regime. This requirement includes information relating to foreign stock potentially subject to the special estate and gift tax rules.

If the individual fails to file the statement in a timely manner or fails correctly to include all the required information, the individual is required to pay a penalty of $10,000. The $10,000 penalty does not apply if it is shown that the failure is due to reasonable cause and not to willful neglect.

HOUSE BILL

No provision.

SENATE AMENDMENT

*In general*

The Senate amendment creates new section 877A, that generally subjects certain U.S. citizens who relinquish their U.S. citizenship and certain long-term U.S. residents who terminate their U.S. residence to tax on the net unrealized gain in their property as if such property were sold for fair market value on the day before the expatriation or residency termination (''mark-to-market tax''). Gain from the deemed sale is taken into account at that time without regard to other Code provisions. Any loss from the deemed sale generally is taken into account to the extent otherwise provided in the Code, except that the wash sale rules of section 1091 do not apply. Any net gain on the deemed sale, is recognized to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom relinquish citizenship or terminate residency). The $600,000 amount is increased by a cost of living adjustment factor for calendar years after 2005.

*Individuals covered*

Under the Senate amendment, the mark-to-market tax applies to U.S. citizens who relinquish citizenship and long-term residents who terminate U.S. residency (collectively, ''covered expatriates''). The definition of ''long-term resident'' under the provision is the same as that under present law. As under present law, an individual is considered to terminate long-term residency when the individual either ceases to be a lawful permanent resident (i.e., loses his or her green card status), or is treated as a resident of another country under a tax treaty and does not waive the benefits of the treaty.

Exceptions to an individual's classification as a covered expatriate are provided in two situations. The first exception applies to an individual who was born with citizenship both in the United States and in another country; provided that (1) as of the expatriation date the individual continues to be a citizen of, and is taxed as a resident of, such other country, and (2) the individual was not a resident of the United States for the five taxable years ending with the year of expatriation. The second exception applies to a U.S. citizen who relinquishes U.S. citizenship before reaching age 18½, provided that the individual was a resident of the United States for no more than five taxable years before such relinquishment.

For purposes of the mark-to-market tax, an individual is treated as having relinquished U.S. citizenship on the earliest of four possible dates: (1) the date that the individual renounces U.S. nationality before a diplomatic or consular officer of the United States (provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (2) the date that the individual furnishes to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (again, provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (3) the date that the State Department issues a certificate of loss of nationality; or (4) the date that a U.S. court cancels a naturalized citizen's certificate of naturalization.

In addition, the provision provides that, for all tax purposes (i.e., not limited to the mark-to-market tax), a U.S. citizen continues to be treated as a U.S. citizen for tax purposes until that individual's citizenship is treated as relinquished under the rules of the immediately preceding paragraph. However, under Treasury regulations, relinquishment may occur earlier with respect to an individual who became at birth a citizen of the United Sates and of another country.

*Election to be treated as a U.S. citizen*

Under the provision, a covered expatriate is permitted to make an irrevocable election to continue to be taxed as a U.S. citizen with respect to all property that otherwise is covered by the expatriation tax. This election is an ''all or nothing'' election; an individual is not permitted to elect this treatment for some property but not for other property. The election, if made, applies to all property that would be subject to the expatriation tax and to any property the basis of which is determined by reference to such property. Under this election, following expatriation the individual continues to pay U.S. income taxes at the rates applicable to U.S. citizens on any income generated by the property and on any gain realized on the disposition of the property. In addition, the property continues to be subject to U.S. gift, estate, and generation-skipping transfer taxes. In order to make this election, the taxpayer is required to waive any treaty rights that would preclude the collection of the tax.

The individual is also required to provide security to ensure payment of the tax under this election in such form, manner, and amount as the Secretary of the Treasury requires. The amount of mark-to-market tax that would have been owed but for this election (including any interest, penalties, and certain other items) becomes a lien in favor of the United States on all U.S.-situated property owned by the individual. This lien arises on the expatriation date and continues until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary of the Treasury is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to liens arising under this provision.

*Deemed sale of property upon expatriation or residency termination and tentative tax*

The deemed sale rule of the provision generally applies to all property interests held

[429] Secs. 7701(b)(3)(D), 7701(b)(5) and 7701(b)(7)(B)–(D).

[430] An individual has such a relationship to a foreign country if (1) the individual becomes a citizen or resident of the country in which the individual was born, such individual's spouse was born, or either of the individual's parents was born, and (2) the individual becomes fully liable for income tax in such country.

[431] An individual has a minimal prior physical presence in the United States if the individual was physically present for no more than 30 days during each year in the ten-year period ending on the date of loss of United States citizenship or termination of residency. However, for purposes of this test, an individual is not treated as being present in the United States on a day if the individual remained in the United States because of a medical condition that arose while the individual was in the United States. Sec. 7701(b)(3)(D)(ii).

by the individual on the date of relinquishment of citizenship or termination of residency. Special rules apply in the case of trust interests, as described below. U.S. real property interests (which remain subject to U.S. tax in the hands of nonresident noncitizens), with the exception of stock of certain former U.S. real property holding corporations, are exempted from the provision. Regulatory authority is granted to the Treasury to exempt other types of property from the provision.

Under the provision, an individual who is subject to the mark-to-market tax is required to pay a tentative tax equal to the amount of tax that would be due for a hypothetical short tax year ending on the date the individual relinquishes citizenship or terminates residency. Thus, the tentative tax is based on all income, gains, deductions, losses, and credits of the individual for the year through such date, including amounts realized from the deemed sale of property. Moreover, notwithstanding any other provision of the Code, any period during which recognition of income or gain had been deferred terminates on the day before relinquishment of citizenship or termination of residency (and, therefore, such income or gain recognition becomes part of the tax base of the tentative tax). The tentative tax is due on the 90th day after the date of relinquishment of citizenship or termination of residency, subject to the election, described below, to defer payments of the mark-to-market tax. In addition, notwithstanding any other provision of the Code, any extension of time for payment of tax ceases to apply on the day before relinquishment of citizenship or termination of residency, and the unpaid portion of such tax becomes due and payable at the time and in the manner prescribed by the Secretary of the Treasury.

*Deferral of payment of mark-to-market tax*

Under the provision, an individual is permitted to elect to defer payment of the mark-to-market tax imposed on the deemed sale of property. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. The election is irrevocable and is made on a property-by-property basis. Under the election, the deferred tax attributable to a particular property is due when the property is disposed of (or, if the property is disposed of in a transaction in which gain is not recognized in whole or in part, at such other time as the Secretary of the Treasury may prescribe). The deferred tax attributable to a particular property is an amount that bears the same ratio to the total mark-to-market tax as the gain taken into account with respect to such property bears to the total gain taken into account under these rules. The deferral of the mark-to-market tax may not be extended beyond the due date of the return for the taxable year which includes the individual's death.

In order to elect deferral of the mark-to-market tax, the individual is required to provide a bond in the amount of the deferred tax to the Secretary of the Treasury. Other security mechanisms are permitted provided that the individual establishes to the satisfaction of the Secretary of the Treasury that the security is adequate. In the event that the security provided with respect to a particular property subsequently becomes inadequate and the individual fails to correct the situation, the deferred tax and the interest with respect to such property will become due. As a further condition to making the election, the individual is required to consent to the waiver of any treaty rights that would preclude the collection of the tax.

The deferred tax amount (including any interest, penalties, and certain other items) becomes a lien in favor of the United States on all U.S.-situated property owned by the individual. This lien arises on the expatriation date and continues until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to such liens.

*Retirement plans and similar arrangements*

Subject to certain exceptions, the provision applies to all property interests held by covered expatriates at the time of relinquishment of citizenship or termination of residency. Accordingly, such property includes an interest in an employer-sponsored qualified plan or deferred compensation arrangement as well as an interest in an individual retirement account or annuity (i.e., an IRA).[432] However, the provision contains a special rule for an interest in a ''retirement plan.'' For purposes of the provision, a ''retirement plan'' includes an employer-sponsored qualified plan (sec. 401(a)), a qualified annuity (sec. 403(a)), a tax-sheltered annuity (sec. 403(b)), an eligible deferred compensation plan of a governmental employer (sec. 457(b)), an individual retirement account (sec. 408(a)), and an individual retirement annuity (sec. 408(b)). The special retirement plan rule also applies, to the extent provided in regulations, to any foreign plan or similar retirement arrangement or program. An interest in a trust that is part of a retirement plan is subject to the special retirement plan rules and not to the rules for interests in trusts (discussed below).

Under the special retirement plan rules, in lieu of the deemed sale rule, an amount equal to the present value of the individual's vested, accrued benefit under a retirement plan is treated as having been received by the individual as a distribution under the retirement plan on the day before the individual's relinquishment of citizenship or termination of residency. In the case of any later distribution to the individual from the retirement plan, the amount otherwise includible in the individual's income as a result of the distribution is reduced to reflect the amount previously included in income under the special retirement plan rule. The amount of the reduction applied to a distribution is the excess of: (1) the amount included in income under the special retirement plan rule, over (2) the total reductions applied to any prior distributions. It is not intended that the retirement plan would be deemed to have made a distribution at the time of expatriation for purposes of the tax-favored status of the retirement plan, such as whether a plan may permit distributions before a participant has severed employment. However, the retirement plan, and any person acting on the plan's behalf, will treat any later distribution in the same manner as the distribution would be treated without regard to the special retirement plan rule.

It is expected that the Treasury Department will provide guidance for determining the present value of an individual's vested, accrued benefit under a retirement plan, such as the individual's account balance in the case of a defined contribution plan or an IRA, or present value determined under the qualified joint and survivor annuity rules applicable to a defined benefit plan (sec. 417(e)).

*Interests in trusts*

Detailed rules apply under the provision to trust interests held by an individual at the time of relinquishment of citizenship or termination of residency. The treatment of trust interests depends on whether the trust is a ''qualified trust.'' A trust is a qualified trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

Constructive ownership rules apply to a trust beneficiary that is a corporation, partnership, trust, or estate. In such cases, the shareholders, partners, or beneficiaries of the entity are deemed to be the direct beneficiaries of the trust. In addition, an individual who holds (or who is treated as holding) a trust instrument at the time of relinquishment of citizenship or termination of residency is required to disclose on his or her tax return the methodology used to determine his or her interest in the trust, and whether such individual knows (or has reason to know) that any other beneficiary of the trust uses a different method.

*Nonqualified trusts.*—If an individual holds an interest in a trust that is not a qualified trust, a special rule applies for purposes of determining the amount of the mark-to-market tax due with respect to such trust interest. The individual's interest in the trust is treated as a separate trust consisting of the trust assets allocable to such interest. Such separate trust is treated as having sold its net assets for their fair market value on the day before the date of relinquishment of citizenship or termination of residency and having distributed the assets to the individual, who then is treated as having recontributed the assets to the trust. Any income, gain, or loss of the individual arising from the deemed distribution from the trust is taken into account as if it had arisen under the deemed sale rules.

The election to defer payment is available for the mark-to-market tax attributable to a nonqualified trust interest. A beneficiary's interest in a nonqualified trust is determined under all the facts and circumstances, including the trust instrument, letters of wishes, historical patterns of trust distributions, and the existence of, and function performed by, a trust protector or any similar advisor.

*Qualified trusts.*—If an individual has an interest in a qualified trust, the amount of mark-to-market tax on unrealized gain allocable to the individual's trust interest (''allocable expatriation gain'') is calculated at the time of expatriation or residency termination, but is collected as the individual receives distributions from the qualified trust. The allocable expatriation gain is the amount of gain which would be allocable to the individual's trust interest if the individual directly held all the assets allocable to such interest.[433] If any individual's interest in a trust is vested as of the day before the expatriation date (e.g., if the individual's interest in the trust is non-contingent and non-discretionary), the gain allocable to the individual's trust interest is determined based on the trust assets allocable to his or her trust interest. If the individual's interest in the trust is not vested as of the expatriation date (e.g., if the individual's trust interest is a contingent or discretionary interest), the gain allocable to his or her trust interest is determined based on all of the trust assets that could be allocable to his or her trust interest, determined by resolving all contingencies and discretionary powers in the individual's favor (i.e., the individual is allocated the maximum amount that he or she could receive).

Taxes are imposed on each distribution from a qualified trust. These distributions

[432] Application of the provision is not limited to an interest that meets the definition of property under section 83 (relating to property transferred in connection with the performance of services).

[433] Allocable expatriation gain is subject to the $600,000 exemption (adjusted for cost of living increases).

also may be subject to other U.S. income taxes. If a distribution from a qualified trust is made after the individual relinquishes citizenship or terminates residency, the mark-to-market tax is imposed in an amount equal to the amount of the distribution multiplied by the highest tax rate generally applicable to trusts and estates for the taxable year which includes the date of expatriation, but in no event will the tax imposed exceed the balance in the ''deferred tax account'' with respect to the trust interest. For this purpose, the balance in the deferred tax account is equal to (1) the hypothetical tax calculated under the ''regular'' deemed sale rules with respect to the allocable expatriation gain, (2) increased by interest charged on the balance in the deferred tax account at a rate two percentage points higher than the rate normally applicable to individual underpayments, for periods beginning after the 90th day after the expatriation date and calculated up to 30 days prior to the date of the distribution, (3) reduced by any mark-to-market tax imposed on prior trust distributions to the individual, and (4) to the extent provided in Treasury regulations, in the case of a covered expatriate holding a nonvested interest, reduced by mark-to-market taxes imposed on trust distributions to other persons holding nonvested interests.

The tax that is imposed on distributions from a qualified trust generally is to be deducted and withheld by the trustees. If the individual does not agree to waive treaty rights that would preclude collection of the tax, the tax with respect to such distributions is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual with respect to the tax.

Mark-to-market taxes become due immediately if the trust ceases to be a qualified trust, the individual disposes of his or her qualified trust interest, or the individual dies. In such cases, the amount of mark-to-market tax equals the lesser of (1) the tax calculated under the rules for nonqualified trust interests as of the date of the triggering event, or (2) the balance in the deferred tax account with respect to the trust interest immediately before that date. Such tax is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual (or his or her estate) with respect to such tax.

*Regulatory authority*

The provision authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 877A. In addition, the Secretary of the Treasury may provide for adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, to ensure that gain is taxed only once.

*Income tax treatment of gifts and inheritances from a former citizen or former long-term resident*

Under the provision, the exclusion from income provided in section 102 (relating to exclusions from income for the value of property acquired by gift or inheritance) does not apply to the value of any property received by gift or inheritance from a covered expatriate. Accordingly, a U.S. taxpayer who receives a gift or inheritance from such an individual is required to include the value of such gift or inheritance in gross income and is subject to U.S. tax on such amount. Having included the value of the property in income, the recipient takes a basis in the property equal to that value. The tax does not apply to property that is shown on a timely filed gift tax return and that is a taxable gift by the former citizen or former long-term resident, or property that is shown on a timely filed estate tax return and included in the gross U.S. estate of the former citizen or former long-term resident (regardless of whether the tax liability shown on such a return is reduced by credits, deductions, or exclusions available under the estate and gift tax rules). In addition, the tax does not apply to property in cases in which no estate or gift tax return was filed, but no such return would have been required to be filed if the former citizen or former long-term resident had not relinquished citizenship or terminated residency, as the case may be.

*Coordination with present-law alternative tax regime*

The provision provides a coordination rule with the present-law alternative tax regime. Under the provision, the expatriation income tax rules under section 877, and the special present-law expatriation estate and gift tax rules under sections 2107 and 2501(a)(3) (generally described above), do not apply to a covered expatriate whose expatriation or residency termination occurs on or after the date of enactment.

*Information reporting*

Certain information reporting requirements under the law presently applicable to former citizens and former long-term residents (sec. 6039G) also apply for purposes of the provision.

*Immigration rules*

The provision denies former citizens reentry into the United States if the individual is determined not to be in compliance with his or her tax obligations under the provision's expatriation tax rules (regardless of the subjective motive for expatriating). For this purpose, the provision permits the IRS to disclose certain items of return information of an individual, upon written request of the Attorney General or his delegate, as is necessary for making a determination under section 212(a)(10)(E) of the Immigration and Nationality Act. Specifically, the provision permits the IRS to disclose to the agency administering section 212(a)(10)(E) whether such taxpayer is in compliance with section 877A, and to identify the items of any noncompliance. Recordkeeping requirements, safeguards, and civil and criminal penalties for unauthorized disclosure or inspection apply to return information disclosed under this provision.

*Effective date*

The provision generally is effective for U.S. citizens who relinquish citizenship or long-term residents who terminate their residency on or after the date of enactment. The due date for tentative tax, however, may not occur before the 90th day after the date of enactment. The provision relating to income taxes on gifts and inheritances is effective for gifts and inheritances received from former citizens or former long-term residents (or their estates) on or after the date of enactment, whose relinquishment of citizenship or residency termination occurs after such date. The immigration and disclosure provisions relating to former citizens are effective with respect to individuals who relinquish citizenship on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

F. MISCELLANEOUS PROVISIONS

1. Treatment of contingent payment convertible debt instruments (Sec. 451 of the Senate amendment and sec. 1275 of the Code)

PRESENT LAW

Under present law, a taxpayer generally deducts the amount of interest paid or accrued within the taxable year on indebtedness issued by the taxpayer. In the case of original issue discount (''OID''), the issuer of a debt instrument generally accrues and deducts, as interest, the OID over the life of the obligation, even though the amount of the OID may not be paid until the maturity of the instrument.

The amount of OID with respect to a debt instrument is equal to the excess of the stated redemption price at maturity over the issue price of the debt instrument. The stated redemption price at maturity includes all amounts that are payable on the debt instrument by maturity. The amount of OID with respect to a debt instrument is allocated over the life of the instrument through a series of adjustments to the issue price for each accrual period. The adjustment to the issue price is determined by multiplying the adjusted issue price (i.e., the issue price increased or decreased by adjustments prior to the accrual period) by the instrument's yield to maturity, and then subtracting any payments on the debt instrument (other than non-OID stated interest) during the accrual period. Thus, in order to compute the amount of OID and the portion of OID allocable to a particular period, the stated redemption price at maturity and the time of maturity must be known. Issuers of debt instruments with OID accrue and deduct the amount of OID as interest expense in the same manner as the holders of such instruments accrue and include in gross income the amount of OID as interest income.

Treasury regulations provide special rules for determining the amount of OID allocated to a period with respect to certain debt instruments that provide for one or more contingent payments of principal or interest.[434] The regulations provide that a debt instrument does not provide for contingent payments merely because it provides for an option to convert the debt instrument into the stock of the issuer, into the stock or debt of a related party, or into cash or other property in an amount equal to the approximate value of such stock or debt.[435] The regulations also provide that a payment is not a contingent payment merely because of a contingency that, as of the issue date of the debt instrument, is either remote or incidental.[436]

In the case of contingent payment debt instruments that are issued for money or publicly traded property,[437] the regulations provide that interest on a debt instrument must be taken into account (as OID) whether or not the amount of any payment is fixed or determinable in the taxable year. The amount of OID that is taken into account for each accrual period is determined by constructing a comparable yield and a projected payment schedule for the debt instrument, and then accruing the OID on the basis of the comparable yield and projected payment schedule by applying rules similar to those for accruing OID on a noncontingent debt instrument (the ''noncontingent bond method''). If the actual amount of a contingent payment is not equal to the projected amount, appropriate adjustments are made to reflect the difference. The comparable yield for a debt instrument is the yield at which the issuer would be able to issue a fixed-rate noncontingent debt instrument with terms and conditions similar to those of the contingent payment debt instrument (i.e., the comparable fixed-rate debt instrument), including the level of subordination, term, timing of payments, and general market conditions.[438]

[434] Treas. Reg. sec. 1.1275–4.
[435] Treas. Reg. sec. 1.1275–4(a)(4).
[436] Treas. Reg. sec. 1.1275–4(a)(5).
[437] Treas. Reg. sec. 1.1275–4(b).
[438] Treas. Reg. sec. 1.1275–4(b)(4)(i)(A).

With respect to certain debt instruments that are convertible into the common stock of the issuer and that also provide for contingent payments (other than the conversion feature)—often referred to as ''contingent convertible'' debt instruments—the IRS has stated that the noncontingent bond method applies in computing the accrual of OID on the debt instrument.[439] In applying the noncontingent bond method, the IRS has stated that the comparable yield for a contingent convertible debt instrument is determined by reference to a comparable fixed-rate nonconvertible debt instrument, and the projected payment schedule is determined by treating the issuer stock received upon a conversion of the debt instrument as a contingent payment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, in the case of a contingent convertible debt instrument,[440] any Treasury regulations which require OID to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock. For purposes of applying the provision, the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock. Thus, the noncontingent bond method in the Treasury regulations shall be applied in a manner such that the comparable yield for contingent convertible debt instruments shall be determined by reference to comparable noncontingent fixed-rate convertible (rather than nonconvertible) debt instruments.

*Effective date.*—The provision is effective for debt instruments issued on or after date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Grant Treasury regulatory authority to address foreign tax credit transactions involving inappropriate separation of foreign taxes from related foreign income (sec. 452 of the Senate amendment and sec. 901 of the Code)

PRESENT LAW

The United States employs a ''worldwide'' tax system, under which residents generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the possibility of double taxation arising from overlapping claims of the United States and a source country to tax the same item of income, the United States provides a credit for foreign income taxes paid or accrued, subject to several conditions and limitations.

For purposes of the foreign tax credit, regulations provide that a foreign tax is treated as being paid by ''the person on whom foreign law imposes legal liability for such tax.''[441] Thus, for example, if a U.S. corporation owns an interest in a foreign partnership, the U.S. corporation can claim foreign tax credits for the tax that is imposed on it as a partner in the foreign entity. This would be true under the regulations even if the U.S. corporation elected to treat the foreign entity as a corporation for U.S. tax purposes. In such a case, if the foreign entity does not meet the definition of a controlled foreign corporation or does not generate income that is subject to current inclusion under the rules of subpart F, the income generated by the foreign entity might never be reported on a U.S. return, and yet the U.S. corporation might take the position that it can claim credits for taxes imposed on that income. This is one example of how a taxpayer might attempt to separate foreign taxes from the related foreign income, and thereby attempt to claim a foreign tax credit under circumstances in which there is no threat of double taxation.

The Treasury Department currently has the authority to promulgate regulations under section 901 and other provisions of the Code to address transactions and structures that produce inappropriate foreign tax credit results.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment enhances the regulatory authority of the Treasury Department to address transactions that involve the inappropriate separation of foreign taxes from the related foreign income or in which foreign taxes are imposed on any person in respect of income of another person. This grant of regulatory authority supplements existing Treasury Department authority and thereby provide greater flexibility in addressing a wide range of transactions and structures. Regulations issued pursuant to this authority could, for example, provide for the disallowance of a credit for all or a portion of the foreign taxes, or for the allocation of the foreign taxes among the participants in the transaction in a manner more consistent with the economics of the transaction.

*Effective date.*—The provision generally is effective for transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision. No inference is intended as to the scope of the Treasury Department's existing regulatory authority to address transactions that involve the inappropriate separation of foreign taxes from the related foreign income.

3. Modifications of effective dates of leasing provisions of the American Jobs Creation Act of 2004 (sec. 453 of the Senate amendment and sec. 470 of the Code)

PRESENT LAW

Present law provides for the deferral of losses attributable to certain tax exempt use property, generally effective for leases entered into after March 12, 2004. However, the deferral provision does not apply to property located in the United States that is subject to a lease with respect to which a formal application: (1) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004; (2) is approved by the Federal Transit Administration before January 1, 2006; and (3) includes a description and the fair market value of such property (the ''qualified transportation property exception'').

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment makes two changes to the effective date of the loss deferral rules. First, the Senate amendment repeals the qualified transportation property exception. Second, the Senate amendment applies the loss deferral rules to leases entered into on or before March 12, 2004, if the lessee is a foreign person or entity. With respect to such leases, losses are deferred starting in taxable years beginning after December 31, 2005.

*Effective date.*—The Senate amendment is effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. No. 108–357 (2004), to which it relates.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Application of earnings stripping rules to partners which are corporations (sec. 454 of the Senate amendment and sec. 163 of the Code)

PRESENT LAW

Present law provides rules to limit the ability of U.S. corporations to reduce the U.S. tax on their U.S.-source income through earnings stripping transactions. Section 163(j) specifically addresses earnings stripping involving interest payments, by limiting the deductibility of interest paid to certain related parties (''disqualified interest''),[442] if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its ''adjusted taxable income'' (generally taxable income computed without regard to deductions for net interest expense, net operating losses, and depreciation, amortization, and depletion). Disallowed interest amounts can be carried forward indefinitely. In addition, excess limitation (i.e., any excess of the 50–percent limit over a company's net interest expense for a given year) can be carried forward three years.

Proposed Treasury regulations provide that a partner's proportionate share of partnership liabilities is treated as liabilities incurred directly by the partner, for purposes of applying the earnings stripping limitation to interest payments by a corporate partner of a partnership.[443] The proposed Treasury regulations provide that interest paid or accrued to a partnership is treated as paid or accrued to the partners of the partnership in proportion to each partner's distributive share of the partnership's interest income for the taxable year.[444] In addition, the proposed Treasury regulations provide that interest expense paid or accrued by a partnership is treated as paid or accrued by the partners of the partnership in proportion to each partner's distributive share of the partnership's interest expense.[445]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision codifies the approach of the proposed Treasury regulations by providing that, except to the extent provided by regulations, in the case of a corporation that owns, directly or indirectly, an interest in a partnership, the corporation's share of partnership liabilities is treated as liabilities of the corporation for purposes of applying the earnings stripping rules to the corporation. The provision provides that the corporation's distributive share of interest income of the partnership, and of interest expense of the partnership, is treated as interest income or interest expense of the corporation.

The provision provides Treasury regulatory authority to reallocate shares of partnership debt, or distributive shares of the

[439] Rev. Rul. 2002–31, 2002–1 C.B. 1023.

[440] Under the provision, a contingent convertible debt instrument is defined as a debt instrument that: (1) is convertible into stock of the issuing corporation, or a corporation in control of, or controlled by, the issuing corporation; and (2) provides for contingent payments.

[441] Treas. Reg. sec. 1.901–2(f)(1).

[442] This interest also may include interest paid to unrelated parties in certain cases in which a related party guarantees the debt.

[443] Prop. Treas. Reg. sec. 1.163(j)–3(b)(3).

[444] Prop. Treas. Reg. sec. 1.163(j)–2(e)(4).

[445] Prop. Treas. reg. sec. 1.163(j)–2(e)(5).

partnership's interest income or interest expense, as may be appropriate to carry out the purposes of the provision. For example, it is not intended that the application of the earnings stripping rules to corporations with direct or indirect interests in partnerships be circumvented through the use of allocations of partnership interest income or expense (or partnership liabilities) to or away from partners.

*Effective date.*—The provision is effective for taxable years beginning on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision.

5. Limitation on employer deduction for certain entertainment expenses (sec. 455 of the Senate amendment and sec. 274(e) of the Code)

PRESENT LAW

*In general*

Under present law, no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, unless the taxpayer establishes that the item was directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business, or (2) a facility (*e.g.*, an airplane) used in connection with such activity.[446] The Code includes a number of exceptions to the general rule disallowing deductions of entertainment expenses. Under one exception, the deduction disallowance rule does not apply to expenses for goods, services, and facilities to the extent that the expenses are reported by the taxpayer as compensation and wages to an employee.[447] The deduction disallowance rule also does not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient who is not an employee (*e.g.*, a nonemployee director) as compensation for services rendered or as a prize or award.[448] The exceptions apply only to the extent that amounts are properly reported by the company as compensation and wages or otherwise includible in income. In no event can the amount of the deduction exceed the amount of the actual cost, even if a greater amount is includible in income.

Except as otherwise provided, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. In general, an employee or other service provider must include in gross income the amount by which the fair value of a fringe benefit exceeds the amount paid by the individual. Treasury regulations provide rules regarding the valuation of fringe benefits, including flights on an employer-provided aircraft.[449] In general, the value of a non-commercial flight is determined under the base aircraft valuation formula, also known as the Standard Industry Fare Level formula or ''SIFL''.[450] If the SIFL valuation rules do not apply, the value of a flight on a company-provided aircraft is generally equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable aircraft for that period for the same or a comparable flight.[451]

In the context of an employer providing an aircraft to employees for nonbusiness (*e.g.*, vacation) flights, the exception for expenses treated as compensation was interpreted in Sutherland Lumber-Southwest, Inc. v. Commissioner (''Sutherland Lumber'') as not limiting the company's deduction for operation of the aircraft to the amount of compensation reportable to its employees,[452] which can result in a deduction many times larger than the amount required to be included in income. In many cases, the individual including amounts attributable to personal travel in income directly benefits from the enhanced deduction, resulting in a net deduction for the personal use of the company aircraft.

*Specified individuals*

In the case of specified individuals, the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income of the specified individual. For example, a company's deduction attributable to aircraft operating costs and other expenses for a specified individual's vacation use of a company aircraft is limited to the amount reported as compensation to the specified individual. Sutherland Lumber is thus overturned with respect to specified individuals.

Specified individuals are individuals who, with respect to an employer or other service recipient (or a related party), are subject to the requirements of section 16(a) of the Securities and Exchange Act of 1934, or would be subject to such requirements if the employer or service recipient (or the related party) were an issuer of equity securities referred to in section 16(a).[453] Such individuals generally include officers (as defined by section 16(a)),[454] directors, and 10-percent-or-greater owners of private and publicly-held companies.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, in the case of all individuals, the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income. Thus, under those exceptions, no deduction is allowed with respect to expenses for (1) a nonbusiness activity generally considered to be entertainment, amusement or recreation, or (2) a facility (e.g., an airplane) used in connection with such activity to the extent that such expenses exceed the amount treated as compensation or includible in income. The provision is intended to overturn Sutherland Lumber for all individuals. As under present law, the exceptions apply only if amounts are properly reported by the company as compensation and wages or otherwise includible in income.

*Effective date.*—The provision is effective for expenses incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. Increase in age of minor children whose unearned income is taxed as if parent's income (Sec. 456 of the Senate amendment and sec. 1(g) of the Code)

PRESENT LAW

*Filing requirements for children*

A single unmarried individual eligible to be claimed as a dependent on another taxpayer's return generally must file an individual income tax return if he or she has: (1) earned income only over $5,150 (for 2006); (2) unearned income only over the minimum standard deduction amount for dependents ($850 in 2006); or (3) both earned income and unearned income totaling more than the smaller of (a) $5,150 (for 2006) or (b) the larger of (i) $850 (for 2006), or (ii) earned income plus $300.[455] Thus, if a dependent child has less than $850 in gross income, the child does not have to file an individual income tax return for 2006.[456]

A child who cannot be claimed as a dependent on another person's tax return is subject to the generally applicable filing requirements. Such a child generally must file a return if the individual's gross income exceeds the sum of the standard deduction and the personal exemption amount ($3,300 for 2006).

*Taxation of unearned income under section 1(g)*

Special rules (generally referred to as the ''kiddie tax'') apply to the unearned income of a child who is under age 14.[457] The kiddie tax applies if: (1) the child has not reached the age of 14 by the close of the taxable year; (2) the child's unearned income was more than $1,700 (for 2006); and (3) the child is required to file a return for the year. The kiddie tax applies regardless of whether the child may be claimed as a dependent on the parent's return.

For these purposes, unearned income is income other than wages, salaries, professional fees, or other amounts received as compensation for personal services actually rendered.[458] For children under age 14, net unearned income (for 2006, generally unearned income over $1,700) is taxed at the parent's rate if the parent's rate is higher than the child's rate. The remainder of a child's taxable income (i.e., earned income, plus unearned income up to $1,700 (for 2006), less the child's standard deduction) is taxed at the child's rates, regardless of whether the kiddie tax applies to the child. In general, a child is eligible to use the preferential tax rates for qualified dividends and capital gains.[459]

The kiddie tax is calculated by computing the ''allocable parental tax.'' This involves adding the net unearned income of the child to the parent's income and then applying the parent's tax rate. A child's ''net unearned income'' is the child's unearned income less the sum of (1) the minimum standard deduction allowed to dependents ($850 for 2006), and (2) the greater of (a) such minimum standard deduction amount or (b) the amount of allowable itemized deductions

[446] Sec. 274(a).

[447] Sec. 274(e)(2). As discussed below, a special rule applies in the case of specified individuals.

[448] Sec. 274(e)(9).

[449] Treas. Reg. sec. 1.61–21.

[450] Treas. Reg. sec. 1.61–21(g).

[451] Treas. Reg. sec. 1.61–21(b)(6).

[452] *Sutherland Lumber-Southwest, Inc.* v. *Comm.*, 114 T.C. 197 (2000), aff'd, 255 F.3d 495 (8th Cir. 2001), acq., AOD 2002–02 (Feb. 11, 2002).

[453] For purposes of this definition, a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b).

[454] An officer is defined as the president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

[455] Sec. 6012(a)(1)(C). Other filing requirements apply to dependents who are married, elderly, or blind. See, Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 2, Table 1 (2005).

[456] A taxpayer generally need not file a return if he or she has gross income in an amount less than the standard deduction (and, if allowable to the taxpayer, the personal exemption amount). An individual who may be claimed as a dependent of another taxpayer is not eligible to claim the dependency exemption relating to that individual. Sec. 151(d)(2). For taxable years beginning in 2006, the standard deduction amount for an individual who may be claimed as a dependent by another taxpayer may not exceed the greater of $850 or the sum of $300 and the individual's earned income.

[457] Sec. 1(g).

[458] Sec. 1(g)(4) and sec. 911(d)(2).

[459] Sec. 1(h).

that are directly connected with the production of the unearned income.[460] A child's net unearned income cannot exceed the child's taxable income.

The allocable parental tax equals the hypothetical increase in tax to the parent that results from adding the child's net unearned income to the parent's taxable income. If the child has net capital gains or qualified dividends, these items are allocated to the parent's hypothetical taxable income according to the ratio of net unearned income to the child's total unearned income. If a parent has more than one child subject to the kiddie tax, the net unearned income of all children is combined, and a single kiddie tax is calculated. Each child is then allocated a proportionate share of the hypothetical increase, based upon the child's net unearned income relative to the aggregate net unearned income of all of the parent's children subject to the tax.

Special rules apply to determine which parent's tax return and rate is used to calculate the kiddie tax. If the parents file a joint return, the allocable parental tax is calculated using the income reported on the joint return. In the case of parents who are married but file separate returns, the allocable parental tax is calculated using the income of the parent with the greater amount of taxable income. In the case of unmarried parents, the child's custodial parent is the parent whose taxable income is taken into account in determining the child's liability. If the custodial parent has remarried, the stepparent is treated as the child's other parent. Thus, if the custodial parent and stepparent file a joint return, the kiddie tax is calculated using that joint return. If the custodial parent and stepparent file separate returns, the return of the one with the greater taxable income is used. If the parents are unmarried but lived together all year, the return of the parent with the greater taxable income is used.[461]

Unless the parent elects to include the child's income on the parent's return (as described below) the child files a separate return to report the child's income.[462] In this case, items on the parent's return are not affected by the child's income. The total tax due from a child is the greater of:

1. the sum of (a) the tax payable by the child on the child's earned income and unearned income up to $1,700 (for 2006), plus (b) the allocable parental tax on the child's unearned income, or
2. the tax on the child's income without regard to the kiddie tax provisions.

*Parental election to include child's dividends and interest on parent's return*

Under certain circumstances, a parent may elect to report a child's dividends and interest on the parent's return. If the election is made, the child is treated as having no income for the year and the child does not have to file a return. The parent makes the election on Form 8814, Parents' Election to Report Child's Interest and Dividends. The requirements for the parent's election are that:

1. the child has gross income only from interest and dividends (including capital gains distributions and Alaska Permanent Fund Dividends);[463]
2. such income is more than the minimum standard deduction amount for dependents ($850 in 2006) and less than 10 times that amount ($8500 in 2006);
3. no estimated tax payments for the year were made in the child's name and taxpayer identification number;
4. no backup withholding occurred; and
5. the child is required to file a return if the parent does not make the election.

Only the parent whose return must be used when calculating the kiddie tax may make the election. The parent includes in income the child's gross income in excess of twice the minimum standard deduction amount for dependents (i.e., the child's gross income in excess of $1,700 for 2007). This amount is taxed at the parent's rate. The parent also must report an additional tax liability equal to the lesser of: (1) $85 (in 2006), or (2) 10 percent of the child's gross income exceeding the child's standard deduction ($850 in 2006).

Including the child's income on the parent's return can affect the parent's deductions and credits that are based on adjusted gross income, as well as income-based phaseouts, limitations, and floors.[464] In addition, certain deductions that the child would have been entitled to take on his or her own return are lost.[465] Further, if the child received tax-exempt interest from a private activity bond, that item is considered a tax preference of the parent for alternative minimum tax purposes.[466]

*Taxation of compensation for services under section 1(g)*

Compensation for a child's services is considered the gross income of the child, not the parent, even if the compensation is not received or retained by the child (e.g. is the parent's income under local law).[467] If the child's income tax is not paid, however, an assessment against the child will be considered as also made against the parent to the extent the assessment is attributable to amounts received for the child's services.[468]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision increases the age to which the kiddie tax provisions apply from under 14 to under 18 years of age. The provision also creates an exception to the kiddie tax for distributions from certain qualified disability trusts, defined by cross-reference to sections 1917 and 1614(a)(3) of the Social Security Act.

*Effective date.*—The provision applies to taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision with one modification. This modification provides that the kiddie tax does not apply to a child who is married and files a joint return for the taxable year.

7. Impose loan and redemption requirements on pooled financing bonds (sec. 457 of the Senate amendment and sec. 149 of the Code)

PRESENT LAW

*In general*

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of such bonds are used to finance direct activities of governmental units or if such bonds are repaid with revenues of governmental units. These bonds are called ''governmental bonds.'' Interest on State or local government bonds issued to finance activities of private persons is taxable unless a specific exception applies. These bonds are called ''private activity bonds.'' The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes. In addition, the Code imposes qualification requirements that apply to all State and local bonds. Arbitrage restrictions, for example, limit the ability of issuers to profit from investment of tax-exempt bond proceeds. The Code also imposes requirements that only apply to specific types of bond issues. For instance, pooled financing bonds (defined below) are not tax-exempt unless the issuer meets certain requirements regarding the expected use of proceeds.

*Pooled financing bond restrictions*

State or local governments also issue bonds to provide financing for the benefit of a third party (a ''conduit borrower''). Pooled financing bonds are bond issues that are used to make or finance loans to two or more conduit borrowers, unless the conduit loans are to be used to finance a single project.[469] The Code imposes several requirements on pooled financing bonds if more than $5 million of proceeds are expected to be used to make loans to conduit borrowers. For purposes of these rules, a pooled financing bond does not include certain private activity bonds.[470]

A pooled financing bond is not tax-exempt unless the issuer reasonably expects that at least 95 percent of the net proceeds will be lent to ultimate borrowers by the end of the third year after the date of issue. The term ''net proceeds'' is defined to mean the proceeds of the issue less the following amounts: 1) proceeds used to finance issuance costs; 2) proceeds necessary to pay interest on the bonds during a three-year period; and 3) amounts in reasonably required reserves.[471]

An issuer's past experience regarding loan origination is a criterion upon which the reasonableness of the issuer's expectations can be based. As an additional requirement for tax exemption, all legal and underwriting costs associated with the issuance of pooled financing bonds may not be contingent and must be substantially paid within 180 days of the date of issuance.

*Arbitrage restrictions on tax-exempt bonds*

To prevent the issuance of more Federally subsidized tax-exempt bonds than necessary; the tax exemption for State and local bonds does not apply to any arbitrage bond.[472] An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the issue are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'') before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government (''arbitrage rebate'').

The Code contains several exceptions to the arbitrage rebate requirement, including an exception for bonds issued by small governments (the ''small issuer exception''). For this purpose, small governments are defined as general purpose governmental units that

[460] Sec. 1(g)(4).

[461] Sec. 1(g)(5); Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 6 (2005).

[462] The child must attach to the return Form 8615, Tax for Children Under Age 14 With Investment Income of More Than $1,700 (2006).

[463] Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 6 (2005).

[464] Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 7 (2005).

[465] Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 7 (2005).

[466] Sec. 1(g)(7)(B).

[467] Sec. 73(a).

[468] Sec. 6201(c).

[469] Treas. Reg. sec. 1.150–1(b).

[470] Sec. 149(f)(4)(B).

[471] Sec. 149(f)(2)(C).

[472] Secs. 103(a) and (b)(2).

issue no more than $5 million of tax-exempt governmental bonds in a calendar year.[473]

Pooled financing bonds are subject to the arbitrage restrictions that apply to all tax-exempt bonds, including arbitrage rebate. Under certain circumstances, however, small governments may issue pooled financing bonds without those bonds counting towards the determination of whether the issuer qualifies for the small issuer exception to arbitrage rebate. In the case of a pooled financing bond where the ultimate borrowers are governmental units with general taxing powers not subordinate to the issuer of the pooled bond, the pooled bond does not count against the issuer's $5 million limitation, provided the issuer is not a borrower from the pooled bond.[474] However, the issuer of the pooled financing bond remains subject to the arbitrage rebate requirement for unloaned proceeds.[475]

HOUSE BILL

No provision.

SENATE AMENDMENT

*In general*

The provision imposes new requirements on pooled financing bonds as a condition of tax-exemption. First, the provision imposes a written loan commitment requirement to restrict the issuance of pooled bonds where potential borrowers have not been identified (''blind pools''). Second, in addition to the current three-year expectations requirement, the issuer must reasonably expect that at least 50 percent of the net proceeds of the pooled bond will be lent to borrowers one year after the date of issue. Third, the provision requires the redemption of outstanding bonds with proceeds that are not loaned to borrowers within the expected loan origination periods. Finally, the provision eliminates the rule allowing an issuer of pooled financing bonds to disregard the pooled bonds for purposes of determining whether the issuer qualifies for the small issuer exception to rebate.

*Borrower identification*

Under the provision, interest on a pooled financing bond is tax exempt only if the issuer obtains written commitments with ultimate borrowers for loans equal to at least 50 percent of the net proceeds of the pooled bond prior to issuance. The loan commitment requirement does not apply to bonds issued by States (or an integral part of a State) to provide loans to subordinate governmental units or State entities created to provide financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

*Loan origination expectations*

The provision imposes new reasonable expectations requirements for loan originations. The issuer must expect that at least 50 percent of the net proceeds of a pooled financing bond will be lent to ultimate borrowers one year after the date of issue. This is in addition to the present-law requirement that at least 95 percent of the net proceeds will be lent to ultimate borrowers by the end of the third year after the date of issue.

*Redemption requirement*

Under the provision, if bond proceeds are not loaned to borrowers within prescribed periods, outstanding bonds equal to the amount of proceeds that were not loaned within the required period must be redeemed with 90 days. The bond redemption requirement applies with respect to proceeds that are unloaned as of expiration of the one-year and three-year loan origination periods. For example, if an amount equal to 45 percent of the net proceeds of an issue are used to make loans to ultimate borrowers as of one year after the bonds are issued, an amount equal to five percent of the net proceeds of the issue is no longer available for lending and must be used to redeem bonds within the following six-month period. Similarly, if only 85 percent of the net proceeds of the issue are used to make qualifying loans (or to redeem bonds) as of three years after the bonds are issued, 10 percent of the remaining net proceeds is no longer available for lending and must be used to redeem bonds within the following six months.

*Small issuer exception*

The provision eliminates the rule disregarding pooled financing bonds from the issuer's $5,000,000 annual limitation for purposes of the small issuer exception to arbitrage rebate.

*Effective date.*—The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with the following modifications.

Under the conference agreement, issuers of pooled financing bonds must reasonably expect that at least 30 percent of the net proceeds of such bonds will be loaned to ultimate borrowers one year after the date of issue. The present-law requirement that issuers must reasonably expect to loan at least 95 percent of the net proceeds of a pooled financing bond to ultimate borrowers three years after the date of issue is unchanged. Bond proceeds that are not loaned to borrowers as required under the one- and three-year rules must be used to redeem outstanding bonds within 90 days of the expiration of such one- and three-year periods.

The conference agreement requires issuers of pooled financing bonds to obtain, prior to issuance, written commitments from borrowers equal to at least 30 percent of the net proceeds of the pooled financing bond. The conference agreement includes the Senate amendment's exception to the written loan commitment requirement. Thus, the loan commitment requirement does not apply to pooled financing bonds issued by States (or an integral part of a State) to provide loans to subordinate governmental units or State entities created to provide financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

8. Amend information reporting requirements to include interest on tax-exempt bonds (sec. 458 of the Senate amendment and sec. 6049 of the Code)

PRESENT LAW

*Tax-exempt bonds*

Generally, gross income does not include interest on State or local bonds.[476] State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental facilities or the debt is repaid with governmental funds. Private activity bonds are bonds in which the State or local government serves as a conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain purposes (''qualified private activity bonds'') permitted by the Code.[477]

*Tax-exempt interest reporting by taxpayers*

The Code provides that every person required to file a return must report the amount of tax-exempt interest received or accrued during any taxable year.[478] There are a number of reasons why the amount of tax-exempt interest received is relevant to determining tax liability despite the general exclusion from income. For example, the interest income from qualified private activity bonds (other than qualified 501(c)(3) bonds) issued after August 7, 1986, is a preference item for purposes of calculating the alternative minimum tax (''AMT'').[479] Tax-exempt interest also is relevant for determining eligibility for the earned income credit (the ''EIC'')[480] and the amount of Social Security benefits includable in gross income.[481] Moreover, determining includable Social Security benefits is necessary for calculating either adjusted or modified adjusted gross income under several Code sections.[482]

*Information reporting by payors*

The Code generally requires every person who makes payments of interest aggregating $10 or more or receives payments of interest as a nominee and who makes payments aggregating $10 or more to file an information return setting forth the amount of interest payments for the calendar year and the name, address, and TIN[483] of the person to whom interest is paid.[484] Treasury regulations prescribe the form and manner for filing interest payment information returns. Penalties are imposed for failures to file interest payment information returns or payee statements.[485] Treasury Regulations also impose recordkeeping requirements on any person required to file information returns.[486] The Code excludes interest paid on tax-exempt bonds from interest reporting requirements.[487]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision eliminates the exception from information reporting requirements for interest paid on tax-exempt bonds.

*Effective date.*—The provision is effective for interest paid on tax-exempt bonds after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision.

9. Modification of credit for fuel from a nonconventional source (sec. 459 of the Senate amendment and sec. 45K of the Code)

PRESENT LAW

Certain fuels produced from ''non-conventional sources'' and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation)[488] per barrel or Btu oil barrel equivalent (''non-

[473] The $5 million limit is increased to $15 million if at least $10 million of the bonds are used to finance public schools.

[474] Sec. 148(f)(4)(D)(ii)(II).

[475] Treas. Reg. sec. 1.148–8(d)(1).

[476] Sec. 103.

[477] Secs. 103(b)(1) and 141.

[478] Sec. 6012(d).

[479] Sec. 57(a)(5). Special rules apply to exclude refundings of bonds issued before August 8, 1986, and certain bonds issued before September 1, 1986.

[480] Sec. 32(i).

[481] Sec. 86.

[482] See Secs. 135, 219, and 221.

[483] The taxpayer's identification number, generally, for individuals is the taxpayer's social security number. Sec. 7701(a)(41).

[484] Sec. 6049.

[485] Secs. 6721 and 6722.

[486] Treas. Reg. sec. 1.6001–1(a).

[487] Sec. 6049.

[488] The inflation adjustment is generally calculated using 1979 as the base year. Generally, the value of the credit for fuel produced in 2005 was $6.79 per barrel-of-oil equivalent produced, which is approximately $1.20 per thousand cubic feet of natural gas. The credit for coke or coke gas is indexed for inflation using 2004 as the base year instead of 1979.

conventional source fuel credit'').[489] Qualified fuels must be produced within the United States.

*Qualified fuels include:*

—oil produced from shale and tar sands;

—gas produced from geopressured brine, Devonian shale, coal seams, tight formations, or biomass; and

—liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

Generally, the non-conventional source fuel credit has expired, except for certain biomass gas and synthetic fuels sold before January 1, 2008, and produced at facilities placed in service after December 31, 1992, and before July 1, 1998. The non-conventional source fuel credit provision also includes a credit for producing coke or coke gas at qualified facilities placed in service before 1993 or after June 30, 1998, and before 2010. The coke production credit is available for coke or coke gas produced over the four-year period beginning on January 1, 2006, or the date the facility was placed in service, if later. The amount of credit-eligible coke produced at any one facility may not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

The non-conventional source fuel credit is reduced (but not below zero) over a $6 (inflation-adjusted) phase-out period as the reference price for oil exceeds $23.50 per barrel (also adjusted for inflation). The reference price is the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil. The credit did not phase-out for 2004 because the reference price for that year of $50.26 did not exceed the inflation adjusted threshold of $51.35.

Beginning with taxable years ending after December 31, 2005, the non-conventional source fuel credit is part of the general business credit (sec. 38).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the manner in which the phase-out of the non-conventional source fuel credit is calculated. Specifically, in calculating the phase-out of the credit rather than relying upon the reference price for the calendar year in which the sale of qualified non-conventional fuel occurs, the provision uses the reference price for the calendar year preceding the calendar year in which the sale occurs. Thus, under the provision, whether the credit is phased out in 2005 is determined by reference to 2004 wellhead prices, whether the credit is phased out in 2006 is determined by reference to 2005 wellhead prices, and so on. In addition, the provision repeals the phase-out limitation entirely for coke and coke gas produced under section 45K(g).

The provision eliminates the inflation adjustment for all fuels other than coke and coke gas for 2005, 2006, and 2007. Thus, the current credit amount of $6.79 per barrel of oil equivalent would be retroactively reduced to $6.56 per barrel of oil equivalent, and that reduced amount would remain in effect through the December 31, 2007. Under the provision, the credit amount of $3 per barrel of oil equivalent for coke and coke gas produced under section 45K(g) would continue to be adjusted for inflation using 2004 as the base year.

Finally, the provision clarifies that qualifying facilities producing coke and coke gas under section 45K(g) do not include facilities that produce petroleum-based coke or coke gas.

*Effective date.*—The provision applies to fuel sold after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Modification of individual estimated tax safe harbor (sec. 460 of the Senate Amendment and sec. 6654 of the Code)

PRESENT LAW

An individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments equal to the lesser of: (1) 90 percent of the tax shown on the current year's return or (2) 100 percent of the prior year's tax. For individuals with a prior year's AGI above $150,000, however, the rule that allows payment of 100 percent of prior year's tax is modified. Individuals with prior-year AGI above $150,000 generally must make estimated payments equal to the lesser of (1) 90 percent of the tax shown on the current year's return or (2) 110 percent of the tax shown on the prior year's return.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that individuals with prior year's AGI above $150,000 who make estimated tax payments based on prior year's tax must do so based on 120 percent of the tax shown on the prior year's return, for estimated tax payments for taxable years beginning in 2006. That percentage will revert back to 110 percent for taxable years beginning after 2006.

*Effective date.*—The provision is effective for estimated tax payments for taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Revaluation of LIFO inventories of large integrated oil companies (sec. 461 of the Senate amendment)

PRESENT LAW

A taxpayer is generally permitted to use a last-in, first-out (LIFO) method to inventory goods, on the condition that the taxpayer also uses the LIFO method in reporting to shareholders, partners, other proprietors, and beneficiaries, and for credit purposes.[490] Under the LIFO method, a taxpayer (i) treats goods on hand at the close of the taxable year as being: first, those goods included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereof; and second, those acquired in the taxable year; (ii) inventories the goods at cost; and (iii) treats those goods included in the opening inventory of the taxable year in which the LIFO method was first used as having been acquired at the same time, and determines their cost by the average cost method.[491]

In periods during which a taxpayer produces or purchases more goods than the taxpayer sells (such excess, an ''inventory increment''), a LIFO method taxpayer generally records the inventory cost of such excess (and separately tracks such amount as the ''LIFO layer'' for such period), adds it to the cost of inventory at the start of the period, and carries such total inventory cost forward to the beginning inventory of the following year.

In periods during which the taxpayer sells more goods than the taxpayer produces or purchases (such decrease, an ''inventory decrement''), a LIFO method taxpayer generally determines the cost of goods sold of the amount of the decrement by treating such sales as occurring out of the most recent LIFO layer (or the most recent LIFO layers, if the amount of the decrement exceeds the amount of inventory in the most recent LIFO layer) in reverse chronological order.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision disallows a portion of the benefit of the LIFO method to integrated oil companies[492] which have an average daily production of crude oil of at least 500,000 barrels of oil and which have in excess of $1 billion for the last taxable year ending during 2005.

Specifically, the provision requires such taxpayers to revalue each historic LIFO layer of crude oil inventories by adding to each layer an amount equal to $18.75 multiplied by the number of barrels of crude oil represented by such LIFO layer; the taxpayer must reduce its cost of sales for such taxable year by a like amount.

For example, suppose a taxpayer, which is an integrated oil company with average daily production of at least 500,000 barrels of oil and revenues in excess of $1 billion, has a 2005 starting inventory of 200x barrels, comprised of a 1955 LIFO layer with 50x barrels valued at $5 per barrel (with a total cost of $250x); a 1985 LIFO layer with 100x barrels valued at $18 per barrel (with a total cost $1800x); a 2000 LIFO layer with 30x barrels valued at $25 per barrel (with a total cost of $750x), and a 2004 LIFO layer with 20x barrels valued at $35 per barrel (with a total cost $700x), for a total inventory value of $3500x. Suppose further that the taxpayer's ending inventory is 200x barrels, i.e., the same as the starting inventory, so the taxpayer has neither an inventory increment nor an inventory decrement for the taxable year.

Under the provision, the taxpayer will revalue each layer upwards by $18.75/barrel. Thus, the taxpayer will increase its 1955 LIFO layer by $937.50x; its 1985 LIFO layer by $1875x; its 2000 LIFO layer by $562.50x; and its 2004 LIFO layer by $375x. The taxpayer will offset this $3750x increase in inventory by reducing by $3750x the taxpayer's cost of goods sold for the last taxable year ending in 2005. In the event the taxpayer's cost of goods sold for such taxable year prior to such reduction is less than $3750x, the taxpayer will reduce its cost of goods sold to zero and increase its gross income for such taxable year by such difference.

*Effective date.*—The provision is effective for the last taxable year of a taxpayer ending in 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

12. Amortization of geological and geophysical expenditures (sec. 462 of the Senate amendment and sec. 167(h) of the Code)

PRESENT LAW

Geological and geophysical expenditures (''G&G costs'') are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. G&G costs incurred in connection with oil and gas exploration in the United States may be amortized over two years.[493] In the

[489] Sec. 29 (for tax years ending before 2006); sec. 45K (for tax years ending after 2005).

[490] Sec. 472(c).

[491] Sec. 472.

[492] The provision defines an ''integrated oil company'' by cross-reference to section 291(b)(4), which generally includes retailers and large refiners of oil or natural gas or any product derived from oil or natural gas.

[493] Sec. 167(h).

case of abandoned property, remaining basis may not be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision repeals the two-year amortization period with respect to G&G costs paid or incurred by certain large integrated oil companies, defined to include integrated oil companies (as defined in section 291(b)(4) of the Code) that have an average daily worldwide production of crude oil of at least 500,000 barrels. Thus, affected oil companies are required to capitalize their G&G costs associated with successful exploration projects that result in the acquisition of property. Such companies can recover any G&G costs associated with abandoned property in the year of abandonment.

*Effective date.*—The provision is effective for G&G costs paid or incurred in taxable years beginning after August 8, 2005.

CONFERENCE AGREEMENT

The conference agreement extends the two-year amortization period for G&G costs to five years for certain major integrated oil companies. Under the conference agreement, the five-year amortization rule for G&G costs applies only to integrated oil companies that have an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year, gross receipts in excess of $1 billion in the last taxable year ending during calendar year 2005, and an ownership interest in a crude oil refiner of 15 percent or more.

*Effective date.*—The provision applies to amounts paid or incurred after the date of enactment.

13. Valuation of employee personal use of noncommercial aircraft (sec. 463 of the Senate amendment)

PRESENT LAW

Unless an exception applies, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. In general, an employee or other service provider must include in gross income the amount by which the fair value of a fringe benefit exceeds the amount paid by the individual. Treasury regulations provide rules regarding the valuation of fringe benefits, including flights on an employer-provided aircraft.[494] In general, the value of a non-commercial flight is determined under the base aircraft valuation formula, also known as the Standard Industry Fare Level formula or ''SIFL''.[495] If the SIFL valuation rules do not apply, the value of a flight on a company-provided aircraft is generally equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable aircraft for that period for the same or a comparable flight.[496]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, for purposes of income inclusion, the value of any employee personal use of noncommercial aircraft is equal to the excess of (1) the greater of the fair market value of such use or actual cost of such use (including all fixed and variable costs), over (2) the amount paid by or on behalf of the employee for such use. Thus, the SIFL valuation rules may no longer be used to determine the value of such use.

*Effective date.*—The provision applies to use after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

14. Application of Foreign Investment in Real Property Tax Act (''FIRPTA'') to Regulated Investment Companies (''RICs'') (sec. 464 of the Senate amendment and sec. 897(h)(4) of the Code)

*In general*

A nonresident alien individual or foreign corporation is taxable on its taxable income which is effectively connected with the conduct of a trade or business within the United States, at the income tax rates applicable to U.S. persons. A nonresident alien individual is taxed (at a 30-percent rate) on gains, derived from sources within the United States, from the sale or exchange of capital assets if the individual is present in the United States for 183 days or more during the taxable year.

In addition, the Foreign Investment in Real Property Tax Act (FIRPTA)[497] generally treats a nonresident alien individual or foreign corporation's gain or loss from the disposition of a U.S. real property interest (USRPI) as income that is effectively connected with a U.S. trade or business, and thus taxable at the income tax rates applicable to U.S. persons, including the rates for net capital gain. A foreign investor subject to tax on this income is required to file a U.S. income tax return under the normal rules relating to receipt of income effectively connected with a U.S. trade or business.

The payor of FIRPTA effectively connected income to a foreign person is generally required to withhold U.S. tax from the payment. Withholding is generally 10 percent of the sales price in the case of a direct sale by the foreign person of a USRPI, and 35 percent of the amount of a distribution to a foreign person of proceeds attributable to such sales from an entity such as a partnership.[498] The foreign person can request a refund with its U.S. tax return, if appropriate based on that person's total U.S. effectively connected income and deductions (if any) for the taxable year.

USRPIs include interests in real property located in the United States or the U.S. Virgin Islands, and stock of a domestic U.S. real property holding company (USRPHC), generally defined as any corporation, unless the taxpayer established that the fair market value of its U.S. real property interests is less than 50 percent of the combined fair market value of all its real property interests (U.S. and worldwide) and of all its assets used or held for use in a trade or business.[499] However, any class of stock that is regularly traded on an established securities market located in the U.S. is treated as a U.S. real property interest only if the seller held more than 5 percent of the stock at any time during the 5-year period ending on the date of disposition of the stock.[500]

*Special rules for certain investment entities*

Real estate investment trusts and regulated investment companies are generally passive investment entities. They are organized as U.S. domestic entities and are taxed as U.S. domestic corporations. However, because of their special status, they are entitled to deduct amounts distributed to shareholders and, in some cases, to allow the shareholders to characterize these amounts based on the type of income the REIT or RIC received. Among numerous other requirements for qualification as a REIT or RIC, the entity is required to distribute to shareholders at least 90 percent of its income (excluding net capital gain) annually.[501] A REIT or RIC may designate a capital gain dividend to its shareholders, who then treat the amount designated as capital gain.[502] A REIT or RIC is taxed at regular corporate rates on undistributed income; but the combination of the requirement to distribute income other than net capital gain, plus the ability to declare a capital gain dividend and avoid corporate level tax on such income, can result in little, if any, corporate level tax paid by a REIT or RIC. Instead, the shareholder-level tax on distributions is the principal tax paid with respect to income of these entities. The requirements for REIT eligibility include primary investment in real estate assets (which assets can include mortgages). The requirements for RIC eligibility include primary investment in stocks and securities (which can include stock of REITs or of other RICs).

FIRPTA contains special rules for real estate investment trusts (REITs) and regulated investment companies (RICs).[503]

Stock of a ''domestically controlled'' REIT is not a USRPI. The term ''domestically controlled'' is defined to mean that less than 50 percent in value of the REIT has been owned by non-U.S. shareholders during the 5-year period ending on the date of disposition.[504] For 2005, 2006, and 2007, a similar exception applies to RIC stock. Thus, stock of a domestically controlled REIT or RIC can be sold without FIRPTA consequences. This exception applies regardless of whether the sale of stock is made directly by a foreign person, or by a REIT or RIC whose distributions to foreign persons of gain attributable to the sale of USRPI's would be subject to FIRPTA as described below.

A distribution by a REIT to a foreign shareholder, to the extent attributable to gain from the REIT's sale or exchange of USRPIs, is generally treated as FIRPTA gain to the shareholder. An exception enacted in 2004 applies if the distribution is made on a class of REIT stock that is regularly traded on an established securities market located in the United States and the foreign shareholder has not held more than 5 percent of the class of stock at any time during the one-year period ending on the date of the distribution.[505] Where the exception applies, the distribution to the foreign shareholder is treated as the distribution of an ordinary dividend (rather than as a capital gain dividend), subject to 30-percent (or lower treaty rate) withholding.[506]

Prior to 2005, distributions by RICs to foreign shareholders, to the extent attributable to the RIC's sale or exchange of USRPIs, were not treated as FIRPTA gain. If distributions were attributable to long-term

[494] Treas. Reg. sec. 1.61–21.

[495] Treas. Reg. sec. 1.61–21(g).

[496] Treas. Reg. sec. 1.61–21(b)(6).

[497] FIRPTA is codified in section 897 of the Code.

[498] Sec. 1445 and Treasury regulations thereunder. The Treasury department is authorized to issue regulations that would reduce the 35 percent withholding on distributions to 15 percent during the time that the maximum income tax rate on dividends and capital gains of U.S. persons is 15 percent. Section 1445 statutorily requires the 10 percent withholding by the purchaser of a USRPI and the 35 percent withholding (or less if directed by Treasury) on certain distributions by partnerships, trusts, and estates, among other situations. Treasury regulations prescribe the 35 percent withholding requirement for distributions by REITs to foreign shareholders. Treas. Reg. sec. 1.1445–8. No regulations have been issued relating specifically to RIC distributions, which first became subject to FIRPTA in 2005.

[499] Sec. 897(c)(2).

[500] Sec. 897(c)(3).

[501] Secs. 852(a)(1) and 852(b)(2)(A); 857(a)(1).

[502] Secs. 852(b)(3); 857(b)(3).

[503] Sec. 897(h).

[504] Sec. 897(h)(2) and (h)(4)(B).

[505] This exception, effective beginning in 2005, was added by section 418 of the American Jobs Creation Act of 2004 (''AJCA''), Pub. L. No. 108–357, and modified by section 403(p) of the Tax Technical Corrections Act of 2005.

[506] Sec. 857(b)(3)(F).

capital gains, the RIC could designate the distributions as long-term capital gain dividends that would not be subject to any tax to the foreign shareholder, rather than as a regular dividends subject to 30-percent (or lower treaty rate) withholding.[507] For 2005, 2006, and 2007, RICs are subject to the rule that had applied to REITs prior to 2005, i.e., any distribution to a foreign shareholder attributable to gain from the RIC's sale of a USRPI is characterized as FIRPTA gain, without any exceptions.[508]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision provides that distributions by a RIC to foreign shareholders of amounts attributable to the sale of USRPIs are not treated as FIRPTA income unless the RIC itself is a U.S. real property holding corporation (i.e. 50 percent or more of its value is represented by its U.S. real property interests, including investments in U.S. real property holding corporations). In determining whether a RIC is a real property holding company for this purpose, a special rule applies that requires the RIC to include as U.S. real property interests its holdings of RIC or REIT stock if such RIC or REIT is a U.S. real property holding corporation, even if such stock is regularly traded on an established securities market and even if the RIC owns less than 5 percent of such stock. Another special rule requires the RIC to include as U.S. real property interests its interests in any domestically controlled RIC or REIT that is a U.S. real property holding corporation.

*Effective date.*—The provision applies to distributions with respect to taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision with a clarification to the effective date. Under the clarification, the provision takes effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 to which it relates.

15. Treatment of REIT and RIC distributions attributable to FIRPTA gains (secs. 465 and 466 of the Senate amendment and secs. 897, 852, and 871 of the Code)

PRESENT LAW

*General treatment of U.S.-source income of foreign investors*

*Fixed and determinable annual and periodical income*

The United States generally imposes a flat 30-percent tax, collected by withholding, on the gross amount of U.S.-source investment income payments, such as interest, dividends, rents, royalties and similar types of fixed and determinable annual and periodical income, to nonresident alien individuals and foreign corporations (''foreign persons'').[509] Under treaties, the United States may reduce or eliminate such taxes.

*Dividends*

Even taking into account U.S. treaties, the tax on a dividend generally is not entirely eliminated. Instead, U.S.-source portfolio investment dividends received by foreign persons generally are subject to U.S. withholding tax at a rate of at least 15 percent.

*Interest*

Although payments of U.S.-source interest that is not effectively connected with a U.S. trade or business generally are subject to the 30-percent withholding tax, there are exceptions to that rule. For example, interest from certain deposits with banks and other financial institutions is exempt from tax.[510] Original issue discount on obligations maturing in 183 days or less from the date of original issue (without regard to the period held by the taxpayer) is also exempt from tax.[511] An additional exception is provided for certain interest paid on portfolio obligations.[512] Such ''portfolio interest'' generally is defined as any U.S.-source interest (including original issue discount), not effectively connected with the conduct of a U.S. trade or business, (i) on an obligation that satisfies certain registration requirements or specified exceptions thereto (i.e., the obligation is ''foreign targeted''), and (ii) that is not received by a 10-percent shareholder.[513] With respect to a registered obligation, a statement that the beneficial owner is not a U.S. person is required.[514] This exception is not available for any interest received either by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), or by a controlled foreign corporation from a related person.[515] Moreover, this exception is not available for certain contingent interest payments.[516] For 2005, 2006 and 2007, a regulated investment company (''RIC'') may designate certain distributions to foreign shareholders that are attributable to the RIC's qualified interest income as non-taxable interest distributions to such foreign persons.[517]

*Capital gains*

A foreign person generally is not subject to U.S. tax on capital gain, including gain realized on the disposition of stock or securities issued by a U.S. person, unless the gain is effectively connected with the conduct of a trade or business in the United States or such person is an individual present in the United States for a period or periods aggregating 183 days or more during the taxable year.[518] A regulated investment company (RIC) can generally designate dividends to foreign persons that are attributable to the RIC's long term capital gain as a long-term gain dividends that are not subject to withholding.[519] For 2005, 2006 and 2007, RICs may also designate short-term capital gain dividends.[520]

For the years 2005, 2006 and 2007, RIC capital gain dividends that are attributable to the sale of U.S. real property interests (which can include stock of companies that are U.S. real property holding companies) are subject to special rules described below.

Real estate investment trusts (REITs) can also designate long-term capital gain dividends to shareholders; but when made to a foreign person such distributions attributable to the sale of U.S. real property interests are also subject to the special rules described below.

*Foreign Investment in Real Property Tax Act (''FIRPTA'')*

Unlike most other U.S. source capital gains, which are generally not taxed to a foreign investor, the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) subjects gain or loss of a foreign person from the disposition of a U.S. real property interest (USRPI) to tax as if the taxpayer were engaged in a trade or business within the United States and the gain or loss were effectively connected with such trade or business.[521] In addition to an interest in real property located in the United States or the Virgin Islands, USRPIs include (among other things) any interest in a domestic corporation unless the taxpayer establishes that the corporation was not, during a five-year period ending on the date of the disposition of the interest, a U.S. real property holding corporation (which is defined generally to mean any corporation the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of its real property interests and any other of its assets used or held for use in a trade or business).

Distributions by a REIT to its foreign shareholders attributable to the sale of USRPI's are generally treated as income from the sale of USRPIs.[522] Treasury regulations require the REIT to withhold at 35 percent on such a distribution.[523] However, there is an exception for distributions by a REIT with respect to stock of the REIT that is regularly traded on an established securities market located in the U.S., to a foreign shareholder that has not held more than 5 percent of the stock of the REIT for the one year period ending with the date of the distribution.[524] In such cases, the REIT and the shareholder treat the distribution to a foreign shareholder as the distribution of an ordinary dividend,[525] subject to the 30-percent (or lower treaty rate) withholding applicable to dividends.

For 2005, 2006, and 2007, any RIC distribution to a foreign shareholder attributable to the sale of USRPIs is treated as FIRPTA income, without any exceptions.[526] However, no Treasury regulations have been issued addressing withholding obligations with respect to such distributions.

A more complete description of the provisions of FIRPTA and the special rules under FIRPTA that apply to RICs and REITs is contained under ''Present Law'' for the provision ''Application of Foreign Investors in Real Property Tax Act (FIRPTA) to Regulated Investment Companies (RICS).

Although the law thus provides rules for taxing foreign persons under FIRPTA on distributions of gain from the sale of USRPIs by RICs or REITs, some taxpayers may be taking the position that if a foreign person invests in a RIC or REIT that, in turn, invests in a lower-tier RIC or REIT that is the entity that disposes of USRPIs and distributes the proceeds, then the proceeds from such disposition by the lower-tier RIC or REIT cease to be FIRPTA income when distributed to the upper-tier RIC or REIT (which is not itself a foreign person), and can thereafter be distributed by that latter entity to its foreign shareholders as non-

[507] Sec. 852(b)(3)(C); Treas. Reg. sec. 1.1441–3(c)(2)(D).

[508] This requirement for RICs was added by section 411 of the American Jobs Creation Act of 2004 (''AJCA''), in connection with the enactment of other rules that allow RICs to identify certain types of distributions to foreign shareholders, attributable to the RIC's receipt of short-term capital gains or interest income, as distributions to such shareholders of such short-term gains or interest income and thus not taxed to the foreign shareholders, rather than as regular dividends that would be subject to withholding. See Secs. 871(k), 881(e), 1441(c)(12) and 1442(a). All these rules are scheduled to expire at the end of 2007, as is the rule subjecting to FIRPTA all distributions of RIC gain attributable to sales of U.S. real property interests and the rule excepting from FIRPTA a foreign person's sale of stock of a ''domestically controlled'' RIC.

[509] Secs. 871(a), 881, 1441, and 1442.

[510] Secs. 871(i)(2)(A) and 881(d).

[511] Sec. 871(g).

[512] Secs. 871(h) and 881(c).

[513] Secs. 871(h)(3) and 881(c)(3).

[514] Secs. 871(h)(2), (5) and 881(c)(2).

[515] Sec. 881(c)(3).

[516] Secs. 871(h)(4) and 881(c)(4).

[517] This interest distribution rule was added by section 411 of the American Jobs Creation Act of 2004 (''AJCA''), Pub. L. No. 108–357.

[518] Secs. 871(a)(2) and 881.

[519] Treas. Reg. sec. 1.1441–3(c)(2)(D).

[520] This short-term gain distribution rule was added by section 411 of AJCA.

[521] Sec. 897.

[522] Sec. 897(h)(1).

[523] Treas. Reg. sec. 1.1445–8.

[524] Sec. 897(h)(1)(second sentence).

[525] Sec. 857(b)(3)(F).

[526] Sec. 897(h)(1)

FIRPTA income of such RIC or REIT, rather than continuing to be categorized as FIRPTA income. Furthermore, RICs may take the position that in the absence of regulations or a specific statutory rule addressing the withholding rules for FIRPTA capital gain that is treated as effectively connected with a U.S. trade or business, such gain should be considered capital gain for which no withholding is required.

In addition, some foreign persons may be attempting to avoid FIRPTA tax on a distribution from a RIC or a REIT, by selling the RIC or REIT stock shortly before the distribution and buying back the stock shortly after the distribution. If the stock is not a U.S. real property interest in the hands of the foreign seller, that person would take the position that the gain on the sale of the stock is capital gain not subject to U.S. tax. Stock of a RIC or REIT that is ''domestically controlled'' is not a U.S. real property interest.[527]

If the stock is a USRPI in the hands of the foreign person, the transferee generally is required to withhold 10 percent of the gross sales price under general FIRPTA withholding rules.[528]

HOUSE BILL

No provision.

SENATE AMENDMENT

The first part of the Senate amendment provision requires any distribution that is made by a RIC or a REIT that would otherwise be subject to FIRPTA because the distribution is attributable to the disposition of a U.S. real property interest (USRPI) to retain its character as FIRPTA income when distributed to any other RIC or REIT, and to be treated as if it were from the disposition of a USRPI by that other RIC or REIT. Under the provision, a RIC continues to be subject to FIRPTA, even after December 31, 2007, in any case in which a REIT makes a distribution to the RIC that is attributable to gain from the sale of U.S. real property interests.

The second part of the Senate amendment provision provides that a distribution by a RIC to a foreign shareholder, or to a RIC or REIT shareholder, attributable to sales of USRPIs is not treated as gain from the sale of a USRPI by that shareholder if the distribution is made with respect to a class of RIC stock that is regularly traded on an established securities market[529] located in the U.S. and if such shareholder did not hold more than 5 percent of such stock within the one year period ending on the date of the distribution. Such distributions instead are treated as dividend distributions.[530]

The third part of the Senate amendment provision requires a foreign person that disposes of stock of a RIC or REIT during the 30-day period preceding a distribution on that stock that would have been treated as a distribution from the disposition of a USRPI, that acquires an identical stock interest during the 60 day period beginning the first day of such 30-day period preceding the distribution, and that does not in fact receive the distribution in a manner that subjects the person to tax under FIRPTA, to pay FIRPTA tax on an amount equal to the amount of the distribution that was not taxed under FIRPTA as a result of the disposition. A foreign person is treated as having acquired any interest acquired by any person treated as related to that foreign first person under section 465(b)(3)(C).[531]

This third part of the Senate amendment provision applies only in the case of a shareholder that would have been treated as receiving FIRPTA income on the distribution if that shareholder had in fact received the distribution, but that would not have been treated as receiving FIRPTA income if the form of the disposition transaction were respected. This category of persons consists of persons that are shareholders in a domestically controlled RIC or REIT (since sales of shares of such an entity are not subject to FIRPTA tax), but does not include a person who sells stock that is regularly traded on an established securities market located in the U.S. and who did not own more than five percent of such stock during the one year period ending on the date of the distribution (since such a person would not have been subject to FIRPTA tax under present law for REITs and under the second part of the Senate amendment provision for RICs, *supra.*, if that person had received the dividend instead of disposing of the stock).

Notwithstanding the recharacterization of the disposition as involving a FIRPTA distribution to the foreign person, no withholding on disposition proceeds to the foreign person on the disposition of such stock would be required. No inference is intended as to what situations under present law would or would not be respected as dispositions.

*Effective dates.*—The first part of the Senate amendment provision is effective for distributions with respect to taxable years of a RIC or REIT beginning after the date of enactment.

The second part of the Senate amendment provision applies to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

The third part of the Senate amendment provision is effective for dispositions after December 31, 2005, in taxable years ending after that date.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision with modifications and clarifications.

The conference agreement provides that the second part of the Senate amendment provision, treating certain distributions attributable to sales of U.S. real property interests as dividends subject to dividend withholding, applies when the distribution is made to a foreign shareholder of a RIC or REIT, but does not apply when the distribution is made to another RIC or a REIT. In such cases, the character of the distribution as FIRPTA gain is retained and must be tracked by the recipient RIC or REIT, but the distribution itself does not become dividend income in the hands of such RIC or REIT. Therefore, such recipient RIC or REIT can in turn distribute amounts attributable to that distribution (attributable to the sale of USRPIs) to its U.S shareholders as capital gain. However, if any recipient RIC or REIT in turn distributes to a foreign shareholder amounts that are attributable to a sale by a lower tier RIC or REIT of USRPIs, such amounts distributed to a foreign shareholder shall be treated as FIRPTA gain or as dividend income, according to whether or not such distribution to such foreign shareholder qualifies for dividend treatment.

The conference agreement amends section 1445 so that it explicitly requires withholding on RIC and REIT distributions to foreign persons, attributable to the sale of USRPIs, at 35 percent, or, to the extent provided by regulations, at 15 percent.[532]

The conference agreement clarifies that the treatment of a RIC as a qualified investment entity continues after December 2007 with respect to a RIC that receives a distribution from a REIT, not only for purposes of the distribution rules, including withholding on distributions to foreign shareholders, but also for purposes of the new ''wash sale'' rules of the provision.

The conference agreement modifies the new ''wash sale'' rule. The period within which the basic ''wash-sale'' rule applies is changed from 60 days to 61 days.[533] The definition of ''applicable wash sales transaction'' is expanded to cover not only situations in which the taxpayer acquires a substantially

[527] Sec. 897(g)(3). A RIC or REIT is ''domestically controlled'' if less than 50 percent in value of the entity's stock is held by foreign persons. RIC stock ceases to be eligible for this exception as of the end of 2007. Distributions by a domestically controlled RIC or REIT, if attributable to the sale of U.S. real property interests, are not exempt from FIRPTA by reason of such domestic control. A foreign person that would be subject to FIRPTA on receipt of a distribution from such an entity might sell its stock before the distribution and repurchase stock after the distribution in an attempt to avoid FIRPTA consequences.

Under a different exception from FIRPTA, applicable to stock of all entities, neither RIC nor REIT stock is a U.S. real property interest if the RIC or REIT stock is regularly traded on an established securities market located in the United States and if the stock sale is made by a foreign shareholder that has not owned more than five percent of the stock during the five years ending with the date of the sale. Sec. 897(c)(3). Distributions by a REIT to a foreign person, attributable to the sale of U.S. real property interests, are also not subject to FIRPTA if made with respect to stock that is regularly traded on an established securities market located in the United States and made to a foreign person that has not held more than five percent of the REIT stock for the one-year period ending on the date of distribution. (Sec. 897(h)(1), second sentence.) Thus, any foreign shareholder of such a regularly traded REIT that would be exempt from FIRPTA on a sale of the REIT stock immediately before a distribution would also generally be exempt from FIRPTA on a distribution from the REIT if such shareholder held the stock through the date of the distribution, due to the holding period requirements. Distributions that are not subject to FIRPTA under this five percent exception are recharacterized as ordinary dividends and thus would normally be subject to ordinary dividend withholding rules. Secs. 857(b)(3)(F) and 1441.

[528] Secs. 1445(a) and 1445(e).

[529] It is intended that the rules generally applicable for this purpose under section 897 also apply under the provision in determining whether a class of interests is regularly traded on an established securities market located in the United States. For example, at the present time the rules currently in force for this purpose include Temp. Reg. sec. 1.897–9T(d)(2).

[530] The provision treats such distributions as ordinary dividend distributions rather than as distributions of long term capital gain. This rule is the same as the present law rule for publicly traded REITs making a distribution to a foreign shareholder. In addition, under the immediately preceding provision (sec. 464) of the Senate amendment, for the years 2005, 2006 and 2007 that RICs are subject to FIRPTA, a RIC can make distributions from sales of USRPIs to shareholders who do not meet this rule, and such distributions will be treated not as dividends but as non-taxable long- or short-term capital gain, if so designated by the RIC, as long as the RIC itself is not a USRPHC after applying the special rules for counting the RIC's ownership of REIT or other RIC stock.

[531] These relationships generally include persons that are engaged in trades or businesses under common control (generally, a more than 50 percent relationship) and also include persons that have a more than 10 percent relationship, such as (for example) a corporation and an individual owning more than 10 percent of the corporation; or a corporation and a partnership if the same persons own more than 10 percent of the interests in each.

[532] This provision is similar to present law section 1445(c)(1). The regulatory authority to reduce the withholding to 15 percent sunsets in accordance with the same sunset that applies to section 1445(c)(1), at the time that the present law maximum 15 percent rate on dividends is scheduled to sunset.

Treasury regulations under section 1445 already impose FIRPTA withholding on REITs under present law. Treasury has not yet written regulations applicable to RICs. No inference is intended regarding the existing Treasury regulations in force under section 1445 with respect to REITs.

[533] Thus the period includes the 30 days before and the 30 days after the ex-dividend date, in addition to the ex-dividend date itself.

identical interest, but also situations in which the taxpayer enters into a contract or option to acquire such an interest. The related party rule is also modified to apply the 50-percent relationship test under section 267(b) and 707(b)(1) rather than a 10-percent test.

In addition, treatment of a foreign shareholder of a RIC or REIT as if it had received a FIRPTA distribution that is treated as U.S. effectively connected income is extended to transactions that meet the definition of ''substitute dividend payments'' provided for purposes of section 861 and that would be properly treated by the foreign taxpayer as receipt of a distribution of FIRPTA gain if the distribution from the RIC or REIT had itself been received by the taxpayer, but that, by virtue of the substitute dividend payment, is not so treated but for the provision,[534] as well as to other similar arrangements to which Treasury may extend the rules.

*Effective date.*—The first part of the conference agreement provision, relating to distributions generally, applies to distributions with respect to taxable years of RICs and REITs beginning after December 31, 2005, except that no withholding is required under sections 1441, 1442, or 1445 with respect to any distribution before the date of enactment if such amount was not otherwise required to be withheld under any such section as in affect before the amendments made by the conference agreement.

The second part of the conference agreement, relating to the ''wash sale'' and substitute dividend payment transactions, is applicable to distributions and substitute dividend payments occurring on or after the 30th day following the date of enactment.

No inference is intended regarding the treatment under present law of any transactions addressed by the conference agreement.

16. Credit to holders of rural renaissance bonds (sec. 469 of the Senate amendment)

PRESENT LAW

*In general*

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of such bonds are used to finance direct activities of governmental units or if such bonds are repaid with revenues of governmental units. These bonds are called ''governmental bonds.'' Interest on State or local government bonds issued to finance activities of private persons is taxable unless a specific exception applies. These bonds are called ''private activity bonds.'' The term ''private person'' generally includes the Federal Government and all other individuals and entities other than States or local governments.

Private activity bonds are eligible for tax-exemption if issued for certain purposes permitted by the Code (''qualified private activity bonds''). Generally, qualified private activity bonds are subject to restrictions on the use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain specified facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay costs of issuance (e.g., bond counsel and underwriter fees). Small issue and redevelopment also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and massage parlors). Moreover, the term of qualified private activity bonds generally may not exceed 120 percent of the economic life of the property being financed and certain public approval requirements (similar to requirements that typically apply under State law to issuance of governmental debt) apply under Federal law to issuance of private activity bonds.

*Tax-credit bonds*

As an alternative to traditional tax-exempt bonds, States and local governments may issue tax-credit bonds for certain purposes. Rather than receiving interest payments, a taxpayer holding a tax-credit bond on an allowance date is entitled to a credit. Generally, the credit amount is includible in gross income (as if it were a taxable interest payment on the bond), and the credit may be claimed against regular income tax and alternative minimum tax liability. The following types of tax-credit bonds may be issued under present law: ''qualified zone academy bonds,'' which are bonds issued for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other personnel at certain school facilities; ''clean renewable energy bonds,'' which are bonds issued to finance for facilities that would qualify for the tax credit under section 45 without regard to the placed in service date requirements of that section; and ''gulf tax credit bonds,'' which are bonds issued by the States of Louisiana, Mississippi, and Alabama to pay principal, interest, or premium on certain prior bonds.

*Arbitrage restrictions on tax-exempt bonds*

To prevent States and local governments from issuing more tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined ''temporary periods'' before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., ''reasonably required reserve or replacement funds''). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government. Governmental bonds are subject to less restrictive arbitrage rules than most private activity bonds.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment creates a new category of tax-credit bonds to finance certain projects located in rural areas (''Rural Renaissance Bonds''). As with present law tax-credit bonds, the taxpayer holding Rural Renaissance Bonds on the allowance date would be entitled to a tax credit. The amount of the credit would be determined by multiplying the bond's credit rate by the face amount on the holder's bond. The credit would be includible in gross income (as if it were an interest payment on the bond) and could be claimed against regular income tax liability and alternative minimum tax liability.

Under the Senate amendment, Rural Renaissance Bonds are defined as any bonds issued by a qualified issuer if, in addition to the requirements discussed below, 95 percent or more of the proceeds of such bonds are used to finance capital expenditures incurred for one or more qualified projects. ''Qualified projects'' include any of the following projects located in a rural area: (i) a water or waste treatment project, (ii) an affordable housing project, (iii) a community facility project, including hospitals, fire and police stations, and nursing and assisted-living facilities, (iv) a value-added agriculture or renewable energy facility project for agricultural producers or farmer-owned entities, including any project to promote the production, processing, or retail sale of ethanol (including fuel at least 85 percent of the volume of which consists of ethanol), bio-diesel, animal waste, biomass, raw commodities, or wind as a fuel, (v) a distance learning or telemedicine project, (vi) a rural utility infrastructure project, including any electric or telephone system, (vii) a project to expand broadband technology, (viii) a rural teleworks project, and (ix) any of the previously described projects if carried out by the Delta Regional Authority. A ''rural area'' means any area other than a city or town which has a population of greater than 50,000 inhabitants or the urbanized area contiguous and adjacent to such a city or town.

For purposes of the provision, the term ''qualified issuer'' means any not-for-profit cooperative lender which, as of the date of enactment of this provision, has received a guarantee under the Rural Electrification Act. A qualified issuer must also meet a user fee requirement during the period any Rural Renaissance Bond issued by such qualified issuer is outstanding. The user fee requirement is met if the qualified issuer makes semi-annual grants for qualified projects equal to the outstanding principal of Rural Renaissance Bond issued by such issuer multiplied by one-half the rate on United States Treasury securities of the same maturity.

The Senate amendment imposes a maximum maturity limitation on Rural Renaissance Bonds. The maximum maturity is the term which the Secretary estimates will result in the present value of the obligation to repay the principal on any bonds being equal to 50 percent of the face amount of such bond. The provision also requires level amortization of Rural Renaissance Bonds during the period such bonds are outstanding.

To qualify as Rural Renaissance Bonds, the qualified issuer of such bonds must reasonably expect to and actually spend 95 percent or more of the proceeds of such bonds on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as Rural Renaissance Bonds if unspent proceeds are used within 90 days from the end of such five-year period to redeem any ''nonqualified bonds.'' For these purposes, the amount of nonqualified bonds is to be determined in the same manner as Treasury regulations under section 142. In addition, the provision provides that the five-year spending period may be extended by the Secretary upon the qualified issuer's request.

[534] The conference agreement adopts the definition of ''substitute dividend payment'' used for purposes of section 861, which definition applies to determine substitute dividend payments under the conference agreement provision, even though the recipient may not be an individual and even though the underlying payment would not have been treated as a dividend to the recipient but as a distribution of FIRPTA gain. Treasury regulations section 1.861–3(a)(6) defines a ''substitute dividend payment'' as a payment, made to the transferor of a security in a securities lending transaction or a sale-repurchase transaction, of an amount equivalent to a dividend distribution which the owner of the transferred security is entitled to receive during the term of the transaction. The regulation applies to amounts received or accrued by the taxpayer. The regulation defines a securities lending transaction as a transfer of one or more securities that is described in section 1058(a) or a substantially similar transaction. The regulation defines a sale-repurchase transaction as an agreement under which a person transfers a security in exchange for cash and simultaneously agrees to receive substantially identical securities from the transferee in the future in exchange for cash. Under the regulation, a ''substitute dividend payment'' is generally sourced and in many instances characterized in the same manner as the underlying distribution with respect to the transferred security.

Under the provision, Rural Renaissance Bonds are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and the regulations thereunder shall apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to Rural Renaissance Bonds. For example, for arbitrage purposes, the yield on an issue of Rural Renaissance Bonds is computed by taking into account all payments of interest, if any, on such bonds, i.e., whether the bonds are issued at par, premium, or discount. However, for purposes of determining yield, the amount of the credit allowed to a taxpayer holding Rural Renaissance Bonds is not treated as interest, although such credit amount is treated as interest income to the taxpayer.

Rural Renaissance Bonds must be designated as such by the qualified issuer and must be issued in registered form. The provision also requires issuers of Rural Renaissance Bonds to report issuance to the IRS in a manner similar to that required for tax-exempt bonds. There is a national limitation of $200 million of Rural Renaissance Bonds that the Secretary may allocate, in the aggregate, to qualified projects. The authority to issue Rural Renaissance Bonds expires December 31, 2009.

*Effective date.*—The provision is effective for bonds issued after the date of enactment and before January 1, 2010.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

17. Modify foreign tax credit rules for large integrated oil companies which are dual capacity taxpayers (sec. 470 of the Senate amendment and sec. 901 of the Code)

PRESENT LAW

U.S. persons are subject to U.S. income tax on their worldwide income. A credit against U.S. tax on foreign source income is allowed for foreign taxes that are paid or accrued.[535] In addition, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends or with respect to which it is taxed under the rules of subpart F is deemed to have paid a portion of the foreign taxes of such foreign corporation.[536] The foreign tax credit is available only for foreign income, war profits, and excess profits taxes, and for certain taxes that qualify under section 903 as imposed ''in lieu'' of such taxes. Other foreign levies generally are treated as deductible expenses only.

The amount of foreign tax credits that a taxpayer may claim in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. The foreign tax credit limitation is calculated separately for specific categories of income. The amount of creditable taxes paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back one year and carried forward 10 years.

Treasury regulations provide detailed rules for determining whether a foreign levy is a creditable income tax. A levy generally is a tax if it is a compulsory payment under the authority of a foreign country to levy taxes and is not compensation for a specific economic benefit provided by a foreign country. A taxpayer that is subject to a foreign levy and also receives a specific economic benefit from such country is considered a ''dual capacity taxpayer.''[537] Treasury regulations provide that the portion of a foreign levy paid by a dual capacity taxpayer that is considered a tax is determined based on all the facts and circumstances.[538] Alternatively, under a safe harbor provided in the regulations, the portion of a foreign levy paid by a dual capacity taxpayer that is creditable is determined based on the foreign country's generally imposed income tax or, if the foreign country has no generally imposed income tax, the U.S. tax.[539]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment denies the foreign tax credit with respect to all amounts paid or accrued (or deemed paid) to any foreign country or possession by a large integrated oil company which is a dual capacity taxpayer if the country or possession does not impose a generally applicable income tax. The provision modifies the safe harbor rule currently provided by Treasury Regulations. Under the provision, as under present law, a dual capacity taxpayer is a person who is subject to a levy in a foreign country or possession and also directly or indirectly receives (or will receive) a specific economic benefit (as determined in accordance with regulations) from such foreign country or possession. A generally applicable income tax is an income tax that is generally imposed on income derived from a trade or business conducted within that foreign country or possession (which may include taxes qualifying under section 903 as imposed in lieu of income taxes), provided that the tax has substantial application (by its terms and in practice) to persons who are not dual capacity taxpayers and to persons who are citizens or residents of the foreign country or possession.

If the country does impose a generally applicable income tax, the foreign tax credit is denied to the extent that such amounts exceed the amount (as determined under regulations) which is paid by the dual capacity taxpayer pursuant to such generally applicable income tax, or which would have been paid if such generally applicable income tax were applicable to the dual capacity taxpayer. Amounts not in excess of the amount calculated under the generally applicable income tax are subject to all other rules pertaining to foreign tax credits. Amounts for which the foreign tax credit is denied under the provision are not subject to carryback or carryforward, but could constitute deductible expenses if such amounts qualify under the relevant deduction provisions. The provision does not apply to the extent contrary to any treaty obligation of the United States.

The provision applies only to ''large integrated oil companies.'' These are persons that meet all of the following requirements for a particular taxable year: (1) the person is a producer of crude oil; (2) the person has gross receipts in excess of one billion dollars; (3) the person or persons related to such person has an average daily worldwide production of crude oil of at least 500,000 barrels; and (4) either (a) the person or persons related to such person sells at retail oil or natural gas (excluding bulk sales of such items to commercial or industrial users), or any product derived from oil or natural gas (excluding bulk sales of aviation fuels to the Department of Defense), in an aggregate amount of five million dollars or greater, or (b) the person or persons related to such person engage in the refining of crude oil, if the aggregate average daily refinery runs for that taxable year exceeds 75,000 barrels. For purposes of requirement (4), a person is a related person with respect to another person if either one owns a five percent or greater interest in the other, or if a third person owns such an interest in both.

*Effective date.*—The provision applies to taxes paid or accrued in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

18. Disability preference program for tax collection contracts (sec. 471 of the Senate amendment)

PRESENT LAW

Under present law, the IRS may use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type and to arrange payment of those taxes by the taxpayers.

There are several procedural conditions applicable to the use of private debt collection contracts. First, provisions of the Fair Debt Collection Practices Act apply to the private debt collection company. Second, taxpayer protections that are statutorily applicable to the IRS are also made statutorily applicable to the private sector debt collection companies. In addition, taxpayer protections that are statutorily applicable to IRS employees also are made statutorily applicable to employees of private sector debt collection companies. Third, subcontractors are prohibited from having contact with taxpayers, providing quality assurance services, and composing debt collection notices; any other service provided by a subcontractor must receive prior approval from the IRS.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the IRS may not enter a contract with a private debt collection company after April 1, 2006, until the Secretary implements a qualified disability preference program. A qualified disability preference program is a program that requires qualified employers to receive not less than 10 percent of taxpayer accounts (based on dollar value) awarded to private debt collection companies. A qualified employer is an employer who, as of the date the private debt collection contract is awarded, employs not less than 50 severely disabled individuals or not less than 30 percent of such employer's employees are severely disabled. In addition, a qualified employer must agree that not more than 90 days after being awarded a private debt collection contract not less than 35 percent of the employees providing services under the private debt collection contract shall be severely disabled individuals and hired after the date the contract is awarded.

For purposes of the provision, a severely disabled individual means (i) a veteran of the United States armed forces with a disability of 50 percent or greater determined by law or the Secretary of Veterans Affairs to be service-connected or (ii) any individual who is a disabled beneficiary as defined by the Social Security Act or would be considered to such a disabled beneficiary but for having income or resources in excess of limits established by the Social Security Act.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

## TITLE VI—SUNSET OF CERTAIN PROVISIONS AND AMENDMENTS

(Sec. 501 of the Senate amendment)

PRESENT LAW

Reconciliation is a procedure under the Congressional Budget Act of 1974 (the ''Budget Act'') by which Congress implements

[535] Sec. 901. Foreign taxes include taxes imposed by possessions.

[536] Secs. 902 and 960. Foreign corporations include corporations created or organized in possessions.

[537] Treas. Reg. sec. 1.901–2(a)(2)(ii)(A).

[538] Treas. Reg. sec. 1.901–2A(c)(2)(i).

[539] Treas. Reg. sec. 1.901–2A(e).

spending and tax policies contained in a budget resolution. The Budget Act contains numerous rules enforcing the scope of items permitted to be considered under the budget reconciliation process. One such rule, the so-called ''Byrd rule,'' was incorporated into the Budget Act in 1990. The Byrd rule, named after its principal sponsor, Senator Robert C. Byrd, is contained in section 313 of the Budget Act. The Byrd rule generally permits members to raise a point of order against extraneous provisions (those which are unrelated to the goals of the reconciliation process) from either a reconciliation bill or a conference report on such bill.

Under the Byrd rule, a provision is considered to be extraneous if it falls under one or more of the following six definitions:

1. It does not produce a change in outlays or revenues;
2. It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
3. It is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
4. It produces a change in outlays or revenues which is merely incidental to the nonbudgetary components of the provision;
5. It would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; and
6. It recommends changes in Social Security.

HOUSE BILL

No provision.

SENATE AMENDMENT

To ensure compliance with the Budget Act, the Senate amendment provides that the provisions of, and amendments made by, title I, subtitle A of title II, and title III of the Senate amendment shall not apply to taxable years beginning after September 30, 2010, and that the Code shall be applied and administered to such years as if those provisions and amendments had never been enacted.

*Effective date.*—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

## TITLE VII—FUNDING FOR MILITARY OPERATIONS

(Secs. 601 and 602 of the Senate amendment)

PRESENT LAW

Present law does not include the Senate amendment provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that there is to be appropriated, out of any money in the Treasury that is not otherwise appropriated, for the fiscal years 2006 through 2010, the following amounts, to be used for resetting and recapitalizing equipment being used in theaters of operations: (1) $16,900,000,000 for operations and maintenance of the Army; (2) $1,800,000,000 for aircraft for the Army; (3) $6,300,000,000 for other Army procurement; (4) $10,000,000,000 for wheeled and tracked combat vehicles for the Army; (5) $467,000,000 for the Army working capital fund; (6) $6,000,000 for missiles for the Department of Defense; (7) $100,000,000 for defense wide procurement for the Department of Defense; (8) $4,500,000,000 for Marine Corps procurement; (9) $4,500,000,000 for operations and maintenance of the Marine Corps; and (10) $2,700,000,000 for Navy aircraft procurement.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

## TITLE VIII—OTHER REVENUE OFFSET PROVISIONS

### A. Imposition of Withholding on Certain Payments Made by Government Entities

(Sec. 3402 of the Code)

PRESENT LAW

*Withholding requirements*

Employers are required to withhold income tax on wages paid to employees, including wages and salaries of employees or elected officials of Federal, State, and local government units. Withholding rates vary depending on the amount of wages paid, the length of the payroll period, and the number of withholding allowances claimed by the employee.

Certain non-wage payments also are subject to mandatory or voluntary withholding. For example:

—Employers are required to withhold FICA and Railroad Retirement taxes from wages paid to their employees. Withholding rates are generally uniform.

—Payors of pensions are required to withhold from payments made to payees, unless the payee elects no withholding.[540] Withholding from periodic payments is at variable rates, parallel to income tax withholding from wages, whereas withholding from nonperiodic payments is at a flat 10-percent rate.

—A variety of payments (such as interest and dividends) are subject to backup withholding if the payee has not provided a valid taxpayer identification number (TIN). Withholding is at a flat rate based on the fourth lowest rate of tax applicable to single taxpayers.

—Certain gambling proceeds are subject to withholding. Withholding is at a flat rate based on the third lowest rate of tax applicable to single taxpayers.

—Voluntary withholding applies to certain Federal payments, such as Social Security payments. Withholding is at rates specified by Treasury regulations.

—Voluntary withholding applies to unemployment compensation benefits. Withholding is at a flat 10-percent rate.

—Foreign taxpayers are generally subject to withholding on certain U.S.-source income which is not effectively connected with the conduct of a U.S. trade or business. Withholding is at a flat 30-percent rate (14-percent for certain items of income).

Many payments, including payments made by government entities, are not subject to withholding under present law. For example, no tax is generally withheld from payments made to workers who are not classified as employees (i.e., independent contractors).

*Information reporting*

Present law imposes numerous information reporting requirements that enable the Internal Revenue Service (''IRS'') to verify the correctness of taxpayers' returns. For example, every person engaged in a trade or business generally is required to file information returns for each calendar year for payments of $600 or more made in the course of the payor's trade or business. Special information reporting requirements exist for employers required to deduct and withhold tax from employees' income. In addition, any service recipient engaged in a trade or business and paying for services is required to make a return according to regulations when the aggregate of payments is $600 or more. Government entities are specifically required to make an information return, reporting certain payments to corporations as well as individuals. Moreover, the head of every Federal executive agency that enters into certain contracts must file an information return reporting the contractor's name, address, TIN, date of contract action, amount to be paid to the contractor, and any other information required by Forms 8596 (Information Return for Federal Contracts) and 8596A (Quarterly Transmittal of Information Returns for Federal Contracts).

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement requires withholding on certain payments to persons providing property or services made by the Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies). The withholding requirement applies regardless of whether the government entity making such payment is the recipient of the property or services. Political subdivisions of States (or any instrumentality thereof) with less than $100 million of annual expenditures for property or services that would otherwise be subject to withholding under this provision are exempt from the withholding requirement.

The rate of withholding is three percent on all payments regardless of whether the payments are for property or services. Payments subject to withholding under the provision include any payment made in connection with a government voucher or certificate program which functions as a payment for property or services. For example, payments to a commodity producer under a government commodity support program are subject to the withholding requirement. The provision imposes information reporting requirements on the payments that are subject to withholding under the provision.

The provision does not apply to any payments made through a Federal, State, or local government public assistance or public welfare program for which eligibility is determined by a needs or income test. For example, payments under government programs providing food vouchers or medical assistance to low-income individuals are not subject to withholding under the provision. However, payments under government programs to provide health care or other services that are not based on the needs or income of the recipients are subject to withholding, including programs where eligibility is based on the age of the beneficiary.

The provision does not apply to payments of wages or to any other payment with respect to which mandatory (e.g., U.S.-source income of foreign taxpayers) or voluntary (e.g., unemployment benefits) withholding applies under present law. The provision does not exclude payments that are potentially subject to backup withholding under section 3406. If, however, payments are actually being withheld under backup withholding, withholding under the provision does not apply.

The provision also does not apply to the following: payments of interest; payments for real property; payments to tax-exempt entities or foreign governments; intra-governmental payments; payments made pursuant to a classified or confidential contract (as defined in section 6050M(e)(3)); and payments to government employees that are not otherwise excludable from the new withholding provision with respect to the employees' services as an employees.

*Effective date.*—The provision applies to payments made after December 31, 2010.

[540] Withholding at a rate of 20 percent is required in the case of an eligible rollover distribution that is not directly rolled over.

B. ELIMINATE INCOME LIMITATIONS ON ROTH IRA CONVERSIONS

(Sec. 408A of the Code)

PRESENT LAW

There are two general types of individual retirement arrangements (''IRAs''): traditional IRAs and Roth IRAs. The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($4,000 for 2006); and (2) the amount of the individual's compensation that is includible in gross income for the year. In the case of an individual who has attained age 50 before the end of the year, the dollar amount is increased by an additional amount ($1,000 for 2006). In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses that is includible in gross income is at least equal to the contributed amount. IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn.

Contributions to a traditional IRA may or may not be deductible. The extent to which contributions to a traditional IRA are deductible depends on whether or not the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan and the taxpayer's AGI. An individual may deduct his or her contributions to a traditional IRA if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan. If an individual or the individual's spouse is an active participant in an employer-sponsored retirement plan, the deduction is phased out for taxpayers with AGI over certain levels. To the extent an individual does not or cannot make deductible contributions, the individual may make nondeductible contributions to a traditional IRA, subject to the maximum contribution limit. Distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions.

Individuals with adjusted gross income (''AGI'') below certain levels may make contributions to a Roth IRA (up to the maximum IRA contribution limit). The maximum Roth IRA contribution is phased out between $150,000 to $160,000 of AGI in the case of married taxpayers filing a joint return and between $95,000 to $105,000 in the case of all other returns (except a separate return of a married individual).[541] Contributions to a Roth IRA are not deductible. Qualified distributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that is made on or after the individual attains age 59½, death, or disability or which is a qualified special purpose distribution. A distribution is not a qualified distribution if it is made within the five-taxable year period beginning with the taxable year for which an individual first made a contribution to a Roth IRA.

A taxpayer with AGI of $100,000 or less may convert all or a portion of a traditional IRA to a Roth IRA.[542] The amount converted is treated as a distribution from the traditional IRA for income tax purposes, except that the 10-percent additional tax on early withdrawals does not apply.

In the case of a distribution from a Roth IRA that is not a qualified distribution, certain ordering rules apply in determining the amount of the distribution that is includible in income. For this purpose, a distribution that is not a qualified distribution is treated as made in the following order: (1) regular Roth IRA contributions; (2) conversion contributions (on a first in, first out basis); and (3) earnings. To the extent a distribution is treated as made from a conversion contribution, it is treated as made first from the portion, if any, of the conversion contribution that was required to be included in income as a result of the conversion.

Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 59½, death, or disability are subject to an additional 10-percent early withdrawal tax, unless an exception applies.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement eliminates the income limits on conversions of traditional IRAs to Roth IRAs.[543] Thus, taxpayers may make such conversions without regard to their AGI.

For conversions occurring in 2010, unless a taxpayer elects otherwise, the amount includible in gross income as a result of the conversion is included ratably in 2011 and 2012. That is, unless a taxpayer elects otherwise, none of the amount includible in gross income as a result of a conversion occurring in 2010 is included in income in 2010, and half of the income resulting from the conversion is includible in gross income in 2011 and half in 2012. However, income inclusion is accelerated if converted amounts are distributed before 2012.[544] In that case, the amount included in income in the year of the distribution is increased by the amount distributed, and the amount included in income in 2012 (or 2011 and 2012 in the case of a distribution in 2010) is the lesser of: (1) half of the amount includible in income as a result of the conversion; and (2) the remaining portion of such amount not already included in income. The following example illustrates the application of the accelerated inclusion rule.

*Example.*—Taxpayer A has a traditional IRA with a value of $100, consisting of deductible contributions and earnings. A does not have a Roth IRA. A converts the traditional IRA to a Roth IRA in 2010, and, as a result of the conversion, $100 is includible in gross income. Unless A elects otherwise, $50 of the income resulting from the conversion is included in income in 2011 and $50 in 2012. Later in 2010, A takes a $20 distribution, which is not a qualified distribution and all of which, under the ordering rules, is attributable to amounts includible in gross income as a result of the conversion. Under the accelerated inclusion rule, $20 is included in income in 2010. The amount included in income in 2011 is the lesser of (1) $50 (half of the income resulting from the conversion) or (2) $70 (the remaining income from the conversion), or $50. The amount included in income in 2012 is the lesser of (1) $50 (half of the income resulting from the conversion) or (2) $30 (the remaining income from the conversion, i.e., $100—$70 ($20 included in income in 2010 and $50 included in income in 2011)), or $30.

*Effective date.*—he provision is effective for taxable years beginning after December 31, 2009.

C. REPEAL OF FSC/ETI BINDING CONTRACT RELIEF

PRIOR AND PRESENT LAW

For most of the last two decades, the United States provided export-related tax benefits under the foreign sales corporation (''FSC'') regime. In 2000, the World Trade Organization (''WTO'') held that the FSC regime constituted a prohibited export subsidy under the relevant trade agreements. In response to this WTO finding, the United States repealed the FSC rules and enacted a new regime, under the FSC Repeal and Extraterritorial Income (''ETI'') Exclusion Act of 2000. Transition rules delayed the repeal of the FSC rules and the effective date of ETI for transactions in the ordinary course of a trade or business occurring before January 1, 2002, or after December 31, 2001 pursuant to a binding contract between the taxpayer and an unrelated person which was in effect on September 30, 2000 and at all times thereafter (the ''FSC binding contract relief'').[545] In 2002, the WTO held that the ETI regime also constituted a prohibited export subsidy.

In general, under the ETI regime, an exclusion from gross income applied with respect to ''extraterritorial income,'' which was a taxpayer's gross income attributable to ''foreign trading gross receipts.'' This income was eligible for the exclusion to the extent that it was ''qualifying foreign trade income.'' Qualifying foreign trade income was the amount of gross income that, if excluded, would result in a reduction of taxable income by the greatest of: (1) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction; (2) 15 percent of the ''foreign trade income'' derived by the taxpayer from the transaction;[546] or (3) 30 percent of the ''foreign sale and leasing income'' derived by the taxpayer from the transaction.[547]

Foreign trading gross receipts were gross receipts derived from certain activities in connection with ''qualifying foreign trade property'' with respect to which certain economic processes had taken place outside of the United States. Specifically, the gross receipts must have been: (1) from the sale, exchange, or other disposition of qualifying foreign trade property; (2) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States; (3) for services which were related and subsidiary to the sale, exchange, disposition, lease, or rental of qualifying foreign trade property (as described above); (4) for engineering or architectural services for construction projects located outside the United States; or (5) for the performance of certain managerial services for unrelated persons. A taxpayer could elect to treat gross receipts from a transaction as not being foreign trading gross receipts. As a result of such an

[541] In the case of a married taxpayer filing a separate return, the phaseout range is $0 to $10,000 of AGI.

[542] Married taxpayers filing a separate return may not convert amounts in a traditional IRA into a Roth IRA.

[543] Under the conference agreement, married taxpayers filing a separate return may convert amounts in a traditional IRA into a Roth IRA.

[544] Whether a distribution consists of converted amounts is determined under the present-law ordering rules.

[545] An election was provided, however, under which taxpayers could adopt ETI at an earlier date for transactions after September 30, 2000. This election allowed the ETI rules to apply to transactions after September 30, 2000, including transactions occurring pursuant to pre-existing binding contracts.

[546] ''Foreign trade income'' was the taxable income of the taxpayer (determined without regard to the exclusion of qualifying foreign trade income) attributable to foreign trading gross receipts.

[547] ''Foreign sale and leasing income'' was the amount of the taxpayer's foreign trade income (with respect to a transaction) that was properly allocable to activities constituting foreign economic processes. Foreign sale and leasing income also included foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside the United States.

election, a taxpayer could use any related foreign tax credits in lieu of the exclusion.

Qualifying foreign trade property generally was property manufactured, produced, grown, or extracted within or outside the United States that was held primarily for sale, lease, or rental in the ordinary course of a trade or business for direct use, consumption, or disposition outside the United States. No more than 50 percent of the fair market value of such property could be attributable to the sum of: (1) the fair market value of articles manufactured outside the United States; and (2) the direct costs of labor performed outside the United States. With respect to property that was manufactured outside the United States, certain rules were provided to ensure consistent U.S. tax treatment with respect to manufacturers.

The American Jobs Creation Act of 2004 (''AJCA'') repealed the ETI exclusion,[548] generally effective for transactions after December 31, 2004. AJCA provides a general transition rule under which taxpayers retain 100 percent of their ETI benefits for transactions prior to 2005, 80 percent of their otherwise-applicable ETI benefits for transactions during 2005, and 60 percent of their otherwise-applicable ETI benefits for transactions during 2006.

In addition to the general transition rule, AJCA provides that the ETI exclusion provisions remain in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract[549] between the taxpayer and an unrelated person and such contract is in effect on September 17, 2003, and at all times thereafter (the ''ETI binding contract relief'').

In early 2006, the WTO Appellate Body held that the ETI general transition rule and the FSC and ETI binding contract relief measures are prohibited export subsidies.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement repeals both the FSC binding contract relief and the ETI binding contract relief. The general transition rule remains in effect.

*Effective date.*—The provision is effective for taxable years beginning after date of enactment.

D. MODIFICATION OF WAGE LIMIT FOR PURPOSES OF DOMESTIC PRODUCTION ACTIVITIES DEDUCTION

(Sec. 199 of the Code)

PRESENT LAW

*In general*

Present law provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2009, the deduction is nine percent of such income. For taxable years beginning in 2005 and 2006, the deduction is three percent of income and, for taxable years beginning in 2007, 2008 and 2009, the deduction is six percent of income. However, the deduction for a taxable year is limited to 50 percent of the wages paid by the taxpayer during the calendar year that ends in such taxable year.[550]

*Qualified production activities income*

In general, ''qualified production activities income'' is equal to domestic production gross receipts (defined by section 199(c)(4)), reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts; and (2) other expenses, losses, or deductions which are properly allocable to such receipts.

*Application of wage limitation to passthrough entities*

For purposes of applying the wage limitation, a shareholder, partner, or similar person who is allocated components of qualified production activities income from a passthrough entity also is treated as having been allocated wages from such entity in an amount that is equal to the lesser of: (1) such person's allocable share of wages, as determined under regulations prescribed by the Secretary; or (2) twice the qualified production activities income that actually is allocated to such person for the taxable year.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

Under the conference agreement, the wage limitation is modified such that taxpayers may only include amounts which are properly allocable to domestic production gross receipts.[551] Thus, the wage limitation is 50 percent of those wages which are deducted in arriving at qualified production activities income.

In addition, the conference agreement repeals the special limitation on wages treated as allocated to partners or shareholders of passthrough entities. Accordingly, for purposes of the wage limitation, a shareholder, partner, or similar person who is allocated components of qualified production activities income from a passthrough entity is treated as having been allocated wages from such entity in an amount that is equal to such person's allocable share of wages as determined under regulations prescribed by the Secretary, even if such amount is more than twice the qualified production activities income that actually is allocated to such person for the taxable year. The shareholder, partner, or similar person will then include in its wage limitation only those wages which are deducted in arriving at qualified production activities income.

*Effective date.*—The conference agreement is effective with respect to taxable years beginning after the date of enactment.

E. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD

(Sec. 911 of the Code)

PRESENT LAW

*In general*

U.S. citizens generally are subject to U.S. income tax on all their income, whether derived in the United States or elsewhere. A U.S. citizen who earns income in a foreign country also may be taxed on that income by the foreign country. The United States generally cedes the primary right to tax a U.S. citizen's non-U.S. source income to the foreign country in which the income is derived. This concession is effected by the allowance of a credit against the U.S. income tax imposed on foreign-source income for foreign taxes paid on that income. The amount of the credit for foreign income tax paid on foreign-source income generally is limited to the amount of U.S. tax otherwise owed on that income. Accordingly, if the amount of foreign tax paid on foreign-source income is less than the amount of U.S. tax owed on that income, a foreign tax credit generally is allowed in an amount not exceeding the amount of the foreign tax, and a residual U.S. tax liability remains.

A U.S. citizen or resident living abroad may be eligible to exclude from U.S. taxable income certain foreign earned income and foreign housing costs.[552] This exclusion applies regardless of whether any foreign tax is paid on the foreign earned income or housing costs. To qualify for these exclusions, an individual (a ''qualified individual'') must have his or her tax home in a foreign country and must be either (1) a U.S. citizen[553] who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or (2) a U.S. citizen or resident present in a foreign country or countries for at least 330 full days in any 12-consecutive-month period.

*Exclusion for compensation*

The foreign earned income exclusion generally is available for a qualified individual's non-U.S. source earned income attributable to personal services performed by that individual during the period of foreign residence or presence described above. The maximum exclusion amount for any calendar year is $80,000 in 2002 through 2007 and is indexed for inflation after 2007.

*Exclusion for housing costs*

A qualified individual is allowed an exclusion from gross income (or, as described below, a deduction) for certain foreign housing costs paid or incurred by or on behalf of the individual. The amount of this housing cost exclusion is equal to the excess of a taxpayer's ''housing expenses'' over a base housing amount. The term ''housing expenses'' means the reasonable expenses paid or incurred during the taxable year for a taxpayer's housing (and, if they live with the taxpayer, for the housing of the taxpayer's spouse and dependents) in a foreign country. The term includes expenses attributable to housing such as utilities and insurance, but it does not include separately deductible interest and taxes. If the taxpayer maintains a second household outside the United States for a spouse or dependents who do not reside with the taxpayer because of dangerous, unhealthful, or otherwise adverse living conditions, the housing expenses of the second household also are eligible for exclusion. The base housing amount above which costs are eligible for exclusion in a taxable year is 16 percent of the annual salary (computed on a daily basis) of a grade GS–14, step 1, U.S. government employee, multiplied by the number of days of foreign residence or presence (as described above) in the taxable year.

[548] Pub. L. No. 108–357, sec. 101. In addition, foreign corporations that elected to be treated for all Federal tax purposes as domestic corporations in order to facilitate the claiming of ETI benefits were allowed to revoke such elections within one year of the date of enactment of the repeal without recognition of gain or loss, subject to anti-abuse rules.

[549] This rule also applies to a purchase option, renewal option, or replacement option that is included in such contract. For this purpose, a replacement option is considered enforceable against a lessor notwithstanding the fact that a lessor retained approval of the replacement lessee.

[550] For purposes of the provision, ''wages'' include the sum of the amounts of wages as defined in section 3401(a) and elective deferrals that the taxpayer properly reports to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and, for taxable years beginning after December 31, 2005, designated Roth contributions (as defined in section 402A).

[551] As under present law, the Secretary shall provide rules for the proper allocation of items (including wages) in determining qualified production activities income. Section 199(c)(2).

[552] Sec. 911.

[553] Generally, only U.S. citizens may qualify under the bona fide residence test. A U.S. resident alien who is a citizen of a country with which the United States has a tax treaty may, however, qualify for the section 911 exclusions under the bona fide residence test by application of a nondiscrimination provision of the treaty.

For 2006 this salary is $77,793; the current base housing amount therefore is $12,447 (assuming the taxpayer is a bona fide resident of or is present in a foreign country every day during the year).

To the extent otherwise excludable housing costs are not paid or reimbursed by a taxpayer's employer, these costs generally are allowed as a deduction in computing adjusted gross income.

*Exclusion limitation amounts*

The combined foreign earned income exclusion and housing cost exclusion (including the amount of any deductible housing costs) may not exceed the taxpayer's total foreign earned income for the taxable year. The taxpayer's foreign tax credit is reduced by the amount of the credit that is attributable to excluded income.

*Tax brackets*

A taxpayer with excludable income under section 911 is subject to tax on the taxpayer's other income, after deductions, starting in the lowest tax rate bracket.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

*Exclusion for compensation*

The conference agreement provision adjusts for inflation the maximum amount of the foreign earned income exclusion in taxable years beginning in calendar years after 2005 (rather than, as under present law, after 2007). The limitation in 2006 therefore is $82,400.[554]

*Exclusion for housing costs*

Under the conference agreement, the base housing amount used in calculating the foreign housing cost exclusion in a taxable year is 16 percent of the amount (computed on a daily basis) of the foreign earned income exclusion limitation (instead of the present law 16 percent of the grade GS–14, step 1 amount), multiplied by the number of days of foreign residence or presence (as previously described) in that year.

Reasonable foreign housing expenses in excess of the base housing amount remain excluded from gross income (or, if paid by the taxpayer, are deductible) under the conference agreement, but the amount of the exclusion is limited to 30 percent of the maximum amount of a taxpayer's foreign earned income exclusion.[555] The Secretary is given authority to issue regulations or other guidance providing for the adjustment of this 30-percent housing cost limitation based on geographic differences in housing costs relative to housing costs in the United States. The conferees intend that the Secretary be permitted to use publicly available data, such as the Quarterly Report Indexes published by the U.S. Department of State or any other information deemed reliable by the Secretary, in making adjustments. The conferees also intend that the Secretary may adjust the 30-percent amount upward or downward. The conferees intend that the Secretary make adjustments annually.

Under the 30-percent rule described above, the maximum amount of the foreign housing cost exclusion in 2006 is (assuming foreign residence or presence on all days in the year) $11,536 (= ($82,400 x 30 percent)—($82,400 x 16 percent)).[556]

*Tax brackets*

Under the conference agreement, if an individual excludes an amount from income under section 911, any income in excess of the exclusion amount determined under section 911 is taxed (under the regular tax and alternative minimum tax) by applying to that income the tax rates that would have been applicable had the individual not elected the section 911 exclusion. For example, an individual with $80,000 of foreign earned income that is excluded under section 911 and with $20,000 in other taxable income (after deductions) would be subject to tax on that $20,000 at the rate or rates applicable to taxable income in the range of $80,000 to $100,000.

*Effective date*

The conference agreement provision is effective for taxable years beginning after December 31, 2005.

## TITLE IX—CORPORATE ESTIMATED TAX PROVISIONS

PRESENT LAW

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

In case of a corporation with assets of at least $1 billion, payments due in July, August, and September, 2006, shall be increased to 105 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012, shall be increased to 106.25 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

In case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2013, shall be increased to 100.75 percent of the payment otherwise due and the next required payment shall be reduced accordingly.

With respect to corporate estimated tax payments due on September 15, 2010, 20.5 percent shall not be due until October 1, 2010.

With respect to corporate estimated tax payments due on September 15, 2011, 27.5 percent shall not be due until October 1, 2011.

*Effective date.*—The provision is effective on the date of enactment.

## TITLE X—COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the ''IRS Reform Act'') requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service (''IRS'') and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the ''Code'') and has widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and Treasury regarding each of the provisions included in the complexity analysis.

*Capital gain and dividend rate reduction (sec. 102 of the conference agreement)*

*Summary description of provision*

The conference agreement extends the zero- and 15-percent capital gain and dividend rates to taxable years beginning in 2009 and 2010.

*Number of affected taxpayers*

It is estimated that the provision will affect 33 million individual tax returns.

*Discussion*

The extension of the provision means that for 2009 and 2010 individual taxpayers and the IRS will continue to use the same forms for capital gains and dividends.

The extension of the lower rates for net capital gain will achieve simplification because the extension prevents the separate five-year holding periods from going into effect in 2009 and 2010. On the other hand, the extension of the lower rates for dividends will continue requiring dividends to be classified as qualified dividends and nonqualified dividends in 2009 and 2010 and will continue to require the tax to be computed using the capital gains forms.

*Increase in the AMT exemption amount (sec. 301 of the conference agreement)*

*Summary description of the provision*

The alternative minimum tax exemption amounts for 2006 are increased.

*Number of affected taxpayers*

It is estimated that the provisions will affect approximately 19 million individual tax returns.

*Discussion*

Many individuals will not have to compute their alternative minimum tax and file the IRS forms relating to that tax.

## TITLE XI—UNFUNDED MANDATES

The staff of the Joint Committee on Taxation has reviewed the tax provisions in the conference agreement for H.R. 4297, the ''Tax Relief Extension Reconciliation Act of 2005'' as agreed to by the conferees. This information is provided in accordance with the requirements of Public Law 104–04, the Unfunded Mandates Reform Act of 1995, which provides that if a conference agreement contains (1) a mandate that was not previously considered by either the House or the Senate, or (2) an increase in the direct cost of a previously considered mandate, then the committee of conference is to ensure, to the greatest extent practicable, that a mandates statement is prepared.

We have determined that the tax provisions of the conference agreement contain two unfunded private sector mandates that were not previously considered by either the House or the Senate: (1) repeal of FSC–ETI grandfather rule, and (2) amend section 911 housing exclusion. In addition, the provision relating to withholding on certain government payments imposes an intergovernmental mandate not previously considered by either the House or the Senate.

The costs required to comply with each Federal private sector mandate and Federal intergovernmental mandate generally are no greater than the aggregate estimated budget

[554] This $82,400 amount is calculated under section 911(b)(2)(D)(ii), as amended by the conference agreement provision, using current U.S. Bureau of Labor Statistics (''BLS'') Consumer Price Index data.

[555] In certain programs including grant-making to subsidize rents, the U.S. Department of Housing and Urban Development considers maximum affordable housing costs to be 30 percent of a household's income. See, e.g., United States Housing Act of 1937, 42 U.S.C. sec. 1437a (a)(1)(A), as amended.

[556] The $11,536 amount is based on a calculation under section 911(b)(2)(D)(ii), as amended by the conference agreement, using the BLS data described above.

effects of the provision as indicated on the enclosed revenue table. Benefits from the provisions include improved administration of the tax laws and a more accurate measurement of income for Federal income tax purposes.

**ESTIMATED REVENUE EFFECTS OF THE CONFERENCE AGREEMENT FOR THE "TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005"**

**Fiscal Years 2006 - 2015**

*[Millions of Dollars]*

| Provision | Effective | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2006-10 | 2006-15 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **I. Extension and Modification of Certain Provisions** | | | | | | | | | | | | | |
| 1. Increase section 179 expensing from $25,000 to $100,000 and increase the phaseout threshold amount from $200,000 to $400,000; include software in section 179 property; and extend indexing of both the deduction limit and the phaseout threshold (sunset 12/31/09) | tyba 12/31/07 | --- | --- | -2,605 | -4,459 | -209 | 2,707 | 1,772 | 1,222 | 826 | 476 | -7,274 | -271 |
| 2. Tax capital gains and dividends with a 15%/0% rate structure: | | | | | | | | | | | | | |
| a. Capital gains (sunset 12/31/10) | tyba 12/31/08 | --- | --- | -1,549 | -8,375 | 2,672 | -54 | -12,698 | [1] | [1] | --- | -7,252 | -20,004 |
| b. Dividends (sunset 12/31/10) | tyba 12/31/08 | --- | --- | -860 | -4,431 | -8,008 | -9,368 | -6,326 | -1,224 | -450 | -112 | -13,299 | -30,779 |
| 3. Controlled foreign corporations: | | | | | | | | | | | | | |
| a. Exception under subpart F for active financing income (sunset 12/31/08) | [2] | --- | -775 | -2,339 | -1,682 | --- | --- | --- | --- | --- | --- | -4,796 | -4,796 |
| b. Look-through treatment of payments between related CFCs under foreign personal holding company income rules (sunset 12/31/08) | [3] | -82 | -237 | -260 | -167 | --- | --- | --- | --- | --- | --- | -746 | -746 |
| **Total of Extension and Modification of Certain Provisions** | | **-82** | **-1,012** | **-7,613** | **-19,114** | **-5,545** | **-6,715** | **-17,252** | **-2** | **376** | **364** | **-33,367** | **-56,596** |
| **II. Other Provisions** | | | | | | | | | | | | | |
| 1. Clarification of taxation of certain settlement funds (sunset 12/31/10) | aafea DOE | -2 | -9 | -10 | -11 | -12 | -13 | -14 | -15 | -15 | -15 | -44 | -116 |
| 2. Modify active business definition under section 355 (sunset 12/31/10) | generally da DOE | -1 | -7 | -8 | -8 | -9 | -9 | -5 | -3 | -1 | --- | -33 | -51 |
| 3. Expand the qualified veterans' mortgage bond program (sunset 12/31/10) | [4] | [1] | [1] | -1 | -2 | -3 | -5 | -5 | -5 | -5 | -5 | -7 | -32 |
| 4. Provide capital gains treatment for certain self-created musical works (sunset 12/31/10) | soei tyba DOE | --- | -1 | -5 | -5 | -4 | -2 | -4 | --- | --- | --- | -14 | -20 |
| 5. Expand the eligibility for the tonnage tax election (minimum of 6,000 deadweight tons) (sunset taxable years ending before 1/1/11) | tyba 12/31/05 | -2 | -3 | -4 | -4 | -4 | -3 | --- | --- | --- | --- | -17 | -20 |
| 6. Modification of certain arbitrage rules for certain funds (include 20% State limitation) (sunset 8/31/09) | bia DOE | --- | --- | -1 | -2 | -1 | [1] | [1] | --- | --- | --- | -4 | -5 |
| 7. Amortization of song rights (sunset 12/31/10) | ppisi tyba 12/31/05 | 1 | 3 | 2 | 1 | -1 | -3 | -6 | -5 | -2 | -3 | 6 | -13 |
| 8. Modification to small issue bonds - accelerate effective date for increase in capital expenditure limit | bia 12/31/06 | --- | -2 | -9 | -15 | -18 | -18 | -18 | -18 | -18 | -18 | -44 | -136 |
| 9. Modification of treatment of loans to qualified continuing care facilities (sunset 12/31/10) | [5] | [1] | -3 | -2 | -2 | -2 | -1 | --- | --- | --- | --- | -10 | -10 |
| **Total of Other Provisions** | | **-4** | **-22** | **-38** | **-48** | **-54** | **-54** | **-52** | **-46** | **-41** | **-41** | **-167** | **-403** |

| Provision | Effective | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2006-10 | 2006-15 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **III. Individual AMT Provisions** | | | | | | | | | | | | | |
| 1. Increase individual AMT exemption amount for 2006 to $42,500 ($62,550 Joint) (sunset 12/31/06) | tyba 12/31/05 | -12,419 | -18,628 | --- | --- | --- | --- | --- | --- | --- | --- | -31,047 | -31,047 |
| 2. Treatment of nonrefundable personal credits under the individual alternative minimum tax (sunset 12/31/06) [6] | tyba 12/31/05 | -565 | -2,260 | --- | --- | --- | --- | --- | --- | --- | --- | -2,825 | -2,825 |
| **Total of Individual AMT Provisions** | | **-12,984** | **-20,888** | **---** | **---** | **---** | **---** | **---** | **---** | **---** | **---** | **-33,872** | **-33,872** |
| **IV. Corporate Estimated Tax Provisions** | | | | | | | | | | | | | |
| 1. Increase corporate estimated tax payments due July through September for corporations with assets in excess of $1 billion in certain years (increase to 105% in 2006, 106.25% in 2012, and 100.75% in 2013 of the otherwise required amount) | DOE | 2,209 | -2,209 | --- | --- | --- | --- | 3,189 | -2,793 | -396 | --- | --- | --- |
| 2. Delay due date until October 1 for a percentage of corporate estimated taxes that are otherwise due on September 15 in certain years (20.5% in 2010 and 27.5% in 2011) | DOE | --- | --- | --- | --- | -5,640 | -2,541 | 8,182 | --- | --- | --- | -5,640 | --- |
| **Total of Corporate Estimated Tax Provisions** | | **2,209** | **-2,209** | **---** | **---** | **-5,640** | **-2,541** | **11,371** | **-2,793** | **-396** | **---** | **-5,640** | **---** |
| **V. Revenue Offset Provisions** | | | | | | | | | | | | | |
| 1. Application of earnings stripping rules to partners which are C corporations | tybo/a DOE | 2 | 23 | 25 | 27 | 29 | 31 | 33 | 35 | 38 | 41 | 106 | 284 |
| 2. Reporting of interest on tax-exempt bonds | ipa 12/31/05 | [7] | 2 | 2 | 2 | 2 | 3 | 3 | 3 | 3 | 3 | 9 | 24 |
| 3. 5-year amortization of geological and geophysical costs for major integrated oil companies | apoia DOE | 5 | 28 | 49 | 48 | 30 | 10 | 3 | 4 | 6 | 6 | 160 | 189 |
| 4. Treatment of distributions attributable to FIRPTA gains (including application of FIRPTA to RICs, and prevention of avoidance through wash sales) [8] | various | 1 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 13 | 28 |
| 5. Section 355 not to apply to distributions involving disqualified investment companies | da DOE | 2 | 9 | 11 | 12 | 12 | 12 | 12 | 15 | 15 | 16 | 46 | 116 |
| 6. Loan and redemption requirements on pooled financings (30% first-year loan origination requirement) | bia DOE | 16 | 35 | 39 | 40 | 42 | 44 | 46 | 49 | 52 | 54 | 172 | 417 |
| 7. Require partial payments with submissions of offers-in-compromise (permanent 24-month rule) | osoaa 60da DOE | --- | 160 | 172 | 185 | 199 | 214 | 230 | 247 | 265 | 285 | 715 | 1,955 |
| 8. Increase in age of minor children whose unearned income is taxed as if parent's income | tyba 12/31/05 | 56 | 145 | 203 | 219 | 153 | 204 | 242 | 260 | 298 | 349 | 776 | 2,128 |
| 9. Withholding on government payments (including payments under certificate or voucher programs) for property and services | pma 12/31/10 | --- | --- | --- | --- | --- | 6,079 | 215 | 220 | 228 | 235 | --- | 6,977 |
| 10. Eliminate the income limitations on Roth IRA conversions; taxpayers can elect to pay tax on amounts converted in 2010 in equal installments in 2011 and 2012 | tyba 12/31/09 | --- | --- | --- | -154 | -293 | 2,541 | 4,929 | 1,756 | -1,080 | -1,267 | -447 | 6,432 |
| 11. Repeal of FSC/ETI binding contract relief | tyba DOE | 6 | 209 | 144 | 72 | 36 | 18 | 9 | 5 | 2 | 1 | 467 | 502 |
| 12. Modify wage limitation for section 199 to include only wages allocable to domestic production gross receipts and repeal special rule limiting amount of W-2 wages allocated by pass-thru entities | tyba DOE | 1 | 7 | 8 | 9 | 19 | 24 | 26 | 28 | 29 | 31 | 43 | 181 |
| 13. Amend section 911 housing exclusion and impose a stacking rule and provide regulatory authority to allow for geographic differences | tyba 2005 | 15 | 261 | 199 | 206 | 222 | 228 | 234 | 239 | 254 | 268 | 903 | 2,126 |

| Provision | Effective | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2006-10 | 2006-15 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 14. Tax involvement of accommodation parties in tax shelter transactions | [9] | --- | 18 | 31 | 35 | 40 | 46 | 53 | 62 | 69 | 75 | 123 | 428 |
| **Total of Revenue Offset Provisions** | | **104** | **900** | **886** | **704** | **494** | **9,457** | **6,038** | **2,926** | **182** | **100** | **3,086** | **21,787** |
| **NET TOTAL** | | **-10,757** | **-23,231** | **-6,765** | **-18,458** | **-10,745** | **147** | **105** | **85** | **121** | **423** | **-69,960** | **-69,084** |

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be July 1, 2006. Provisions are estimated relative to the Congressional Budget Office baseline of January, 2005.

Legend for "Effective" column:

aafea = accounts and funds established after
apoia = amounts paid or incurred after
bia = bonds issued after
da = distributions after
DOE = date of enactment
ipa = interest paid after
osoaa = offers submitted on and after
pma = payments made after
ppisi = property placed in service in
soei = sales or exchanges in
tyba = taxable years beginning after
tybo/a = taxable years beginning on or after
60da = 60 days after

[1] Loss of less than $500,000.
[2] Effective for taxable years of foreign corporations beginning after December 31, 2006, and before January 1, 2009, and to taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.
[3] Effective for taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.
[4] Modification of definition of a qualified veteran is effective for bonds issued on or after the date of enactment. New State volume limitation is effective for allocations of State volume limits after April 5, 2006.
[5] Effective for calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.
[6] The "Economic Growth and Tax Relief Reconciliation Act of 2001" provides that the child tax credit and adoption tax credit are allowed for purposes of the alternative minimum tax for 2002 through 2010. For purposes of the alternative minimum tax, the proposal does not treat the alternative motor vehicle credit and the alternative fuel vehicle refueling property credit as nonrefundable personal credits.
[7] Gain of less than $500,000.
[8] Some of the provisions sunset December 31, 2007.
[9] Effective for taxable years ending after the date of enactment, with respect to transactions before, on, or after such date, except that no tax applies to income or proceeds that are properly allocable to the period ending 90 days after the date of enactment; effective for disclosures due after the date of enactment.

WILLIAM THOMAS,
JIM MCCRERY,
DAVE CAMP,
*Managers on the Part of the House.*

CHUCK GRASSLEY,
JON KYL,
*Managers on the Part of the Senate.*

## RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 4 o'clock and 26 minutes p.m.), the House stood in recess until approximately 6:30 p.m.

□ 1832

## AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PORTER) at 6 o'clock and 32 minutes p.m.

## APPOINTMENT OF MEMBER TO BOARD OF VISITORS TO UNITED STATES MERCHANT MARINE ACADEMY

The SPEAKER pro tempore. Pursuant to 46 U.S.C. 1295b(h), and the order of the House of December 18, 2005, the Chair announces the Speaker's appointment of the following Member of the House to the Board of Visitors to the United States Merchant Marine Academy:

Mrs. MCCARTHY, New York

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H. Res. 803; by the yeas and nays;

H.R. 5037; by the yeas and nays;

H.R. 3829; by the yeas and nays.

The first and third electronic votes will be conducted as 15-minute votes. The second vote in this series will be conducted as a 5-minute vote.

## PROVIDING FOR CONCURRENCE BY HOUSE WITH AMENDMENT IN SENATE AMENDMENT TO H.R. 1499, HEROES EARNED RETIREMENT OPPORTUNITIES ACT

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution, H. Res. 803.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM JOHNSON) that the House suspend the rules and agree to the resolution, H. Res. 803, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 412, nays 0, not voting 20, as follows:

[Roll No. 128]

YEAS—412

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
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-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Farr
Fattah
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, Al
Green, Gene
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
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)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
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
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Ortiz
Otter
Owens
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
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
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
Wasserman Schultz
Waters
Watson
Watt
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—20

Andrews
Brown, Corrine
Cardoza
Clay
Davis (FL)
Davis (KY)
Evans
Feeney
Green (WI)
Gutierrez
Kennedy (RI)
Larsen (WA)
Meehan
Mollohan
Murphy
Nussle
Osborne
Payne
Smith (WA)
Strickland

□ 1901

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## RESPECT FOR AMERICA'S FALLEN HEROES ACT

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5037.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 5037, 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 408, nays 3, not voting 21, as follows:

[Roll No. 129]

YEAS—408

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Baca
Bachus
Baird
Baker
Baldwin
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-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Farr
Fattah
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green, Al
Green, Gene
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
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)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
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
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Ortiz
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
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
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
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
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wynn
Young (AK)
Young (FL)

NAYS—3

Frank (MA)
Paul
Wu

NOT VOTING—21

Andrews
Barrett (SC)
Brown, Corrine
Cardoza
Clay
Davis (FL)
Davis (KY)
Evans
Feeney
Green (WI)
Gutierrez
Kennedy (RI)
Larsen (WA)
Meehan
Mollohan
Murphy
Nussle
Osborne
Payne
Smith (WA)
Strickland

□ 1910

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. BARRETT of South Carolina. Mr. Speaker, on rollcall No. 129 I was unavoidably detained. Had I been present, I would have voted "yea."

## HONORING IKE SKELTON

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

Mr. CLEAVER. Mr. Speaker, on this past Friday evening, our colleague, IKE SKELTON, joined an elite group of Americans as he was presented with the Harry S Truman Public Service Award. He joins Colin Powell, Madeline Albright, Henry Kissinger and Tom Eagleton, just to name a few; and so I stand before you, Mr. Speaker and colleagues of IKE SKELTON, to say that we can stand proud of what he has done over his career and fact that he has now been recognized by the body that salutes Harry Truman.

## JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3829.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 3829, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 407, nays 0, not voting 25, as follows:

[Roll No. 130]

YEAS—407

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
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-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Farr
Fattah
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, Al
Green, Gene
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
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
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Oberstar
Obey
Olver
Ortiz
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Pearce
Pelosi
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)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
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
Wasserman Schultz
Waters
Watson
Watt
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—25

Andrews
Brown, Corrine
Butterfield
Cardoza
Clay
Crowley
Davis (FL)
Davis (KY)
Evans
Feeney
Green (WI)
Gutierrez
Johnson, Sam
Kennedy (RI)
Larsen (WA)
Mollohan
Murphy
Nussle
Osborne
Oxley
Payne
Pence
Saxton
Smith (WA)
Strickland

□ 1929

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and 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. MURPHY. Mr. Speaker, I regret that I was unable to be present for today's rollcall votes due to a death in the family. Had I been present, let the RECORD reflect that I would have voted "yea" on H.R. 1499, "yea" on H.R. 5037, and "yea" on H.R. 3829.

## PERSONAL EXPLANATION

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent from this Chamber today. I would like the RECORD to show that, had I been present, I would have voted "yea" on rollcall votes 128, 129 and 130.

## PERSONAL EXPLANATION

Mr. DAVIS of Kentucky. Mr. Speaker, on Tuesday, May 9, 2006, I was absent from the House. Had I been present I would have voted: Rollcall No. 128—"yea"; rollcall No. 129—"yea"; rollcall No. 130—"yea."

## PERSONAL EXPLANATION

Mr. GREEN of Wisconsin. Mr. Speaker, I was absent from Washington on Tuesday, May 9, 2006. As a result, I was not recorded for rollcall votes No. 128, No. 129 and No. 130. Had I been present, I would have voted "yea" on rollcall No. 128, No. 129 and No. 130.

## PRIVILEGED REPORT ON RESOLUTION OF INQUIRY TO THE PRESIDENT

Mr. SHAYS, from the Committee on Government Reform, submitted an adverse privileged report (Rept. No. 109–457) on the resolution (H. Res. 752) requesting the President to transmit to the House of Representatives not later than 14 days after the date of adoption of this resolution documents in the possession of the President relating to the receipt and consideration by the Executive Office of the President of any information concerning the variation between the version of S. 1932, the Deficit Reduction Act of 2005, that the House of Representatives passed on February 1, 2006, and the version of the bill that the President signed on February 8, 2006, which was referred to the House Calendar and ordered to be printed.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 5289

Mr. BOREN. Mr. Speaker, I ask unanimous consent that my name be removed as cosponsor for H.R. 5289.

The SPEAKER pro tempore (Mr. KUHL of New York). Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

## MILITARY RECRUITMENT TACTICS

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

Mr. BLUMENAUER. Mr. Speaker, this weekend the Portland Oregonian reported a troubling story of an 18-year-old high school student with autism in my district who, despite his disability, was recruited into the Army as a cavalry scout, over the strong objection of his parents, and in violation of military rules.

To place somebody with his disability in a combat role would create an entirely unnecessary risk of harm, not just to him, but other members of his unit who would have to rely on him.

I have written to the Secretary of Defense calling for an investigation in this case, which does not appear to be an isolated incident. Accusations of recruitment abuse are at record levels as recruiters face extreme pressure to meet enlistment targets and quotas.

I am concerned that the military has created a situation where recruiters are pressured to act in unethical and possible illegal ways in order to successfully fulfill their orders.

I believe we need a real investigation into the breadth of such requirement practices, and that new safeguards must be put in place to ensure that what happened to my young constituent doesn't happen to any other young man or woman.

Our Nation cannot produce the finest fighting force in the world without also demanding the most rigorous standards of conduct in all ranks of the military.

## THE SLY FOX OF MEXICO

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

Mr. POE. Mr. Speaker, let me recite to you an immigration policy.

1. If you migrate to this country you must speak the native language.

2. You have to be a professional or an investor. No unskilled workers are allowed.

3. There will be no special bilingual programs in the schools, no special ballots or elections, and all government business will be conducted in one language.

4. Foreigners will not have the right to vote.

5. Foreigners will never be able to hold public office.

6. Foreigners will not be a burden to taxpayers. There will be no welfare, no food stamps, no health care or other government assistance programs.

7. If foreigners come and want to buy land, that is highly restricted.

8. Foreigners may not protest. No demonstrations, no foreign flag, no political organizing, no criticizing the President or the policies. If you do, you will be sent back to your country.

9. If you come to this country illegally, you will be arrested by our Federal police and sent to jail.

Mr. Speaker, this is not U.S. immigration policy, but the alleged policy of President Vicente Fox and Mexico. President Fox is a hypocrite for trying to dictate to America what we should do in this country, letting his illegal citizens into the United States, while apparently demanding tougher immigration laws in his own country. Fox is nothing more than a fox in fox clothing. And that's just the way it is.

## SPECIAL ORDERS

The SPEAKER pro tempore. 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.

## HONORING KATLYN MARIE MARCHETTI AND STRESSING THE IMPORTANCE OF SEATBELTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. BILIRAKIS) is recognized for 5 minutes.

Mr. BILIRAKIS. Mr. Speaker, I rise today to honor the memory of a young woman whose life tragically was cut short by her decision not to wear her seatbelt.

Katlyn Marie Marchetti, known as Katie to her family and friends, was a vibrant, loving, community-oriented high school junior who dreamed of a career in fashion or interior design. She encouraged other young women through her participation in the Ophelia Project, a nonprofit group dedicated to encouraging middle and high school girls to believe that an individual's true beauty comes from within.

As a junior at Durant High School in Valrico, Florida, Katie planned to take the SATs in April and spend her summer examining colleges. Her commitment to academic achievement and hard work guaranteed that she would succeed in whatever field she chose. Katie's entire future was ahead of her, and what a bright one it would have been.

But it was not to be. On March 3, 2006, Katie was involved in a car accident that ended up claiming her life early the following morning. To the devastation of her loving parents, Vincent and Laura, and her younger brother, Andrew, she was not wearing her seatbelt. Had she buckled up, March 4 may have been one day closer to realizing her dreams. Instead, it was the day when they were ended.

Unfortunately, Katie's decision to forego wearing a seatbelt is not uncommon. Among the entire population, teenagers are the most likely to neglect this important lifesaving measure. A study conducted by the National Highway Traffic Safety Administration in 2002 indicated that only 69 percent of 16 to 24-year-olds use seatbelts, compared to 82 percent of children and 76 percent of adults. Among 16 to 19-year-olds, the statistics are more troubling. Only 40 percent use seatbelts consistently. And the Fatality Analysis Reporting System shows that 63 percent of teens killed in crashes were not wearing seatbelts.

Data also reveals insights into why teens neglect to fasten up when they get in a vehicle. According to a 2003 survey, only 79 percent of teen drivers reported that they wear a seatbelt all the time. About 47 percent indicated that safety belts were as likely to harm as to help, and 30 percent said that crashes close to home were usually not as serious. Approximately 30 percent affirmed that they would feel self-conscious if they were going against the group norm in wearing safety belts.

Mr. Speaker, these statistics are troubling. Seatbelt use has proven effective time and again in saving lives. According to NHTSA, the wearing of safety belts saved an estimated 14,164 lives in 2002. Choosing to buckle up is the best protection against drunk, tired, or aggressive drivers. And yet people choose not to take this precaution. What can be done to encourage them to do so?

Studies have shown that highly publicized and visible enforcement of safety belt laws have increased seatbelt use. Peer-led education and awareness also hold promise in changing youth norms and attitudes about seatbelt use. Parental involvement is absolutely critical. Children who observe their parents using seatbelts and obeying traffic laws are more likely to adopt these lifesaving habits.

Vincent and Laura Marchetti imparted this wisdom to their daughter and even prevented her from getting her license until she was 6 months beyond her 16th birthday. They instilled a sense of responsibility in her and practiced driving under all sorts of conditions, but it was not enough.

Technological advances have proven to be one of the most promising catalysts for increased seatbelt use. A study commissioned by NHTSA found that while enhanced safety belt reminders such as buzzers, lights and dashboard messages are aimed at the general population, they may be particularly effective for teenagers. Because teens tend to forget to fasten their seatbelts and are less likely than adults to disengage warning systems, they may be more likely to be persuaded to buckle up by these annoyances.

Mr. Speaker, I encourage the automobile industry to help address this problem by increasing and expanding the manufacture of vehicles with warning systems that do not disengage until the seatbelt is fastened. These systems may save precious young lives.

Mr. Speaker, I didn't know Katie personally, but through my discussions with her parents and brother who are in Washington this week, I know what a special young woman she was. I grieve with them and the rest of their family for their loss. I admire the strength and perseverance of the Marchettis to channel this grief into educating teenagers and their parents about the importance of seatbelt use through the Katie Marchetti Memorial Foundation. I rise today to join their call and to plead with all Americans to ''cross it, click it and live.''

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.)

## THE BIG CHILL IN WASHINGTON, D.C.

Mr. MCDERMOTT. Mr. Speaker, I ask unanimous consent to speak out of turn.

The SPEAKER pro tempore. Without objection, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

There was no objection.

Mr. MCDERMOTT. Mr. Speaker, it is awfully cold in Washington, D.C. these days, and the arrival of spring is not going to change the frigid temperature beginning to grip the Nation's Capital.

No matter how much we stand in the bright sunlight, Washington, D.C. is fast becoming a cold, cold place under this President and administration.

The Big Chill is on and it is becoming an ice age for the ''People's-Right-to-Know.''

The New York Times and The Washington Post recently won Pulitzer Prizes for breaking through the administration's secrecy to inform the American people about secret prisons and secret wiretapping.

In response, the administration wants journalism stopped. It just gets in the way of the administration telling people only what they want them to know.

Maintaining this veil of secrecy is so important that the administration directed the Attorney General to see if he might invoke the 1917 Espionage Act as a way to make the first amendment disappear. By controlling what you know, they hope to control what you think.

It is the solution to their Iraq dilemma. You don't have to mislead the people, as the President did, if the people simply don't know anything at all. That is what this assault on free speech is all about.

I seek permission to enter into the RECORD an editorial promoted by the Washington Times by Nat Hentoff entitled ''Chilling Free Speech.''

The President and his administration are doing everything possible to impose censorship. They know that secrecy is the fastest, most effective way to silence dissent.

If the American people know what they are doing, the American people could make them accountable for what they are doing. But there is no accountability for their actions, so they hide them under a blanket of secrecy.

The President cried ''shameful'' that the Pulitzer Prize-winning journalism had reunited the American people with the truth about secret prisons and secret wiretapping ordered by the President and his administration.

In other words, the truth made it out into the open, and that was not part of their plan. The only way to account for it was to attack those responsible for telling us. It is the centerpiece of the

Republican playbook. Attack anyone who disagrees. I know those tactics firsthand.

But the cracks are beginning to show in the Republican wall of silent acquiescence.

□ 1945

A rubber stamp is still being used in this Congress by the Republicans, but many of my colleagues, my Republican colleagues, know that their mandatory vote at the discretion of the President is not in the best interest of the American people, and the people are beginning to listen to other voices, when they can hear them above the clatter of the Republican noise machine. Here is the proof.

David Wise in the Los Angeles Times recently wrote an article entitled, ''Secrecy's Shadow Falls on Washington.'' I ask permission to enter this article in the RECORD. To help the American people understand how pervasive secrecy in the administration is, let me read a short excerpt from Mr. Wise's article, quote, ''The National Archives and Records Administration have been embarrassed by the revelation that at least 55,000 documents formerly available to researchers have been withdrawn and reclassified under secret agreements with the military and the CIA. The deals were so secretive that the documents simply disappeared from the shelves.'' That is the end of the quote.

At least temporarily the head of the National Archives has suspended the disappearance of American history. It doesn't mean the threat has passed; it just means someone is fighting to keep America free. We have two choices, the free flow of information or the outright control of information. America is strong because of the protections within the free flow of information. It is guaranteed by the first amendment.

But the President and his majority want to tell you what to think through the outright control of the information. Geoffrey Stone, author and law professor at the University of Chicago wrote an article in the New York Times the other day called, ''Scared of Scoops.'' Again, I ask to enter it in the RECORD.

As the writer points out, the administration's primary tactic is intimidation. When in doubt, they try to make you afraid. When unpopular, they try to make you afraid. When they are losing their hold on power because of their record, they tend to make you afraid. The only reason you know this President has no energy policy for America is because he can't hide the price of gasoline at the pumps. He would make it a secret if he could.

Don't be surprised if the President tries to classify the price of gasoline as a national security matter. That is his method of accountability to the American people. None. In a Nation where free speech is the last defense against absolute power, they don't want you to know because the more you know, the worse they look.

[From the Washington Times, May 8, 2006.]

CHILLING FREE SPEECH

(By Nat Hentoff)

Beyond the firing of CIA officer Mary O. McCarthy for leaking classified information to the press is a much larger story of the administration's increasing investigation of other such press leaks as a possible prelude to an American version of Britain's stringent Official Secrets Act. In February, CIA Director Porter Goss told the Senate Intelligence Committee of the need for a grand jury investigation including reporters who receive these leaks.

The charge against Miss McCarthy, which she denies, is that she was a source of highly classified information for Dana Priest's report in The Washington Post on CIA secret prisons in Eastern Europe. Miss Priest, a 2006 winner of a Pulitzer award for the story, has been writing about the CIA's ''black sites'' since late 2002; and Sen. Pat Roberts, chairman of the Senate Intelligence Committee, continually refuses to authorize an investigation of the CIA's violations of American and international laws in its prisons wholly hidden from our rule of law.

Miss Priest is already subject to a Justice Department investigation, as are New York Times reporters James Risen and Eric Lichtblau for their disclosure of the president's secret approval of the National Security Agency's warrantless surveillance of Americans. (Those reporters have also received Pulitzers this year, despite the president's characterization of their reporting as ''shameful.'')

The administration's position has been clearly stated by FBI spokesman Bill Carter (The Washington Post, April 19): ''Under the law, no private person (including journalists) may possess classified documents that were illegally provided to them. These documents remain the property of the government.''

The law Mr. Carter cited is this administration's expansion of the Espionage Act of 1917, which is now before the courts in a case that can greatly diminish the First Amendment rights of the press—and the right of Americans to receive information about such lawless government practices as the CIA's secret interrogation centers and the president's violation of the Foreign Intelligence Surveillance Act in unleashing the National Security Agency.

This espionage case—United States of America v. Lawrence Anthony Franklin, Steven J. Rosen and Keith Weissman—is the first in which the federal government is charging violations of the Espionage Act by American citizens—who are not government officials—for being involved in what until now have been regarded as First Amendment-protected activities engaged in by hundreds of American journalists.

Messrs. Rosen and Weissman, former staff members of the American Israel Public Affairs Committee (AIPAC)—who have since been fired—are accused of receiving classified information from Defense Department analyst Franklin regarding U.S. government Middle East and terrorism strategy. Messrs. Rosen and Weissman are charged with then providing that classified information to an Israeli diplomat—and a journalist.

Government official Franklin has pleaded guilty and been sentenced to prison. But defense attorneys for Rosen and Weissman declare: ''Never (until now) has a lobbyist, reporter or any other nongovernment employee been charged . . . for receiving oral information the government alleges to be national-defense material as part of that (accused) person's normal First Amendment-protected activities.''

In an amicus brief to the U.S. District Court for the Eastern District of Virginia, the Reporters Committee for the Freedom of the Press (with which I am affiliated) says:

''These charges potentially eviscerate the primary function of journalism—to gather and publicize information of public concern—particularly where the most valuable information to the public is information that the government wants to conceal'' so that the public cannot ''participate in and serve as a check on the government.'' (That's why the First Amendment's freedom of the press was added to the Constitution in 1791.)

But the judge now hearing this espionage case, T.S. Ellis III, already said in March: ''Persons who come into unauthorized possession of classified information must abide by the law. That applies to academics, lawyers, journalists, professors, whatever.'' Recently, the judge appears to be backing off.

However he decides, and it's uncertain, Steven Aftergood—head of the Project on Government Secrecy at the Federation of American Scientists—says: ''To make a crime of the kind of conversations Rosen and Weissman had with Franklin over lunch would not be surprising in the People's Republic of China. But it's utterly foreign to the American political system.'' (This censorship of the press was cut out of the Espionage Act of 1917.)

If the Supreme Court agrees with the Bush administration on this case, we will, as Mr. Aftergood says, have to build many more jails—and disarm the First Amendment.

---

[From the Los Angeles Times]

SECRECY'S SHADOW FALLS ON WASHINGTON

(By David Wise)

Unencumbered by a First Amendment, Britain for almost 100 years has had an Official Secrets Act to prevent leaks to the media and to prosecute offenders, including journalists.

Some Bush administration officials and members of Congress are casting a longing eye at the British law. If only the United States had a similar law, their reasoning goes, the reporters who revealed CIA-run prisons in Eastern Europe and the National Security Agency's warrantless wiretapping of terrorism suspects would be prosecuted instead of receiving Pulitzer Prizes.

The U.S. Constitution remains a barrier to those who would restrict the flow of information to the media—and thus to the public. But administration policies are chipping away at its protections. The nation is in danger of having an Official Secrets Act not through passage of a law—although that is a possibility—but through incremental steps.

The evidence is mounting: Judith Miller, as a reporter for The New York Times, spent 85 days in jail after refusing to name a confidential source in the investigation by Special Prosecutor Patrick J. Fitzgerald into the leak of the name of CIA officer Valerie Plame. Miller and half a dozen other reporters have been questioned by the prosecutor.

Two former staff members of the American Israel Public Affairs Committee, or AIPAC, a pro-Israel lobby, are on trial in federal court on charges of conspiring to violate espionage statutes by obtaining defense information from a Pentagon official. Both lobbyists are civilians, and the government does not claim they received any documents, classified or otherwise.

The National Archives and Records Administration has been embarrassed by the revelation that at least 55,000 documents formerly available to researchers have been withdrawn and reclassified under secret agreements with the military and the CIA. The deals were so secretive that the documents simply disappeared from the shelves.

Historian Matthew Aid, who discovered the reclassification, pointed out that because he

possesses some of the documents, he might be in violation of the Espionage Act. Allen Weinstein, who heads the National Archives, has halted the documents' reclassification.

The FBI is seeking access to the papers of the late muckraking columnist Jack Anderson to seize classified documents in his files. Anderson broke many stories the government tried to keep secret. His family, citing the First Amendment, has refused the agency's request. It is unclear how far the FBI plans to push the matter, or whether the government will try next to examine the files of other journalists, dead or alive.

Porter J. Goss, director of the CIA, has testified that ''it is my aim and it is my hope'' that reporters who receive leaks on intelligence subjects are hauled before a grand jury and forced ''to reveal who is leaking this information.'' The CIA dismissed Mary O. McCarthy, a senior official, for allegedly having unauthorized contacts with the media and disclosing classified information to reporters. The agency let stand the impression that she had leaked the story of the CIA secret prisons for terrorists in Eastern Europe to Dana Priest of The Washington Post, who won a Pulitzer Prize for her account. McCarthy's attorney says she was not the source of the story and has never leaked classified information.

Congress is considering legislation that would enable intelligence agencies to revoke the pensions of employees who make unauthorized disclosures. The measure also would allow the CIA and NSA to arrest suspicious people outside their gates without a warrant.

Although the indictment of the two lobbyists for the American Israel Public Affairs Committee is replete with references to ''classified information,'' the espionage laws, with one narrow exception, refer only to ''information relating to the national defense.'' The spy laws were passed in 1917 during World War I. A 1951 presidential executive order created the current system of classifying documents.

There is no law prohibiting leaks, so the government has used the espionage laws to combat the practice. President Clinton vetoed anti-leak legislation passed in 2000 that would have made it a crime for a government official to disclose classified information.

To criminalize leaks of government information simply because the information is marked ''classified'' is absurd. In 2004, the most recent year for which figures are available, the government classified over 15.3 million documents. It is hardly likely that the government has that many real secrets to withhold from its citizens.

Unnecessarily classifying documents is a fact of life in Washington. Many bureaucrats know that unless they stamp a document ''secret'' or ''top secret,'' their superiors may not even bother to read it. One agency classified the fact that water does not flow uphill. During World War II, the Army labeled the bow and arrow a secret, calling it a ''silent flash less weapon.''

The government's theory in the lobbyists' prosecution could, if it stands, change the nature of how news is gathered in Washington and how lobbyists and academics interact with the government.

''What makes the AIPAC case so alarming,'' said Steven Aftergood, director of the Project on Government Secrecy of the Federation of American Scientists, ''is the defendants are not being charged with being agents of a foreign power but with receiving classified information without authorization. Most Americans who read the newspaper are also in possession of classified information, whether they know it or not. The scope of the charges is incredibly broad.''

Officials in Washington talk to reporters every day about matters that may, in some government file cabinet, in some agency, be stamped with a secrecy classification. How would a journalist be expected to know that he or she was a ''recipient'' of classified information and, in theory, subject to prosecution under a law that was meant to catch spies?

The original British Official Secrets Act, passed in 1911, allowed the crown to prosecute anyone, even a journalist, who published a railroad timetable. The act was made less draconian in 1989, but still carries tough provisions and can apply to journalists.

Until recently, the U.S. government applied the espionage laws to officials who leaked, not to the recipients.

''Otherwise,'' Aftergood said, ''Bob Woodward would not be a wealthy, bestselling author. He would be serving a life sentence.''

[From the New York Times]

SCARED OF SCOOPS

(By Geoffrey R. Stone)

While tensions between the federal government and the press are as old as the Republic itself, presidential administrations have never been inclined to criminally prosecute the news media for publishing information they would rather keep secret. In recent weeks, however, the Bush administration and its advocates, including Attorney General Alberto Gonzales, have spoken of prosecuting The Washington Post and The New York Times for publishing Pulitzer Prize-winning exposés of the administration's secret prisons in Eastern Europe and secret National Security Agency surveillance of Americans.

Specifically, the president and some of his supporters say reporters and publishers have violated a provision of the 1917 Espionage Act, which provides in part that anyone in unauthorized possession ''of information relating to the national defense, which information the possessor has reason to believe could be used to the injury of the United States'' who willfully communicates it to any person not entitled to receive it ''shall be fined under this title or imprisoned not more than 10 years, or both.''

But for at least three reasons, such threats are largely empty. First, the provision was never intended to be used against the press. When the Espionage Act was proposed by President Woodrow Wilson, it included a section that would expressly have made it a crime for the press to publish information that the president had declared to be ''of such character that it is or might be useful to the enemy.'' Congress overwhelmingly rejected that proposal, with members of both parties characterizing it as ''un-American'' and ''an instrument of tyranny.''

Second, if the 1917 act were meant to apply to journalists, it would unquestionably violate the First Amendment. Laws regulating speech must be precisely tailored to prohibit only speech that may constitutionally be proscribed. This requirement addresses the concern that overbroad laws will chill the willingness of individuals to speak freely.

Not surprisingly, because the act was drafted before the Supreme Court had ever interpreted the First Amendment in a relevant manner, it does not incorporate any of the safeguards the court has since held the Constitution requires. For example, the provision of the act is not limited only to published accounts that pose a ''clear and present danger'' to the nation. For this reason, it seems clear, any prosecution of the press under it would be dismissed out of hand by the judiciary.

Third, if Congress today enacted legislation that incorporated the requirements of the First Amendment, it could not apply to articles like those published by The Times and The Post. Such a statute would have to be limited to articles that, first, do not disclose information of legitimate and important public interest and, second, pose a clear and present danger. Nobody could deny that articles like those on secret prisons and electronic surveillance of Americans clearly concerned matters of legitimate and important public interest; nor could the administration show that such disclosures created a clear and present danger of serious harm to the national security.

I do not mean to suggest that the government has no interest in keeping military secrets or that it may never punish the press for disclosing classified information. To the contrary, the government may take many steps to keep such information secret, including (in appropriate circumstances) firing and even prosecuting public employees who unlawfully leak such information.

Moreover, in narrowly defined circumstances, the government may prosecute the press for disclosing classified national security information. Such a prosecution might be consistent with the First Amendment, for example, if a newspaper revealed that the government had secretly broken an important Qaeda code, thus causing that group to change its cipher. But revelations like those in The Times and Post revealed significant government wrongdoing and therefore are essential to effective self-governance; they are at the very core of the First Amendment.

Although the threats of the White House are largely bluster, they must nonetheless be taken seriously. Not because newspapers are really in danger of being prosecuted, but because such intimidation is the latest step in this administration's relentless campaign to control the press and keep the American people in the dark.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. MCHENRY) is recognized for 5 minutes.

(Mr. MCHENRY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## DON FRANCISCO

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent to claim Mr. MCHENRY's time.

The SPEAKER pro tempore. Without objection, the gentlewoman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I am so proud to rise today to honor the 20th anniversary of the television personality Don Francisco and his wildly popular show Sabado Gigante.

This show was created and is still hosted by Mr. Mario Kreutzberger, better known as Don Francisco, and is watched every Saturday evening by, get this, more than 100 million people worldwide.

Don Francisco's Spanish language international television show Sabado Gigante was recognized by the Guinness Book of World Records as the world's longest-running variety program.

After a successful 24-year run in Chile, the show's operations were

moved to the United States in 1986 when it began airing throughout the Americas, through the prominent U.S.-Spanish television network, Univision.

By 2001, Don Francisco had already been honored with a star on the Hollywood Walk of Fame and The New York Times said he was, quote, ''probably the most popular and best-known Hispanic television personality,'' end quote, and described him as ''a mix of Ed Sullivan, Regis Philbin, Art Linkletter, Bob Barker, Geraldo Rivera and Phil Donahue, with a dash of Oprah Winfrey's civic-mindedness.''

Don Francisco, your commitment to the U.S.-Hispanic community helped bridge the gap between North America and our the Latin American cultures. Your determination taught newcomers the values and the endless opportunities that their adopted country has to offer.

Don Francisco, you have had a long and illustrious career that has spanned many years of service, dedication, hard work and devotion not only for Hispanics, but for all Americans across our country. Your leadership throughout the past years has helped our Hispanic community grow to become one of America's largest-growing populations and the ideals that it stands for have become an intrinsic part of our country.

A stronger and more educated American population contributes to the greatness of this wonderful Nation, making us competitive for this new global economy in this technologically advanced society.

Your commitment to enriching the lives of others is truly commendable. It is the perseverance and the compassion of people like you who continue to help in the development of a stronger, healthier and more successful community for all Hispanics in the United States.

Don Francisco, you have been such an incredible influence for all Americans across the Americas that this tribute is much well deserved. Your personality, your charisma, your willingness to help others and your incredible talent have assured you a prominent place in television history.

I congratulate Don Francisco wholeheartedly, and I wish him the very best. Felicidades, Don Francisco and 20 more years.

---

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

---

## JOB DESCRIPTION OF MOTHERS

Mr. EMANUEL. Mr. Speaker, I ask permission to speak out of order.

The SPEAKER pro tempore. Without objection, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

Mr. EMANUEL. Mr. Speaker, with Mother's Day coming up, I had come across a document on the Internet that was sent around to a number of women, including some in my office. In honor of all the mothers across America, I would like to read this, if I could.

A woman, renewing her driver's license at the county clerk's office, was asked by the woman recorder to state her occupation.

She hesitated, uncertain how to classify herself. ''What I mean is,'' explained the clerk, ''do you have a job or are you just a . . . ?''

''Of course I have a job,'' snapped the woman.

''I'm a Mom.''

''We don't list 'Mom' as an occupation, 'housewife' covers it,'' said the recorder emphatically.

I forgot all about her story until one day I found myself in the same situation, this time at our own town hall. The clerk was obviously a career woman, poised, efficient and possessed of a high sounding title like, ''Official Interrogator'' or ''Town Registrar.''

''What is your occupation?'' she probed.

What made me say it? I do not know. The words simply popped out.

''I'm a Research Associate in the field of Child Development and Human Relations.''

The clerk paused, ball-point pen frozen in midair and looked up as though she had not heard right. I repeated the title, slowly emphasizing the most significant words. Then I stared with wonder as my pronouncement was written in bold, black ink on the official questionnaire.

''Might I ask,'' said the clerk with new interest, ''just what you do in your field?''

Coolly, without any trace of fluster in my voice, I heard myself reply, ''I have a continuing program of research, (what mother doesn't) in the laboratory and in the field (normally I would have said indoors and out).

''I'm working for my Master's, (the whole darned family) and already have four credits (all daughters). Of course, the job is one of the most demanding in the humanities, (any mother care to disagree?) and I often work 14 hours a day (24 is more like it). But the job is more challenging than most run-of-the-mill careers and the rewards are more of a satisfaction, rather than just money.''

There was an increasing note of respect in the clerk's voice as she completed the form, stood up and personally ushered me to the door.

As I drove into our driveway, buoyed up by my glamorous new career, I was greeted by my lab assistants, ages 13, 7, and 3. Upstairs I could hear our new experimental model (a 6-month-old baby) in the child development program, testing out a new vocal pattern. I felt I had scored a beat on bureaucracy. And I had gone on the official records as someone more distinguished and indispensable to mankind than ''just another Mom.''

Motherhood. What a glorious career, especially when there's a title on the door.

Does this make grandmothers ''Senior Research Associates in the Field of Child Development and Human Relations,'' and great-grandmothers ''Executive Senior Research Associates''? I think so. I also think it makes aunts ''Associate Research Assistants.''

Please send this on to another mom, grandmother, aunt and any friends you know.

To all those mothers who will be celebrating Mother's Day, who have the most important profession, the most satisfying profession and probably the only title that says in three words what all of us rely on, to those mothers out there, thank you for what you do every day making sure our children have a home, a place of warmth, and a place of great values in honor of all mothers on Mother's Day.

---

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES of North Carolina addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

---

## KARA POE ALEXANDER, PH.D.

Mr. POE. Mr. Speaker, I request permission to take Mr. JONES' place.

The SPEAKER pro tempore. Without objection, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

There was no objection.

Mr. POE. Mr. Speaker, when born in the hot humid heat of a Texas August in 1976, she was called a bicentennial baby in honor of America's 200th birthday. She was the second of four children and grew up with that second child competitive determination.

She was strongly serious as she went to elementary school. While enjoying playing with her siblings, Kim, Kurt and Kellee Lyn, she also liked irritating the older next-door-neighbor boy.

While growing up, Kara learned and liked to plant vegetables and to take care of a large family garden. But upon entering elementary school, she spoke some words with difficulty, and her speech patterns were not really satisfactory. This began to affect her socially and really bruised her young self-image.

Her third grade teacher at the Oaks Elementary School in Humble, Texas, was determined to help this little girl and worked with her in pronouncing those English words correctly. This little girl, Kara, overcame this issue and speaks perfect English with an exceptional Texas accent, another of America's dedicated school teachers helping out one child at a time.

Anyway, Kara played on soccer teams and was on the swim team with her brother and sisters. They spent

those long Saturdays competing at swim meets all over North Houston. Kara not only took to sports but academics in high school. She lettered 4 years in basketball, was the team captain, high scorer her senior year and played in the Texas State playoffs. Volleyball and cheerleading were also activities she enjoyed and participated in.

After doing some babysitting jobs at 15, Kara applied to work at a local Target store while in school. On her job application, she was asked about her job experiences and reason for leaving her previous job. So she put, quote, ''last job, baby sitting.'' Reason for leaving, quote, ''Kids were brats.'' Blunt truth got her the job.

She continued to tell it like it was, even to this day. At Target, Kara Poe learned how to deal with real people in the real world by working as a cashier. She doesn't like to admit it, but she even held the long-time record as the fastest scanner. She has continued her studies and studied endlessly. She played high school sports, and has continued to work and save as much money as she possibly can.

By the way, Mr. Speaker, Kara graduated valedictorian from her high school, Northland Christian High School in Houston, Texas. Kara, like all the Poe kids, went to Abilene Christian University, and she worked while in college and still was able to graduate with a grade point average of 3.88 with a B.S. in interdisciplinary studies, English and history.

Quite opinionated on all subjects, especially politics and sports, being an avid Astros fan, she loves the freedoms and loves this country.

She went on to get her Master's degree at Abilene Christian University in English, and her GPA was a perfect 4.0. She got married to a guy by the name of Shane Alexander; I was honored to perform that wedding. She has a 10-month-old daughter named Elizabeth.

Mr. Speaker, this Saturday that little girl who had trouble with speech in third grade will receive her doctoral degree from the University of Louisville in rhetoric and composition. She has a GPA of 3.92.

At 29, she obtained her doctoral degree in less than 4 years, a marvelous amount of time and a short time for obtaining a doctorate.

She already has a job at Baylor University in Waco, Texas, and she will be teaching on the tenured track. She will be teaching English, Mr. Speaker, and she will be a teacher like her mother, both her grandmothers and her sister, Kim.

So, Kara, as your dad, I am proud of your determination, commitment and attitude. Congratulations to you for your success in the field and noble field of education and being a teacher. Congratulations to you for your success in life.

That's just the way it is.

□ 2000

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## LOSING GROUND ON THE WAR ON TERRORISM

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, the so-called war on terrorism has been going on for more than 4½ years, and it looks like terrorism is winning.

The U.S. Government released its annual survey of global terrorism two Fridays ago. Of course, they always save the bad news for Friday, when they hope everyone will have checked out for the weekend. The results? The number of terrorists attacks worldwide quadrupled from 2004 to 2005, climbing over 11,000. That is 30 strikes by terrorists every day, an average of more than one an hour.

Of the 11,000, nearly one-third took place in Iraq, and those Iraqi attacks led to 8,300 deaths. Keep in mind, these are just civilian casualties. These numbers don't even include the number of American troops who have been killed at the hands of the insurgency.

Thank goodness there have been no more attacks on American soil and nothing on the order of 9/11. Then again, if violent extremists want to kill Americans, they don't have to infiltrate our borders. They can make a much easier trip to Iraq, where 130,000 of our bravest men and women are deployed.

The dirty little secret that you won't find in the report is that the Iraq war is responsible for the proliferation of terrorism in recent years. Our preemptive invasion strike on Iraq inspired vicious animosity towards the United States, the likes of which we have never seen and the likes of which we will be dealing with for years and years to come.

The continued occupation is a rallying point for bin Laden and everyone who already dislikes America. The war has given jihadists the best possible propaganda tool, turning Iraq into a hotbed of terrorism. And the way we have conducted the war has only exacerbated the problem. The abuses at Abu Ghraib, the detention camps at Guantanamo, the secret gulags around the world, all of these have eroded U.S. moral authority and further radicalized the Muslim world.

The President has sold the Iraq campaign as some kind of antidote to terrorism. The truth is just the opposite. Our presence in Iraq is pouring gasoline on the fire instead of putting it out.

Peter Bergen, a terrorism expert at the New America Foundation, put it this way: he said, ''The President is right that Iraq is the main front in the war on terrorism, but this is a front we created.''

There was one part of the terrorism report that I just could not believe. The Washington Post cites the survey as indicating that bin Laden and al-Zawahiri are frustrated by their lack of direct control over terrorist operations. Here is a man who is American public enemy number one, a sadistic killer who President Bush promised to hunt down and capture, dead or alive, and the best we can say 4½ years later is that we have got him frustrated?

There is only one answer, Mr. Speaker: we must bring our troops home, and we must do it at once. Every day that we persist with this occupation is another day that the insurgency gathers strength and further justifies itself. Every day that we stay in Iraq is a day that we lose ground in the war on terror.

It is time for a new counterterrorism strategy like the one I have outlined in my SMART Security proposal; one that is based on strong intelligence and cooperation with our allies and multilateral organizations; one that invests in homeland security and enhances efforts to cut off financing for terrorist organizations.

Defeating terrorism will require more brains and less brawn. It demands, first and foremost, that we bring our troops home.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Hampshire (Mr. BASS) is recognized for 5 minutes.

(Mr. BASS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## MAINTAINING AIR SUPERIORITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Utah (Mr. BISHOP) is recognized for 5 minutes.

Mr. BISHOP of Utah. Mr. Speaker, in 1781, George Washington, even though he had won the Revolutionary War, kept the Army intact and on alert for 2 more years until the signing of the peace treaty, saying, ''There is nothing that will so soon produce a speedy and honorable peace as a state of preparedness for war.''

Now, this week we will be voting on the Defense Authorization Act, which is not talking about our military in this year or the next year, but 10 and 15 years from now, because those who have our positions 10 and 15 years from now will have their military and their diplomatic options defined by what we do on the Defense Authorization Act this week.

The United States is superpower because of the quality of the individuals we have in our military and the technology and weapons system that back them up. As former general and Secretary of State Colin Powell said, ''If

we go to war, we don't want to be in a fair fight.''

Now, Operation Desert Storm in the early 1990s illustrated the awesome air superiority we have. Afghanistan and Iraq clearly illustrate our air superiority. In fact, the United States has had air superiority since the Korean War. However, we have flown a military sortie every day for the past 15 years, and it is starting to take its toll on our equipment.

A Defense Department study recently said that there has been a 10 percent decline in the mission capable rates of our aircraft since Desert Storm in the 1990s. Now, this 10 percent reduction is not because we have maintenance deficiencies or trained personnel deficiencies. It is because we are still flying the same aircraft, this time, though, much older and with hundreds of more flight hours on the same airframe.

In the 1990s, we took a procurement holiday in Congress and wanted to cash in on the so-called ''peace dividend,'' which simply meant in practical terms the defense budget was cut in favor of other Federal spending and the new generation of fighters, the F–22s, the F–35s, were caught in the cross-hairs of that spending practice and shoved to the outside years, which meant we are now starting to fall behind. We were ignoring the leapfrog of technology that is available to our systems. We are now realizing that the F–22 and the F–35 are going to be that which closes gaps and helps us to ensure air dominance for the foreseeable future.

Both the 22 and the 35 employ stealth technology, which provides our warfighters with a critical edge in any conflict, even in low intensity battles like Iraq. Those responsible for planning the air campaign need the protections provided by stealth fighters in protecting other non-stealth aircraft, as well as ground combat.

The flight range of the 22 is three times the combat radius, and the 35 is projected to have more than double the unrefueled combat radius of the fighters they would hope to replace. The avionics would allow them for a longer stand-off, which simply means we, the good guys, can see, detect, and shoot down the bad guys before they recognize we are in the area, which is what we want to have in any type of combat.

These weapons systems we are talking about are incorporating high-tech advances in composite technologies which result in more durable aircraft parts, reduced corrosion, and lessen the needs of maintenance in the future. What we are doing, Mr. Speaker, is planning for the future.

In 2004, we had a program called Cope India, which revealed that pilots outside the United States are certainly capable of achieving very high levels of proficiency. While we don't count India as a likely enemy, this exercise was an eye-opener for the United States in the sense that it demonstrated the United States can no longer take for granted that it will always be facing an inferior air adversary, even amongst Third World nations.

Fifteen years from now we do not know whether we will be fighting a war of terror or a conventional war. But, as Washington said, we must be prepared for whatever circumstances may be there. Because at the end of the day when we are compelled to take up arms to defend our freedom, we don't want to be in a fair fight. We want our sons and daughters to have the very best capabilities, and we want to prevail.

We must recommit as a Nation to provide the support and the resources to properly field the next generation of fighters, the F–22 and the F–35. We have an oversight responsibility to make sure that these programs are carried out in a responsible manner. We need to work together to ensure that they succeed, because they are one of the most important foundation blocks of our future national defense.

Terrorism does not take a holiday. We cannot. We must look forward to the future, so that 10 and 15 years down the line we will be able to defend ourselves in an appropriate way.

## A NEED FOR SELF-MADE LEADERS, NOT DERIVATIVE LEADERS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, I have been asking myself why the President of the United States really can't get a grip on policies that would help America become energy independent here at home. Last week, as we were looking at rising gasoline prices all across our country, he suggested that we import, import more ethanol.

I thought about that comment and his whole administration's lack of attention to energy independence for our country, and I sort of sat there at my desk and thought, why would the President behave this way? And I thought a lot about how we form our personalities and when we take whatever occupation we get into as adults, why we behave the way we do.

There are some personalities that result from experiences that make you self-made, and then there are those personalities that I call derivative personalities, and their behaviors result from a different set of experiences, so when they get in a job they really can't command and direct, because they have never really done it themselves.

Here is an example. I grew up in a family where our mother made our clothing. We didn't have a lot of money, so we learned how to scrimp, and we learned how to invent and to create. And those are learned skills.

The President grew up in a family that was extraordinarily wealthy. I would guess that they bought most of their clothes. In fact, I can remember when the President, his father, didn't even know how much socks cost in the store during one of his Presidential races. They always bought everything. They never made. They had enough assets, he inherited enough, that they really didn't have to learn how to be self-made. So he doesn't have a mind that lends itself to creativity necessarily.

We came from a family where we ran our own small business. Our dad made his own products. We made our own sausages, our own meatloafs, our own pickles. Dad had to do everything himself. He had to figure out how to finance his business.

We have a President who inherited his wealth. Everything that he did, he had this soft landing pad. He failed a number of times in businesses that he inherited from his own family, but he never really paid the consequences, because someone was always there to catch him and to refinance him, even in the purchase of the baseball team that he owned, which then he eventually sold and used those dollars to get elected President of the United States. Most American families don't have that kind of landing pad.

In our family, we had to earn our way to go to college, and we had to get good grades, because there was nobody there that was going to save you. Nobody in our family had ever gone to college before. I had to keep good grades to keep a scholarship up for the scholarship I did receive.

But the President's education was paid for by his family. In fact, he was admitted to schools, based on his grades, that most Americans could never get admitted to.

I think what these kinds of experiences do is create a different kind of personality, a personality of people who are self-made and they know how to create, versus a personality that is more derivative and sometimes can't solve problems, and they look to someone else to solve them.

So if we have an energy problem in America, the President would look to somebody else. And he says, well, let's import the ethanol. He doesn't really think about creating a whole new industry here at home and using the Government of the United States to help create that industry.

That is why he has proposed cutting programs. At the same time out of one side of his mouth he talks about energy addiction, but then is trying to use the Government of the United States to create a new energy future for America. He really doesn't know what to do with it when he is in command of it.

It was actually Congress that adopted the first energy title to a farm bill. It didn't come from the administration. And if you look at every single budget that he has offered, he talks about energy independence, and then he cuts the programs that would lead us in that direction.

What America really needs is a new biofuels industry as a complement to other forms of power that we can create. But we need self-made people to

help move America in that direction. Many of our farmers are figuring it out. We need programs to help them finance the development of the new infrastructure and the production facilities that are necessary to green up this industry. They need the President's help to do it so they are not bought out by Big Oil and by companies that really don't want them to bring up this new industry. But the President really doesn't know how to create it. His Secretary of Agriculture isn't doing it.

We could have programs like title IX in USDA funded at $1 billion. We struggle to even get $25 million or $23 million in our committee, which is laughable in terms of a trade deficit in oil of over $60 billion and counting.

The President's Cabinet members are not energy-focused. The Secretary of Defense said energy isn't his job. He runs the largest instrument in this country that uses fuel, and energy independence isn't his job? He said that to us in committee.

Mr. Speaker, we need people in our country and the Presidency and this Congress who are self-made, not derivative, to lead America to a new independent energy age.

□ 2015

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. DREIER) is recognized for 5 minutes.

(Mr. DREIER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## SENATE HEALTH WEEK

Mr. GINGREY. Mr. Speaker, I ask unanimous consent to speak out of order for 5 minutes.

The SPEAKER pro tempore. Without objection, the gentleman from Georgia (Mr. GINGREY) is recognized for 5 minutes.

There was no objection.

Mr. GINGREY. Mr. Speaker, I rise tonight to applaud the United States Senate for bringing to the floor this week three critical pieces of health care legislation. Unfortunately, only one of the three still stands a chance to see an actual up-or-down vote on the Senate floor.

The rising cost of health care is an issue the Federal Government can no longer afford to ignore. The Department of Health and Human Services reports the cost of medical liability coverage and defensive medicine alone increases the amount taxpayers must pay for Medicaid, Medicare and other Federal health programs by as much as $56 billion a year. So much more than the increased cost of malpractice premiums is the astronomical cost of defensive medicine.

Mr. Speaker, the Federal Government is seeing, as is every business and State legislature across America, their budget being crowded out by the skyrocketing costs of health care. We no longer have the luxury to pretend that this is not a national crisis, and it demands not only our full attention, but our resolve to find real solutions.

Each and every year, the House of Representatives has tackled the tough issue of controlling the cost of health care. In this body, we have passed medical malpractice liability three times in the last 2 years. Each and every time, that piece of legislation has fallen victim to the inaction of the Senate, and each year our health care crisis continues to grow.

When someone we love brings a child into this world, we do not thank a trial lawyer for his hard work. When a family member is admitted to the emergency room after a heart attack, we do not feel relieved that there was a trial lawyer close by. And yet unless we do something soon to fix our medical liability system, we might discover it is far easier to find a lawyer in our community than to find a doctor.

Guaranteeing all Americans access to quality health care should be what drives this debate. Just think: The best medical care in the world goes to waste if there are not doctors in our community to deliver it.

There are many stories, Mr. Speaker, too numerous to tell, of quality physicians hanging up their stethoscopes to pursue other careers. When they are faced with soaring medical malpractice premiums and decreasing reimbursement, the best and the brightest are pursuing other career paths.

Ask your neighborhood physician if they would encourage their children to follow in their footsteps and to become a doctor. All too often you would get a resounding ''no.''

Unfortunately, there were not enough Senators yesterday who stood on the side of patients. There were not enough Senators yesterday who put quality health care above partisan politics. Once again, sensible medical malpractice reform legislation died in the Senate.

This sensible legislation is based on a proven system that is saving health care in Texas. H.R. 5, the Health Act, common-sense reform legislation for which I was the lead sponsor last year in this House is also based on a successful reform model from the State of California, that was enacted in 1978, called MICRA.

What we know, looking at these precedents is that reform works. Mr. Speaker, look at the medical malpractice premiums in 2003 for OB/GYNs in two different cities. In San Francisco, a city in a reform State, California, an average OB/GYN physician would pay $40,000 a year for an annual policy. However, an OB/GYN physician practicing in Chicago, Illinois, a nonreform State, would pay an annual premium of $139,000.

This is not a situation that can be righted overnight, but there are sensible reforms that provide necessary steps to transform the American health care system, and medical malpractice reform is certainly one of them.

Mr. Speaker, another good step towards transforming health care is Senate bill 1955, which the Senate is currently debating. The Health Insurance Marketplace Modernization and Affordability Act is legislation that is similar to H.R. 525, the Small Business Health Fairness Act, that we passed in this body. This bill was introduced by Representative SAM JOHNSON, and as I say, it passed the House last year. This legislation will reduce the cost of health benefits for small business and the self-employed by establishing the new national Association Health Plans, or AHPs, as they are known.

AHPs currently exist, but they are severely hampered by the administrative burden and the high cost of having to comply with 50 different sets of State insurance laws and regulations. These barriers have made it virtually impossible to start new plans, and they have forced many of these plans to close, thus greatly limiting the availability of affordable health insurance to small businesses.

Allowing an environment that will permit association or small business health plans to flourish will strengthen our health insurance markets by creating greater competition and more choices of health plans for small business. Greater competition will benefit consumers by driving down premiums and expanding access to coverage.

H.R. 525 is just another example of House Republicans showing the American people they get it done when it comes to healthcare reform. In regards to decreasing the cost of health care, expanding private insurance coverage to all Americans, and increasing the quality of the healthcare delivery system; patients across our country deserve our undivided attention and it's time for the Senate to act, or stand accountable.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. ETHERIDGE) is recognized for 5 minutes.

(Mr. ETHERIDGE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## ASIAN PACIFIC AMERICAN HERITAGE MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LEE) is recognized for 5 minutes.

Ms. LEE. Mr. Speaker, I rise this evening to celebrate Asian Pacific American Heritage Month.

Mr. Speaker, I would like to thank a great leader, our colleague, Congressman HONDA, and the Asian Pacific American Caucus, of which I am a very proud member, for organizing later this night a special order to honor the contributions of Asian Pacific Americans.

Mr. Speaker, I cannot help but first recall and remind us of the great leadership of our beloved Congressman Bob

Matsui, whom we all knew so well, who led the fight for justice and reparations for Japanese Americans who were interned in our own country.

And it is in his memory tonight that I hope we will all reflect on the legacy and great contributions of not only Congressman Matsui, but so many Asian Pacific Americans who played a tremendous role in the development of our Nation.

I would like to acknowledge the late Congresswoman Patsy Takemoto Mink, our first woman of color to serve in the United States House of Representatives. She was a trailblazer for Asian Pacific Americans and women and all people of color. And it is wonderful to see that her impact is felt and that her legacy continues. We miss her tremendously.

APA Heritage Month is especially important to my congressional district. Asian Pacific Island American culture has a very large impact in the cities in my district. My district is the birthplace of Amy Tan, a Chinese American woman, and the New York Times best-selling author of the Joy Luck Club. Many have read that novel and its subsequent film adaptation. She has received countless acknowledgments, including the Bay Area Book Reviewers Award. Tonight, Ms. Tan's novels and short stories are part of high schools and universities literacy curricula nationwide.

My district is also the birthplace of Fred Korematsu, born in Oakland to Japanese immigrants who challenged the World War II internment of Japanese American citizens. As an American citizen, Mr. Korematsu refused, he refused to go to an internment camp, but he was arrested. He was sent to one in 1942 and branded a spy by newspapers. He opposed the internment policy in the Supreme Court, but in its 1944 decision, the Supreme Court upheld that policy. Unbelievable.

In 1983, Mr. Korematsu, appealed his conviction which a Federal court overturned, acknowledging that the government's case at the time had been based on misleading and racially biased information.

President Bill Clinton awarded Mr. Korematsu the Presidential Medal of Freedom in 1998, honoring Mr. Korematsu for fighting for human rights and ensuring the very liberties that created this great Nation.

Today, the legacy of Asian Pacific American leaders such as Ms. Tan and Mr. Korematsu, Congressman Matsui, Congresswoman Patsy Mink is apparent in the numerous and remarkable programs and initiatives in our communities and especially throughout my district.

There are several that I would like to recognize, including Oakland's Asian Students Educational Services, also known as OASES. As the City of Oakland is one of three cities in the Bay Area that has the lowest high school graduation rates for Asian students, this organization works to decrease cultural gaps in education.

I would also like to recognize the Oakland Asian Cultural Center. This center works by employing the belief that upholding cultural traditions and honoring cultural heritage are the core of maintaining healthy and liveable communities.

My district is also home to several of the Nation's leading health care providers for the APA community. Asian Community Mental Health Services, for example, is an organization that offers access to and increases community acceptance of mental care, in which many APA communities remain taboo.

Lastly, I would like to bring special attention to Asian Communities for Reproductive Justice and its executive director, Ms. Eveline Shen. Founded in 1989, ACRJ has been a long-time leader in ensuring that APA women and girls are equipped with the tools to make important decisions about their reproductive health. I commend Ms. Shen and the ACRJ's dedication to assisting women to obtain America's promise of liberty and justice for all.

Mr. Speaker, again I would like to thank Mr. HONDA and the APA Caucus for inviting me to participate later tonight in this special order. Let us continue to unite and pay tribute to Asian Pacific Americans and remember the importance of their outstanding contributions to our Nation.

## ASIAN PACIFIC ISLANDER AMERICAN HERITAGE MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. ROYBAL-ALLARD) is recognized for 5 minutes.

Ms. ROYBAL-ALLARD. Mr. Speaker, I am proud to stand with my colleagues as we celebrate Asian Pacific American Heritage Month. I thank Congressman HONDA and the Congressional Asian Pacific American Caucus for organizing tonight's special order.

Our theme for this year's festivities, Dreams and Challenges of Asian Pacific Americans, speaks to the many generations of Asian Pacific Americans who worked hard to overcome economic hardship, racism and other barriers in their pursuit of the American dream.

The theme reminds us of the Chinese who endured inhumane conditions to build our western railroads, and the Koreans who did the back-breaking work on the sugar plantations in Hawaii. And it reminds us of the Filipino Americans who fought bravely for our country, and the courageous Japanese Americans who fought for their country despite the shameful treatment toward their families in internment camps during World War II.

This year's theme also reminds us that in spite of these hardships, the API community has successfully met the challenges it faced and has enhanced greatly the richness and strength of our American society.

The contributions and cultural imprint of the API community is especially impressive in Los Angeles where many of the first Asian American immigrants made their home.

I have the pleasure of representing the Los Angeles communities of Little Tokyo and parts of Chinatown, and Filipinotown. As is true for all Angelenos, my life has been enriched by the magnificent culture of Asian Pacific Islanders and their positive impact on our city and on our Nation.

Asian Pacific Islanders contribute to our economy in many ways. They are leaders, for example, in our international trade. They are pioneers in our fashion industry. They are nonprofit community leaders, restaurateurs and small business owners. They are patriots who continue to defend our Nation and our American way of life through the distinguished service in our Armed Forces.

The API community also enhances our lives throughout the year with its many cultural celebrations. In my own district of downtown Los Angeles, I look forward to riding in the annual Nisei parade in Little Tokyo and the Chinese New Years parade in Chinatown.

Mr. Speaker, Asian Pacific American Heritage Month is a wonderful opportunity for our country to honor our country's API community and its many worthy contributions. And it is a wonderful time to explore their rich and diverse culture, customs and history.

I thank my API constituents who continue to enrich my life, the life of Angelenos, and our Nation. I am proud to join my congressional colleagues in paying tribute to the API community as we celebrate Asian Pacific American Heritage Month.

□ 2030

## REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4297, TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

Mr. GINGREY, from the Committee on Rules, submitted a privileged report (Rept. No. 109–458) on the resolution (H. Res. 805) waiving points of order against the conference report to accompany the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, which was referred to the House Calendar and ordered to be printed.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5122, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

Mr. GINGREY, from the Committee on Rules, submitted a privileged report (Rept. No. 109–459) on the resolution (H. Res. 806) providing for consideration of the bill (H.R. 5122) to authorize appropriations for fiscal year 2007 for military activities of the Department of

Defense, to prescribe military personnel strengths for fiscal year 2007, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## SUBURBAN CAUCUS AGENDA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Illinois (Mr. KIRK) is recognized for 60 minutes as the designee of the majority leader.

Mr. KIRK. Mr. Speaker, I want to thank the House and my colleague from Georgia for arranging for this time to talk about a new suburban agenda for the country, one that addresses key issues before families in America and reflects the new suburban reality of the way we live our lives.

This Congress is well known for being home to a Rural Caucus and an Urban Affairs Caucus. But to date we have never had a Suburban Caucus addressing the needs of suburban families. For us at this time we should recognize not how Americans lived in the 20th century but how they live now in the 21st century.

In the most recent election, over half of all voters were from suburban families, and suburban communities are under attack. They are under attack from gangs moving to the suburbs and taking on suburban police departments. They are under attack from Internet predators. Over 50,000 of them online at any one time attempting to contact our kids. We see a growing wave, a disappearance of green and open space that need to be protected. And there is a general fear held by three-quarters of the American public that it may be more difficult for their kids to enter the middle class than it was for them.

Five dozen Members of Congress have gathered together to put together a suburban agenda to address these needs. And one of those Members is representing the Atlanta suburbs, Congressman TOM PRICE, and a member of Suburban Agenda Caucus, and I yield to him.

Mr. PRICE of Georgia. I thank the gentleman for yielding. I thank the gentleman for his leadership. I appreciate the leadership allowing us to bring this agenda forward.

When I go home, I am often times asked, How often do you get back? How do you get that touchstone? How do you make certain that you are staying in touch with your district? And most Members do go home every weekend and that is important because it is important that we keep in touch with our constituents and hear their views and their concerns. Like most Members, I go home every week, most of us go home every weekend, to my district which is the Sixth District of Georgia. It is a wonderful place to represent. It is the northern suburban Atlanta area. It is kind of the quintessential suburban district. It is full of active and productive families, patriotic Americans, hardworking folks.

And when I am at home, yes, my constituents are concerned about the war on terror, and, yes, they are concerned about the crisis of illegal immigration; but, Mr. Speaker, they are also concerned about school safety; and they are also concerned about easing the difficulty of obtaining health care for themselves and their family and their parents. And they are also concerned about increasing conservation of our Nation's resources, and they are also concerned about being able to afford a college education for their children. So tonight I am honored to join the gentleman from Illinois. I appreciate his leadership in this area, for what has been coined the Suburban Agenda.

I am pleased to support this agenda and this activity. I look forward to assisting the gentleman from Illinois and others in shepherding this legislation through the House. I am so honored to work with him in this endeavor. I look forward to the discussion this evening.

Mr. KIRK. I thank the gentleman.

One of the critical problems we have is from powerful social networking sites like MySpace.com and other sites that have given online predators powerful tools to reach children. Our leader, the author of the Delete Online Predators Act, is a Congressman from Pennsylvania, MIKE FITZPATRICK and I want to yield to him.

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, I am proud to join my colleagues tonight as we unveil the Suburban Caucus' agenda for America. Tonight we bring to the House floor strong forward-looking legislation that would help America's families in some of the fastest growing areas of our country.

I, along with our fellow caucus members, understand the issues that suburban families face each day because each one of us lives in the suburbs. I grew up in a place called Levittown, Pennsylvania, which sits just a few miles north of Philadelphia. The majority of my district is situated only 2 hours from New York City. My district borders the Delaware River right across from Trenton, New Jersey, and I am proud to represent neighborhoods in Northeast Philadelphia.

These are all suburban areas, places removed from cities, but impacted by them on a daily basis. The suburbs have held a sentimental sway in America since the fifties. Thousands of my constituents have migrated away from New York and Philadelphia to live in my district in search of a change of pace, the purchase of a new home, more space to raise a family, a new economic opportunity. However, increased urbanization has blurred the line between city and suburb, creating new challenges that were unheard of only a decade before.

My constituents, like millions of other suburbanites, face transportation challenges, threats from increased crime, environmental concerns, financial worries, and concern over the state of their children's education. In many ways they share the same concerns their neighboring cities have, and those concerns need to be met with attention from Congress.

The Suburban Caucus is dedicated to addressing these issues, and I am proud to be a member of the caucus and to take part in tonight's discussion.

Mr. Speaker, my most important job is my role as a father of six children. In a world that moves and changes at a dizzying pace, being a father gets harder all the time. Technology is one of the key concerns I have as a parent, specifically the Internet and the sites my kids visit, register with, and use on a daily basis.

The Internet is a wonderful invention. It has opened a window to the world right in our homes. However, with the limitless possibilities that window offers, we must be mindful of what we view and let into our homes. One of the most interest and worrying development of late has been the growth in what are called ''social networking sites.'' We have all heard of them in one way or another. Sites like MySpace, Friendster, and Face Book have literally exploded in popularity in just a few short years. MySpace alone has just over 76 million users and ranks as the sixth most popular English language Web site and the eighth most popular site in the world. Everyone can use these sites. Companies and colleges, teachers and students, young and old all make use of networking sites to connect with people electronically, to share pictures, information, course work, and common interests. These sites have torn down the geographical divide that once prevented long distance social relationships from forming, allowing instant communication and connections to take place and a virtual second life to take hold.

For adults, these sites are fairly benign. For children, they open the door to many dangers, including online bullying and exposure to child predators that have turned the Internet into a virtual hunting ground for children.

Mr. Speaker, the dangers our children are exposed to by these sites are clear and compelling. A Department of Justice survey found that one in five children have received an unwanted sexual solicitation from online interests in the past year alone. Mr. Speaker, one in five children.

The FBI reports that child pornography cases have increased more than 2,000 percent over the past decade. And MySpace, which is self-regulated, has removed an estimated 200,00 objectionable profiles since it started in 2003. Look closely at local and national news stories and you will see a troubling increase in cases of child sexual assault where sites like MySpace and Friendster were a key component in the crime.

That is why just this evening I introduced the Deleting Online Predators Act, H.R. 5319, as part of the Suburban

Caucus agenda. Parents have the ability to screen their children's Internet access at home, but this protection ends when their child leaves for school or for the library. The Deleting Online Predators Act requires schools and libraries to monitor the Internet activities and implement technology to protect children from accessing commercial networking sites like MySpace.com; and chat rooms which allow children to be preyed upon by individuals seeking to do harm to our children; and visual depictions that are obscene or child pornography.

Additionally, the legislation would require the Federal Trade Commission to design and publish a unique Web site to serve as a clearinghouse and resource for parents, teachers, and children for information on the dangers of surfing the Internet. The Web site would include detailed information about commercial networking sites like MySpace. The FTC would also be responsible for issuing consumer alerts to parents, teachers, school officials, and others regarding the potential dangers of Internet child predators and others and their ability to contact children through MySpace.com and other social networking sites.

In addition, the bill would require the Federal Communication Commission to establish an advisory board to review and report commercial social networking sites like MySpace.com and chat rooms that have shown to allow sexual predators easy access to personal information of and contact with our Nation's children.

Make no mistake, our children on the Internet are at risk. Predators will look for any way to talk to children online, whether through sites like MySpace, instant messaging, or even online games. The best defense against these people is to educate parents and children of the dangers that come along with the Internet and by protecting our children during the school day. There may be no one silver bullet solution to this problem, Mr. Speaker, but this legislation takes a strong step forward in deleting the presence of child predators online.

It is a step that must be taken and an action that families across the Nation expect and deserve from their United States Congress.

Mr. KIRK. I thank the gentleman who has become the leader on protecting kids from these new powerful tools online.

Suburban families have told us consistently that they want congressional action on education, health care, conservation and the economy; and one of our big reforms in the area of health care is accelerating health care information technology. I yield to my colleague from Georgia to talk about that major piece of legislation.

Mr. PRICE of Georgia. I thank the gentleman from Illinois once again for his leadership and for yielding on this issue.

As you mentioned, right below those top button issues for folks all across this Nation, but especially in the suburban area, if you ask them what is important to them, education and health care are truly right there. They are concerned about being able to have access to health care. They are concerned about being able to afford health care. They are concerned about health care for their parents, and they are concerned about the accuracy of the records that are kept regarding health care and the portability, moving those records around.

As a physician, I practiced medicine for over 20 years; and so many things have changed in medicine, the different medications that we use, the different surgical procedures that we perform. The vast majority of those were not around 20 years ago, but what is around still, not just from 20 years ago but from 40 years ago and 60 years ago is the paper record of one's health care. Most of us go into the doctor and the paper chart shuffles through the office. That was not all bad in that time, but today we can cut down on the errors in health care. We can cut down on the cost of health care. We can improve health care access to folks, to go from a primary care physician to a special physician by the use of health information technology.

Our colleague, NANCY JOHNSON from Connecticut, is introducing, along with the Suburban Caucus, the Health Information Technology Promotion Act. It will result in a remarkable incentive to fully promote electronic medical records that will cut the costs and reduce medical errors by over 80 percent is what the statistics will tell you. Civilian patient records in New Orleans were wiped out. One of the things that made it so was that there was not the portability of health care for those individuals. But the electronic records for veterans were fully protected and available at any VA hospital.

This is just a case in point for how much advantage we could gain as a Nation having health records available in an electronic form. Over 60 percent of Americans support this, and it is imperative that we move in this direction for safety reasons, for access reasons, and for ease of availability of health care for all citizens across this Nation, and especially in our suburban areas.

So I look forward again to working with my colleague from Illinois and all members of the Suburban Caucus and the House to promote these positive, positive agenda items in the area of health and elsewhere.

□ 2045

Mr. KIRK. Mr. Speaker, I thank the gentleman. We saw a dramatic testament to the value of fully electronic medical records when Hurricane Katrina hit New Orleans. The many civilian hospitals had not yet upgraded to fully electronic medical records, and their record rooms were flooded out. Many of those patients then lost their medical histories, but the veterans in New Orleans did not have that problem. Their records were already fully digitized, and so a veteran reporting to a VA hospital in Houston or in Baton Rouge had their complete medical history protected.

That is one key issue in the suburban agenda, but another is protecting kids from predators, especially in schools. We heard of the great tragedy of Jessica Lunsford, an example of inadequate screening for people who come in contact with kids, and one of our experts on this field is my colleague from the State of Florida, and I yield to her.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, thank you very much. First of all, I apologize. I have a little bit of laryngitis here, but I wanted to join you to express my support for the suburban agenda. You have done a great job, and I know I heard Dr. PRICE say that he goes home every weekend, as most of us do.

My district in Florida, the largest city I have is all of 21,000. I have a lot of suburban areas and areas that we call unincorporated areas, and the suburban agenda clearly is one that my constituents who are not city folk, maybe they used to be but they are not anymore, can really relate to. One of the concepts clearly is protecting our children. Whether it is a grandmother who lives in Florida or whether it is a young family that lives in Florida, they all want to make sure that children are protected.

February 23 marked the 1-year anniversary of Jessica Lunsford's death. Her dad, Mark, and her grandparents, Archie and Ruth Lunsford, live in Citrus County in my district. I actually lived less than 5 miles from Jessica at the time that she was murdered.

If she were still with us today, she would have been in the fifth grade, learning about decimals and fractions, the solar system and certainly American government. Instead, her life was taken by a sex offender who kidnapped, assaulted, and murdered her and then buried her in his backyard. This tragedy all of America grieved for.

The irony of it is that the perpetrator actually worked at her school. He was hired by a company that was doing some construction work at her school.

Congressman PORTER introduced the School Safety Acquiring Faculty Excellence Act, which would permit school districts to access FBI criminal data before hiring new employees.

My bill, the Jessica Lunsford Act, requires offenders to wear ankle monitoring devices if they fail to report when they move from area to area. In addition to the current fines and jail time under the Jessica Lunsford Act, offenders would have to wear the GPS monitoring device for 5 years and predators for 10 years.

Probation officers right now are not provided with notification of a probationer's sex offender status from a previous crime. My legislation requires that that record be given to the probation officer. I am sure, Mr. Speaker,

that if the probation officer knew of this record that he never ever would have allowed the predator to work in that school.

We need to make sure that we have this information out there and available; and, certainly, protecting our children from those who would do them harm, those who really are the lowest of our society, is so very, very necessary; and I know that all of the members of the Suburban Caucus are very, very supportive of protecting our children.

Like Dr. PRICE and many of you all here tonight, I, too, go home every weekend. People are surprised to see me, but I tell them that I do not ever want to start thinking like the Beltway mentality up here. For that reason, I was delighted to participate and was a bit encouraged that the Senate passed a version of the bill that we passed here, actually that we passed to protect children. Whether there is a conference committee or whether it is just something that is worked out between the two chairmen of the Judiciary Committees, the Senate chairman and our chairman here, certainly remains to be seen. But let us make no mistake: we want to make sure that we protect our children.

I am so glad that you have included that issue in this suburban agenda. My hat is off to you, and I am sure that all of the suburban areas that we represent and yours will be very, very happy that we have taken these issues on.

Mr. KIRK. Mr. Speaker, I thank the gentlewoman who lost Jessica Lunsford in her own district.

Our leader on this issue is Congressman JON PORTER from Nevada, the author of the School Safety Acquiring Faculty Excellence Act, and I want to yield to him.

Mr. PORTER. Mr. Speaker, I want to thank my colleague and friend from Illinois (Mr. KIRK) for bringing us to together as a caucus that is focused on, I think, issues that are impacting a lot of moms and dads across this country, especially in a part of the country, suburbia, where a lot of these folks are busy taking their kids to school, getting off to work and do not necessarily have a lot of time to show up for congressional hearings.

If we look back through the history, our leadership has been very supportive. I appreciate Mr. HASTERT and Mr. BOEHNER for allowing us this time tonight on these key issues.

If we look back in time, about 40-some years ago, when I was a young man in a small Catholic grade school in the Midwest, in the community of Humbolt, Ohio, a number of challenges for teachers and challenges for parents and students had a lot to do with spitwads. Maybe showing up on time for class, making sure we are on time and making sure we got good grades, of course, was a priority; but think how things have changed. In those days, in my little Catholic grade school, we could not wear blue jeans with rivets because we were afraid we would scratch the desks.

Let us fast forward today into suburbia. Today, we have children in the classroom that are trying to deal with drive-by shooting drills. They have drive-by shooting drills in certain schools across the country. We have children that need our special help more than ever, with an environment that is ever-changing, and it is not about rivets and blue jeans. It is about worrying about the Internet, worrying about predators, worrying about predators that stalk our students, that hang around the playgrounds.

If you look at suburbia and inner city and communities around the country, if you look at police files, you will see that on maps they put dots and marks where sexual predators live and they frequent schools and hang around classrooms and hang around the ball fields.

Well, being a parent myself, and having two children that graduated from the public school system in the community of Nevada and southern Nevada, I trust that when our schools open and when our schools hire teachers, that they are going to have the best tools available to screen teachers, to make sure that we hire the best and the brightest to take care of our children.

We are very fortunate that the bulk of all of our teachers across this country are absolutely some of the finest. They care about their children, they care about the school, and they care about educating our precious resource, that is, our kids.

I cannot imagine the pain of a parent or a child that has been molested or taken advantage of by a teacher or a faculty member at a school somewhere across the country. We pick up the paper every day, and there is a story about someone that slipped through the system, a teacher or a faculty member somewhere that has applied and has found a job and is employed with our children and teaching our children. I will be honest with you, I cannot imagine the pain if my child or a friend of mine's child was molested or assaulted.

In the late 1990s, 1998, this Congress in its wisdom passed legislation to allow for complete background checks on teachers. That was in 1998. Unfortunately, as we fast forward, that bill which was to provide, again, complete knowledge, complete background checks to make sure that our teachers are safe, to date, to 2006, only 26 States are able to use the law that we passed in 1998. Again, that law was passed as a reason to make sure our principals, our administrators have the right tools to check the backgrounds of teachers. Like I said, fortunately, 26 States today are using it; 24 are not. So almost half are not using this tool that is available.

We use Nevada as an example. Clark County School District in southern Nevada hires around 2,000 new teachers a year, another 3,000 or 4,000 faculty members, close to 6,000, 7,000 people a year. You go across the State, you look at our growth, we are one of the fastest growing States in the country. We need to build 2½ new schools each month. We also need about 2,500 new teachers, but we have run into some problems.

Unfortunately, since 1998 only 26 States are using the background check that is available due to constitutional challenges within their States, due to bureaucratic challenges in their States. We want to make sure in Nevada that when we check the background of a teacher that we have the most up-to-date, up-to-the-minute information without barriers.

Well, again, unfortunately, that tool has not been available to all the States. So I proposed legislation, and it is H.R. 4894, the School Safety Acquiring Faculty Excellence Act, and what it does is allows every State to have access to information, both Federal and State information, on criminal background checks on teachers. Again, unfortunately, some of the States that we checked with, and we are trying to hire new teachers, due to different reasons are not able to provide the information that we need. So I encourage that we pass H.R. 4894.

It does a couple of things. One, it gives the tools to all the States to check backgrounds through the Federal Bureau of Investigation, through all that information so they can feel comfortable that they are getting the latest up-to-date information. Number two, it streamlines the process. Some States now, although they are doing background checks, it could take weeks or months to get information on hiring a new teacher.

So the bill really does two things. It provides immediate access so there are fewer barriers so our administrators can have the proper information to make sure our students are safe, and it provides for those States that cannot currently follow the act of 1998 to gather that information.

Mr. Speaker, I appreciate this opportunity. There is no more precious resource than our children. We want to make sure that our parents, our administrators and our teachers and, most certainly, our children have the best available to them through the teachers that we are hiring; and with that, again, I appreciate the time.

Mr. KIRK. Mr. Speaker, I thank the gentleman from Nevada because he is the author of the lead bill of the suburban agenda, and that will be coming up shortly in the Congress here.

We know that, for example, in the State of Michigan, schools unwittingly hired 2,500 people convicted of sexual assault, murder and other felonies, exactly because these predators fell between the cracks of the various State registries which have been established and were not brought together in a single Federal register.

One of the great problems that we have is also the emergence of international drug gangs moving into suburban communities. There are over 800,000 members of drug gangs now in America. It would be the seventh largest army in the world, and we need action to make sure that these gangs, sometimes suppressed inside large urban cores by capable police departments like the Chicago Police Department, are now moving into the suburbs. This is a phenomenon that we are not immune to in Chicagoland. It is happening all over the country, and I yield to my colleague from Atlanta to talk about the law enforcement situation that they face with gangs in that community.

Mr. PRICE of Georgia. Mr. Speaker, I thank my colleague for yielding. I tell you, one of the things that excites me so about this suburban agenda is that it addresses real issues of real people, in real life, in real-time. Oftentimes, we deal with issues and they seem kind of out there. They are far away, and they are issues that are difficult to get your arms around; but I tell you, in my community, the issue of gangs and gang violence has reared its head.

□ 2100

When we have neighborhood meetings or you get together with PTA groups and you talk about this, folks just shake their head. They say, It doesn't make any sense. How can this be going on?

That is why I am so excited about the suburban agenda because what it does is bring issues that people are talking about every single day in our districts back at home and saying, Why can't we do something about that? That is what Congressman REICHERT has brought forward. H.R. 5291 is the Gang Elimination Act of 2006.

Will it eliminate gangs? No, but it will go a long, long way because what it does is charge the Attorney General with identifying those gangs that are the most egregious, that are the most violent, that are the most threatening to our communities all across this Nation, a lot of suburban areas, but all across this Nation and says, Let's get a strategy down to make certain that we address these and start knocking these gangs down, start making it so that these gangs are not able to function in the way that they are able to function right now and not able to threaten our families and our children.

Mr. KIRK. One of the critical problems we have, we have heard of gangs like the Latin Kings and the Vice Lords and the Gangster Disciples, but we have a new gang emerging called MS–13 that may have reported, we don't know, links to international terror groups coming out of drug activity south of the border that seem to have no compunction with killing police officers, both on the West and East coasts. This is not just a threat to kids in school, it is a homeland defense issue.

Mr. PRICE of Georgia. You are absolutely right. Apparently, so many of these gangs have a rite of passage that they institute for their members. That rite of passage is often very violent. Sometimes it is the murder of a member of the police force or a member of the community.

And so this again is real-time issues, real issues that face our communities all across this Nation each day. I am proud again to stand with my colleagues here and I am so proud of Congressman REICHERT for his leadership on this issue. We look forward to having it passed.

Mr. KIRK. We all know DAVE REICHERT from Washington, who was the national hero who tracked down the Green River killer and is someone who understands well law enforcement challenges east of the Cascades in Seattle.

One of the big issues we are also dealing with is a fear among families in America that it may be more difficult for their children to reach the middle class than it was for them. Another key item of the suburban agenda would establish 401-kids, a tax-deferred savings account for each child.

I want to yield to my colleague who shares Florida with the author of that legislation, CLAY SHAW.

Ms. GINNY BROWN-WAITE of Florida. I thank the gentleman for yielding.

CLAY SHAW has introduced a bill called 401-kids. What it does is it gives young families the opportunity to save for college for the education expenses of their children tax-free. It is an awfully good idea and one that many, many people are looking forward to taking advantage of.

You know, when children are first born, you tend to think, Oh, it's going to be so long, but as those of us whose children have grown now, the time does fly by. So the best way to save, certainly whether it is a parent or a grandparent, is by using a system similar to that which many working people use, a 401(k) program.

Mr. Shaw's bill is one that allows you to set aside money tax-free so it can grow, so it can help to pay for the education of our children. And it is one that I have heard a lot of support for in my district. We want to make sure that not only parents, but grandparents also can participate in setting aside some money for the future education of the generation who will be in college 18 years from now, or sooner.

One of the things that I wanted to also comment on, if you would allow me, is if you put in the word ''gangs'' and your State into a search engine, it is absolutely astonishing. Coming from Florida, people may think that AARP is the only gang in town. I can assure you that it is not. When we put this information in, we got three-and-a-half pages of gangs that were listed. This is a problem for local law enforcement.

Yesterday, I actually spoke to a man whose son was killed by a gang in Pasco County. I assured him, and he hasn't heard anything from law enforcement, this happened within the last month, that law enforcement is not sitting by idly. Certainly they are involved with it, because it also goes over into the hate crimes area. And the sheriff and the FBI were all involved in this.

Unfortunately, these gangs have no morals, they have no respect for life, and they are taking the lives and terrorizing many, many communities. That is an area that the Suburban Caucus is also focusing on and one that is very, very long overdue.

As I say, if you put in your State and the word ''gangs,'' you would be absolutely amazed. Who would have thought that this would happen in Florida?

Mr. KIRK. I thank the gentlelady.

We have seen a number of gangs morph from the view that we had of them in the 1950s coming out of cartoon images like West Side Story of the Jets and the Sharks, a group of local toughs that no longer exist. These gangs are all connected to international drug cartels, many times having weapons and contacts far exceeding local law enforcement, especially suburban law enforcement.

And now the view that they have is that they merely need to move outside of cities where they take on smaller police departments or high school officials and security officials that are not well experienced with these groups to continue their operations.

Congressman Reichert's Gang Elimination Act of 2006 makes common sense. It simply says to the Attorney General, identify the top three national drug threat gangs and put forward a plan to the Congress to take them down within 4 years. It sets an example of those gangs that if you represent a near and present danger to kids and to the homeland security of the United States, that the U.S. Government is going to take effective action.

The suburban agenda is very much about the security of families from gang violence. It is also about financial security. It is building a nest egg for each child with 401-kids family savings accounts. The Congress should build success upon success. The creation of the 401(k) program transformed the culture of the country to promote much greater savings and investment for people's retirement. In 2001, the Congress created 529 college savings plans, and over 7 million Americans have saved over $75 billion in these accounts.

The 401-kids accounts expands the tax-free savings for each child's college education to also allow the first-time purchase of a home. This is something that much more greatly ensures access of our children into the middle class. That opportunity is not just to build a nest egg for the child, it also gives an opportunity for each parent to sit down with that child and review how their

account is being built, what is the difference between a stock and a bond and a regular savings account, how they did this year, to build a culture of savings and investment for the rest of the child's life.

I yield to my colleague from Georgia.

Mr. PRICE of Georgia. Thank you so much. So much of what you have just said makes sense. You talked about common sense. We could call this suburban agenda the common-sense agenda really, because when moms and dads sit at home and they try to figure out how to take care of their health or their child's safety or their child's college education, they want to know whether or not they are going to be able to make that happen. One of the ways to do that is obviously through increased savings.

When Congress finds something that works, we ought to do it, we ought to do more of it, especially when it results in greater savings and greater prosperity for so many individuals across our land. So with the success of retirement security and the 401(k) plans and the success of the 529 plans that you mentioned, we ought to build on that success.

That is exactly what the 401-kids family savings account does. I think it is important. Education really is a key to advancing in society.

But a college education isn't right for every single person. What the 401-kids family savings account recognizes is that that money may be best used for purchasing a first home, or for starting a new business for a child or with a child. That is expanding the success that we have had with the 529 plans, common-sense kinds of solutions that I think will be embraced by this entire House and, frankly, by all of America.

Mr. KIRK. I would say that we welcome Republicans, Democrats, everyone, to join this agenda, because while this is popular, while people want this to happen, it hasn't happened yet. This is an incomplete agenda, where we have not set a national strategy to eliminate gangs; we have not established 401-kids programs; we have not interlinked the Federal databases on sexual predators; we have not taken sufficient action on social networking sites like myspace.com to protect kids.

All of this, then, builds up to a set of unfinished work which the Congress should now finish in order to protect the lives of Americans.

One of the other issues that we hear about very often from suburban families is that we need to take greater action for conservation, that we support the national park system, we want it to be healthy and we want it to grow, but we also want to protect green and open space right near home. Without action by the Federal and State governments, there might come a day when we would drive to work or school and see an unending series of strip malls and no green or open space taken to protect the environment in our local communities.

The suburban agenda also contains two pieces of legislation, one by JIM GERLACH and the other by MIKE FITZPATRICK, both of Pennsylvania, that encourages donations of open space for conservation purposes and also protects farmland from being gobbled up in suburban communities. I think it is critical that we embrace a future in this country of rapidly expanding suburban communities in which families 10 and 20 years from now also see green and open space and that they do not let inaction by the government or a climate which does not encourage the donation of these areas, to let these key properties go.

I yield to my colleague from Georgia.

Mr. PRICE of Georgia. I thank the gentleman for yielding.

You are absolutely right. As the suburban areas expand, they often eat up the green land and the open space that is available. Before you know it, there is not enough parkland or open space that is left. And you can't get it back. It doesn't come back.

I, like so many of my colleagues here in Congress, had the privilege of serving in the State legislature. One of the bills that I was so very proud of in the State legislature in Georgia was called the Green Space bill. What it does is provide State resources to set aside on future developments a certain percentage of land for open space, green space.

I am so proud and privileged to be able to join my colleagues here in the Suburban Caucus and my two colleagues from Pennsylvania, Mr. GERLACH and Mr. FITZPATRICK, for promoting these bills that will provide encouragement for the purchase of conservation easements, as it does with Mr. GERLACH's bill, and increase tax easements to encourage charitable contributions of real property for conservation and open space purposes, which is Mr. FITZPATRICK's bill.

These are common-sense solutions. They are not mandates. They aren't requirements. They aren't the heavy hand of the law. But what they are are conservative principles being used for conservation.

I am so pleased to be able to stand with my colleagues and support these positive steps forward.

Mr. KIRK. I thank the gentleman.

It was decisive action of this kind that saved the Wagner Farm in Glenview, Illinois. We still celebrate the cows in that suburban community, now intensely built up, but because of foresighted action by the local community, that farm was preserved and it is helping educate a number of kids in the area about different ways to live and to preserve green space in their community.

I want to speak for a second about another bill, a bill that is later on in the suburban agenda that defends the rights of teachers to be able to search a child to make sure that their classroom is gun and drug free.

A number of us, me included, hesitated seeing a child using our training and our instinct as teachers, knowing that we probably have an issue with a child, but under Federal law and current Supreme Court decisions, we have to show a specific suspicion toward that child before we can execute a search of their book bag, their clothes or their locker.

I think that the country is ready to trust teachers, especially people that are long-experienced, certified, full-time teachers, to use their intuition and experience to defend a fundamental value, which is that Americans have a right to a safe and drug-free school and that the teachers and the administrators in that school know best how to appreciate danger and handle it immediately.

□ 2115

I recently talked with two teachers at Stevenson High School in Lincolnshire, Illinois, where they said that they knew the children, where they had a problem of a weapon potentially coming into the school, but they hesitated. They hesitated because many families in the neighborhood were lawyers, and they would worry about a big lawsuit and jeopardizing their jobs. That hesitation so far in Lincolnshire, Illinois, has not led to a tragedy.

But we have seen other tragedies, like at Columbine High School or in my own district in Winnetka, Illinois, where Laurie Dann led an attack against school kids with a gun.

Defending the rights of teachers to ensure the safety of their classroom is what the Teacher Safety Act is all about from Congressman GEOFF DAVIS, and I think this once again represents commonsense action.

Why do we need to take Federal action on what should be a local issue? Because the Federal courts have continually ruled on this issue, and it is only by action of the Federal legislature that we can define the rights of teachers to protect their classroom.

I yield to my colleague from Georgia.

Mr. PRICE of Georgia. Thank you so much. This is another one of those items, as you mention, it is just common sense. When moms and dads at home wonder why their kids are subjected to the kinds of threats that they are at school, when a teacher stepping in at an appropriate time could have solved that problem, it just doesn't make any sense to them.

And you mention why it needs to be done at the Federal level. When individuals have access to Federal courts for these kinds of issues, then it is imperative that Congress step in and act because the threat of liability of a teacher ought not get in the way of the safety of our children.

When you and I were going to school, our parents would say, look, I don't care what you do, but you ought not upset the teacher. The teacher is right. The teacher is, in essence, your parent while at school, in loco parentis. I am not an attorney, but what that means is that the teacher can act as the parent while the child is at school. When

the child is at home, the parent certainly is able to search the child. So that ought to be the case at school as well. And it is important because of the day and time that we live in. Our children are subjected to risks that you and I never dreamed about, and so it is imperative that adults that are on the scene, the teachers in the classroom, administrators in the school, be trusted to make the right decisions in these areas and not be exposed to liability, not have to think in the back of their mind, if I do that, will I get sued. That's just foolishness, and it threatens our children.

So I am proud once again that you brought that forward.

Mr. KIRK. What we want is to give a message to the country's teachers that when it comes to an issue of the safety and security of kids in the classroom, do not hesitate. Do not worry about some impending lawsuit. Make sure that your classroom is secure. We are going to trust your judgement as a certified teacher, as a full-time employee of the school, to make that call and to make sure the classroom is secure.

When you look at all of this, we know that the House has long been a forum for issues on rural issues, and those are very important issues. We have also been a forum for issues on urban communities, and those are vital to the future of the country.

But there is a reality in the 21st century and it is that Americans, a majority of them, live in suburbs. Suburban families face a number of critical problems. There are drug gangs moving into suburbs that are seeking to take on suburban law enforcement communities that do not have the experience of big-city departments.

There are thousands of online predators who are trying to contact our kids using powerful engines like MySpace.com.

We are watching as green and open space disappear in the suburbs. And millions of Americans worry that it may be tougher for their children to enter the middle class than it was for us.

Suburban families are under attack, and they need a voice in the Congress; and that is why this agenda is coming forward.

These are critical issues in my district of Libertyville, Illinois. They represent commonsense, practical, grassroots solutions coming from the communities to the Congress in a way that we welcome Republicans and Democrats coming together to move this agenda forward.

We will be outlining all of this in detail tomorrow: a School Safety Acquiring Faculty Excellence Act, which helps us screen and make sure that everyone coming into contact with kids is safe and appropriate; a Delete On-Line Predators Act to make sure that these powerful search engines are not put in the service of online predators; a Gang Elimination Act, making the commonsense step forward of identifying the top gangs that are a threat to kids and the Homeland Security of the country and to take them down; a Health Information Technology Promotion Act to accelerate high technology, health information technology to make sure that your medical record, when appropriately available, is appropriate to every doctor that you see and is in a survivable form in case there is a fire or other catastrophe. And, last, a 401–Kids Tax Deferred Savings Account to have more guaranteed access of children, not just in the suburbs, but also in cities and in rural communities into the middle class with tax deferred savings from the day a child is born.

I yield to my colleague from Georgia to wrap up.

Mr. PRICE of Georgia. I thank you so much for yielding and for your leadership on this issue. I want to also thank once again our leadership, the Speaker and majority leader, majority whip, conference Chair, for allowing us to share with the House and with the American people tonight this exciting, commonsense suburban agenda. And it's not just for the suburban area, but the problems and challenges that we have in suburban America oftentimes precede those that we see elsewhere. And so it is so very important that we move this forward, the commonsense suburban agenda.

As I mentioned before, folks in our districts are concerned about all the big issues, the huge issues, the war on terror, the crisis of illegal immigration; but they are also concerned about the issues of school safety. They are also concerned about the issues of making certain that their children are safe when they go on the Internet. They are also concerned about the importance of having private personal medical records and the ease of being able to take them from one doctor to another. They are terribly concerned about making certain that we preserve our Nation's open space and green space. And they are concerned about the ability that they have to assist their children in succeeding, whether it be through starting a business or providing a college education for them.

So I commend the gentleman from Illinois so highly for his leadership on this issue. He has been a champion for the entire length of time, short time, that I have been in the United States Congress. It is a privilege to stand with you this evening, and I look forward to shepherding with you these issues through the United States House and Congress.

Mr. KIRK. I thank the gentleman. Tomorrow, then, five dozen Members of Congress come together to unveil the suburban agenda, many of these pieces of legislation already with bipartisan support, and it represents commonsense solutions addressing real issues before the country, important issues for all families, and it represents a critical agenda of key items of legislation addressing problems before American families that can be done in this session of Congress.

## CONGRESSIONAL ASIAN PACIFIC CAUCUS

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). Under the Speaker's announced policy of January 4, 2005, the gentleman from California (Mr. HONDA) is recognized for 60 minutes as the designee of the minority leader.

Mr. HONDA. Mr. Speaker, I would like to recognize the gentleman from Texas, Congressman AL GREEN.

Mr. AL GREEN of Texas. Mr. Speaker, I rise to celebrate the contributions of the Asian Pacific Islander American community and to celebrate Asian Pacific American Heritage Month.

I also want to take this opportunity to thank and commend my good friend from California, Congressman HONDA, for his strong leadership as Chair of the Congressional Asian Pacific American Caucus.

Mr. Speaker, for over 200 years, Asian Americans have played a pivotal role in the development of our great Nation. When it was time to build the transcontinental railroad, they were there. Chinese immigrants were paid $28 a month to do the very dangerous work of blasting and laying ties over treacherous terrain. It was their labor under harsh working conditions, for meager wages, that helped in the development and progress of our Nation.

When our Nation was drawn into war, they were there. From World War II through the current wars in Iraq and Afghanistan, Asian Americans have been on the front lines in our battle to defend and protect our Nation. There are 32 Asian American Medal of Honor recipients, and thousands of others who have served and continue to courageously serve our Nation.

When hundreds of thousands of people were evacuated from Louisiana and Mississippi after Hurricane Katrina, they were there. The Asian American community in my home city of Houston joined all Americans around the country in welcoming Katrina evacuees and assisting the relief efforts. In Houston, the Asian American community raised more than $200,000 for the Katrina Relief Fund and took in over 15,000 displaced Americans.

And the contributions of this community will continue far into the future. Tomorrow, when it is time to cure the diseases of the future, they will be there. There are more than 105,000 Asian American doctors in the United States.

Tomorrow, when new worlds are to be explored, they will be there. There are thousands of Asian Americans working in the space program.

And tomorrow, when it is time to elect the leaders that will guide our great Nation, they will be there, in Congress, on the Supreme Court, and as President. If our country is to live up to its promises in the Declaration of Independence and the Constitution, every ethnic group will have one of its own to serve as President.

This is why we must protect the voting rights of Asian Americans and others to vote under the Voting Rights Act. We must win this battle now, so that the 14 million Asian Americans, together with all Americans, can have the equitable input that they justly deserve into our political process.

They helped to make America great. The greatness of America rests on the shoulders of all Americans, none more so than our Asian American brothers and sisters.

Mr. HONDA. I want to thank the gentleman from Texas for his wonderful words, and we shall be there.

Mr. Speaker, I would like to bring up now the gentlewoman from California, Congresswoman JUANITA MILLENDER-MCDONALD.

Ms. MILLENDER-MCDONALD. Mr. Speaker, let me thank my dear friend and colleague, Congressman MIKE HONDA, who is just a great leader, not only for the great State of California, but for this great Nation. He is our chairman of the Congressional Asian Pacific American Caucus, and I thank him for convening us here tonight.

It is with great pride and pleasure that I rise as a proud member of the Congressional Asian Pacific American Caucus, and on behalf of the over 80,000 Asian Pacific Americans who reside in my district in commemoration of the Asian Pacific American Heritage Month. I am so pleased to call him my friend, and all of my Asian friends, and I am here to celebrate with them this great heritage month because they have provided so much to this country.

Since the early 1800s, Asian Pacific Americans have played a significant role in the development of our Nation. They have joined hands with the many who came to our shores in search of opportunity, freedom of expression and adventure to make this country what it is today. Their work has made this country a proud country.

This year marks the centennial celebration of the first wave of Filipino migrants to the United States. In 1906, Filipino workers came to the United States, particularly to Hawaii, and later California, to work in the fields as laborers.

Many Chinese and Japanese laborers who arrived in the mid-19th century were instrumental in the completion of the transcontinental railroad on May 10 of 1869.

□ 2130

These workers and those who followed in their footsteps have thrived in various fields of endeavor through their work ethic and ingenuity. They are proud Americans. They have done extremely, extraordinarily well in showing us what work ethic is all about.

Today, the U.S. Census reports an estimated 14 million or more U.S. residents classify themselves as Asian Pacific Americans or having Asian Pacific origins, and many of whom have made extraordinary contributions to our Nation.

Additionally, the United States Census reports 1.1 million businesses are owned by Asian Pacific Americans; 312,700 military veterans have contributed in protecting our democracy and our democratic ideals around the world. Our Filipino veterans are still waiting for their due benefits, having served in World War II.

Furthermore, 46 percent of total Asian Americans and 23 percent of Pacific Islanders' population works in management, professional and related occupations. I am so pleased to know that they are in our legislatures. They are judges. Of course, they are business people. They are teachers. They have made profound progress and extraordinary contributions to this country.

The figures show that Asian Pacific Americans have attained high levels of education, employment and high median household incomes. However, Mr. Speaker, many Asian Pacific Americans have yet to achieve their American dream. Twenty-three percent of the Asian Pacific population lives in poverty.

Attention needs to be given to Asian Pacific Americans who, because of inadequate skills like my Cambodian constituents, find themselves working just to make ends meet. We must work to provide job training and other community-based programs that will allow all of our citizens to fulfill their potential.

Asian Pacific Americans also face significant health disparities. They account for over half of the 1.4 million chronic hepatitis B cases in the United States, and they also suffer from high rates of diabetes, cervical and liver cancers.

Furthermore, the incidence of HIV/AIDS is on the rise in Asian Pacific women. The work that I do on my HIV/AIDS and my 5K AIDS Walk with various Asian Pacific organizations seeks to address this.

Some progress has been made in addressing Asian Pacific American health issues, the availability of Asian and Pacific Islander cancer education materials; Web tools that provide cancer information materials in Asian and Pacific Islander languages for those with limited English is a good start, but more needs to be done to address access to affordable health care.

For example, 50 percent of Asian Pacific Americans are medically underserved since the cost of health insurance is a major barrier to Asian Pacific Americans who are either self-employed or working for small businesses that do not provide employee-sponsored health coverage.

As we celebrate May as Asian Pacific American Heritage Month, we must celebrate the legacy, the culture, the rich traditions and achievements of our Asian Pacific Americans, as well as reflect on the challenges faced by their community. This is an excellent opportunity, Mr. Speaker, for all of us here in this House to celebrate these rich cultures, as well as to strive to address the health and education challenges that confront them in our great Nation.

My commendation to all Asian Pacific community groups, especially those in my district, that have worked tirelessly to promote, assist and improve the lives of all Asian Pacific Americans and all Americans.

Mr. Speaker, I would like to thank my dear friend, Congressman MIKE HONDA, for putting together this special order tonight and his outstanding and extraordinary leadership representing Asian American Pacific Islanders across this country and the profound group of people whom I call my sisters and brothers. He is the chairman of our caucus, and I am pleased to be a part that caucus.

Mr. HONDA. I thank my gracious colleague from California for your wonderful words.

Mr. Speaker, I would like to rise today to recognize the Asian and Pacific Islander community and to commemorate Asian Pacific American Heritage Month.

As Chair of the Congressional Asian Pacific American Caucus we call CAPAC, I feel privileged to be here tonight to speak of the Asian and Pacific Islander history and accomplishments. Additionally, I will be highlighting those issues affecting our communities and the priorities for CAPAC.

Mr. Speaker, I would like to take a moment to acknowledge and remember extraordinary community leaders, long-time friends of the APIA community that we have lost this year, Judge Delbert Wong and journalist Sam Chu Lin.

Sam Chu Lin, who began reporting in the 1960s, worked as a correspondent for CBS and Fox. Sam Chu Lin was also a respected print journalist, writing columns and articles on Asian Pacific affairs for Asian Week, Rafu Shimpo and the San Francisco Examiner.

Judge Delbert Wong was the first Chinese American judge in the continental United States. Delbert Wong was a fourth generation American of Chinese heritage. After earning his undergraduate degree in business at U.C. Berkeley, Wong served in World War II as a B–17 navigator and was awarded numerous medals.

After the war, Judge Wong faced a choice between joining his family's grocery business or entering law school. This was not met with much support from his parents, who would say, Who would hire you, a Chinese, they would constantly say. Undeterred, Wong completed his law degree in 1948, becoming the first Chinese American graduate of Stanford Law School.

After graduation, he was appointed deputy legislative counsel, serving the California State legislature in Sacramento and later appointed deputy attorney general, becoming the first Asian American to hold those positions.

In 1992, Congress passed a law that officially designated May of each year as

Asian Pacific American Heritage Month.

I want to thank the following people who have worked to designate May as Asian Pacific Heritage Month: the late Congressman FRANK Horton from New York; my good friend, Secretary of Transportation, Norman Mineta; Senators Daniel Inouye and the late Senator Spark, or Sparky, Matsunaga.

Some important dates include the first 10 days of May, which coincide with two important anniversaries, the arrival of Japanese American immigrants on May 7, 1843 to California, settling in El Dorado County; and the completion of the transcontinental railroad on May 10, 1869, by the Chinese laborers.

The first APIA settlement in this country dates to 1763 when Filipinos escaped imprisonment aboard Spanish galleons and established a community near New Orleans.

Today, the APIA community is one of the fastest-growing populations in the country, with over 13 million APIAs living in the U.S. and representing 4.5 percent of the total U.S. population.

My home State of California has both the largest APIA population, approximately 4.6 million, and the largest numerical increase of APIAs since April of 2000.

Mr. Speaker, this year's theme for Asian Pacific American Heritage Month, Dreams and Challenges for Asian Pacific Americans, reflects hardships overcome by the APIA community while highlighting the hope we maintain as we contribute to the prosperity of this great Nation.

This year, I would like to particularly honor the centennial celebration of Filipinos in Hawaii and the 50th year since Dalip Singh Saund became the first Asian American Sikh to be elected to the U.S. Congress.

On December 20, 1906, a group of Filipino plantation workers arrived in Hawaii aboard the Doric, leading the first wave of Filipinos to migrate to Hawaii. The first group of Filipinos was followed by subsequent waves of Filipino immigrants who came to settle in Hawaii and, also, other parts of the United States, contributing to a migration pattern that continues up to this day.

Today, Filipinos with their rich culture and heritage have become a positive influence on mainstream life in Hawaii, with many of them succeeding prominently in their respected professions, in business, politics, government, the academe and the arts.

2006 also marks the 50th year since Dalip Singh Saund became the first Asian American to be elected to the U.S. Congress. While in office, Dalip Singh Saund forged a measure that allowed South Asians to become U.S. citizens.

As our community expands, we must also continue to educate our fellow citizens about the uniqueness of our experiences.

The APIA community is often misperceived as monolithic. Our community is extremely diverse in our languages, ethnicities and culture. Aggregating such a large and diverse group makes it difficult to understand the unique problems faced by the individual and subgroups, such as the Southeast Asian Americans, who are refugees that fled their home countries in the late 1970s and the early 1980s.

As a country, we need to better address the needs of the APIA community when we discuss disaster preparedness, comprehensive immigration reform, voting rights, education, health issues and veterans.

National disasters such as the September 11th terrorist attacks, Hurricane Rita and Hurricane Katrina, exposed serious gaps in the delivery of public services to limited-English-proficient communities, or LEP communities. In fact, the lack of linguistic and culturally competent services within FEMA and related Federal agencies prevented many LEP individuals from accessing critical disaster-relief services such as cash assistance, health care, mental health care, housing and small business loans.

As a result, at least 15,000 families from the gulf coast suffered unnecessary hardships. Many of the Asian Americans in the gulf coast region, hit by Katrina, were shrimpers and fishermen and were significant contributors to the local economy and fishing industry for years.

Plaquemines Parish in southern Louisiana is one of the locations of the main fishing and shrimp sites. Plaquemines Parish commercial landings average $441,181,891 in retail annually. Plaquemines Parish has an average annual landing of 28.8 million pounds of shrimp, valued at $238.3 million in retail value.

Extensive reports from FEMA community relations and local fishermen determined that all but 20 percent of the fishing boats were destroyed in the hurricanes. In order for these families to go back to their old way of life, approximately 430 boats must be repaired and in the water before shrimp season begins May 15.

Many of the fishermen, due to cultural and linguistic barriers, were not accustomed to the American way of accessing public assistance, navigating the intricacies and bureaucracies of public agencies and commercial transactions. The fishermen have been denied Small Business Administration loans, which would help them rebuild their boats, due to the fact that they need to buy insurance prior to getting a loan. But one cannot buy insurance for a boat until it is in a working order.

Fishermen must also prove that they can pay back the loan. But without income, SBA is reluctant to give loans. Due to the complications of the system and of the linguistic and cultural barriers that are posed to them, the Asian Pacific community faces an even bigger struggle.

This month, I will introduce legislation to improve disaster relief and preparedness services for individuals with limited English proficiency by requiring the Federal Emergency Management Agency to bolster Federal resources and outreach to community organizations that serve the limited-English population.

Mr. Speaker, our Nation was founded by immigrants who valued freedom and liberty, who sought to be free from persecution, from a tyrant government. Families fled their home countries to seek refuge in this great Nation, because they too believed in liberty, justice and freedom for all.

APIA families who seek to be reunited with their family members overseas have not seen their dreams come true because of our broken immigration system. Over 1.5 million Asians are caught in the family immigration backlog, and immediate family members from overseas wait as long as 10 years to reunite with their families in the U.S.

Mothers and fathers wait to reunite with their children. But due to the long years of waiting, their children may have already reached the age of 18, and their families will have to start the process all over again.

As we honor the 41st anniversary of the Immigration Nationality Act of 1965 and the 31st anniversary of the Refugee Act of 1975, we need to remember that our country was founded and created to protect our freedom and civil liberties.

□ 2145

I believe we need comprehensive immigration reform to fix our broken immigration system.

Mr. Speaker, I would like to take a break in my presentation to offer the microphone and the floor to our Democratic leader, a great leader from the State of California, from the great City of San Francisco, someplace where you always leave your heart, our leader, NANCY PELOSI.

Ms. PELOSI. Thank you very much, my colleague, Congressman HONDA, the distinguished Chair of the Asian Pacific American Caucus. I am pleased to join you, and I thank you for your leadership in calling this Special Order to acknowledge Asian Pacific American Heritage Month. It is a time when we can focus on and sing the praises of the contributions of the Asian Pacific American community to our great country. I wish to associate myself with your extensive remarks and praise of the proud community that you are a part of and thank you for your leadership in the Congress.

I was interested in your comments, where you talked about Katrina and what happened at a time of natural disaster. As you acknowledged, I represent the great City of San Francisco in the Congress, and we are blessed in our community with a large Asian Pacific American community. They have built our city. They have been part of its growth and its success.

This year, we observed the 100th anniversary of the 1906 earthquake. At that time, it was a sorry, sorry sight to see, San Francisco.

A black mark on that time, but one that was averted, but was suggested, was when the earthquake came and the city burned, thousands of people were displaced in downtown San Francisco's Chinatown. It was a horrible thing. There were those in the press who suggested, who wrote in the daily metropolitan journals which were published almost immediately, they suggested that now might be a good time to get rid of Chinatown, get rid of foreigners and everything that went with it. Of course, they had their eye on this prime real estate that was Chinatown right in the heart of downtown San Francisco. But their motivation was not only commercial; it was also racist, quite frankly.

Fortunately, the city leaders at the time rejected that unfair notion and Chinatown was rebuilt, and it is such a magnificent part of our community to this day. It attracts visitors from all over the world and all over California because it is such a magnificent place. It is so invigorating to go there. When you do, you are constantly reminded of the contribution that our Asian Pacific American community makes to America.

We talk about family values. The Asian Pacific Americans take the lead. Their coming to our shores, whether it was over a century ago to build the railroads, whether it is a few days ago, each one of them brings to our community family values, this wonderful optimism and determination for a better future for their children, this courage. Imagine the courage to leave home to come to America, no matter when it was or is now. And they bring a commitment to community, to academic success. They make America stronger, and we owe a great debt of gratitude to the Asian Pacific Americans in this regard. As I say, I see it firsthand in my own community.

But how similar it was in 1906, when the earthquake came and there were those, for whatever reason, who thought this was a good idea to change the community that was San Francisco. Fortunately, it was rejected.

Sadly, it resembled some of the rhetoric following Katrina in New Orleans; and hopefully those notions will be rejected as well, because as we rebuild these cities, we must always remember to rebuild the communities that strengthen them.

I am proud to pay tribute to AAPI leaders in my City of San Francisco who have recently passed away since we had this meeting last year, but leave their legacies. George Wong was a pioneer in the labor movement who worked until his death to ensure that workers' rights were protected.

The Godmother of San Francisco's Japantown and a leading community activist, ''Sox'' Kitashima, she was just fabulous, Sox was, a driving force behind the Japanese American redress movement.

The late Joe Yuey distinguished himself during his 100 years of life as Asian art enthusiast, amassing a collection that is part of the world-renowned San Francisco Asian Art Museum.

Jade Snow Wong was a famous author, ceramicist and businesswoman, whose book ''Fifth Chinese Daughter'' is included on school reading lists across our Nation.

The legacy of all these outstanding people is one that must be carried on as an example for other Americans to follow.

And let us also remember this year as the centennial of Filipino immigration to the United States. My colleague Mr. HONDA has referenced the magnificent contributions of the Filipino American community.

The first Filipinos arrived on the shores of Hawaii to work on the sugar plantations in 1906, again, 1906, a year fraught with meaning, with the belief that a better life could come from hard work and determination. Filipinos continued migrating to the United States, as they are now the second largest AAPI population, making remarkable contributions to our country.

My colleagues have referenced the great contributions, not only the Chinese, the Japanese, the Vietnamese, Cambodians, people from Laos, from South Asia, from India and Pakistan and from so many places in Asia, so different one to the next of these groups, the Korean Americans, the list goes on. They all make a wonderful contribution, and we should acknowledge all of it.

I am very pleased to share in this Special Order with you, Mr. HONDA, because you, frankly, laid out some of the problems and challenges that were faced by the community over time.

I am proud to serve with you, and I am proud to serve with ENI FALEOMAVAEGA and our colleagues Congresswoman MATSUI and DAVID WU, with you and others.

I also want to acknowledge the loss of our dear friend, Bob Matsui, whom we served with. Over a year-and-a-half ago he left us, but his inspiration is still with us here. And Patsy Mink. There can be no discussion of Asian Americans in Congress without mentioning the exceptional leadership of Congresswoman Patsy Mink, who served from Hawaii.

The list goes on and on, and the legacy does too. But the future is brighter because of the contributions of the Asian Pacific American community, and it is appropriate that this heritage month be established and be commemorated.

Mr. HONDA. Thank you, madam leader.

Mr. Speaker, if I may just suspend my remarks and invite my colleague from American Samoa to share his comments with us, the great Congressman who has been here for quite a few years, Congressman ENI FALEOMAVAEGA.

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

Mr. FALEOMAVAEGA. Mr. Speaker, I would like to thank my colleague and dear friend, the gentleman from California, Mr. HONDA, who is managing this Special Order, but more especially also as an outstanding leader in our Asian Pacific American community and currently serving as chairman of our Asian Pacific Congressional Caucus.

I want to also commend our Democratic leader, Ms. NANCY PELOSI, for her outstanding remarks. The fact that she also is a Member who has one of the largest constituencies in not only the State of California of our Asian Pacific American community, but, as Ms. PELOSI was making her statement, I recalled also her predecessor, someone whom I have had the highest admiration and respect for, a giant of a man not only in his ways but as an example, with a real great sensitivity and compassion for the needs of the Asian Pacific American community people, none other than the late Congressman Phil Burton.

I would also like to commend my colleagues, Congresswoman JUANITA MILLENDER-MCDONALD and Congressman AL GREEN, for their outstanding remarks this evening in this Special Order.

Mr. Speaker, I rise today in celebration of the Asian Pacific American Heritage Month to acknowledge the contributions of our Asian Pacific American individuals and communities to the success of our great Nation. I commend my colleagues who founded this celebration in 1977 by introducing a resolution calling upon the President to proclaim the first 10 days in May Asian Pacific Heritage Week, former Representatives Norm Mineta and Frank Horton, and Senators DANIEL K. INOUYE and Senator Spark Matsunaga.

I think we need to also understand, Mr. Speaker, the dynamics. Those of us who are Americans, and we are very, very proud of being Americans, but whose roots are from the Asian Pacific region, and the dynamics of why the Asian Pacific region is so important, it is in our national interests, not only our national security, the economics, just about every phase of what is really critically important in our Nation in dealing with this region of the world which, by the way, two-thirds of the world's population is the Asian Pacific region. Six of the 10 largest armies in the world are in the Asian Pacific region. Our trade with the Asian Pacific region is four times greater than any other region in the world, including especially that of Europe.

I am reminded a couple of years ago what Senator INOUYE said, for every one 747 that flies between the Atlantic and the United States, four 747s fly between the Asian Pacific region and our country.

Mr. Speaker, the Asian Pacific American community is vibrant and growing

with an estimated 14 million Asian American residents and another 975,000 Pacific Americans. I am proud to be a member of this Asian Pacific American community, a community that has produced so many inspiring individuals. In government, in the military, in the sciences, sports, entertainment, business, you name it, we have it.

In government, for example, especially from the great State of Hawaii, among the first, I guess you might say, U.S. Senator Hiram Fong, Senator DANIEL INOUYE, Senator DANIEL AKAKA, the first elected Asian American Governor of any State, Governor George Ariyoshi, our first native Hawaiian Governor, Governor John Waihee, our first Filipino American Governor, Governor Ben Cayetano.

We also have Mayor Neal Blaisdell, and the newly elected mayor of the city and county of Honolulu, Mufi Hannemann. We also have Lieutenant Governors Jimmy Kealoha and Duke Ainoa. Norm Mineta, a good friend of mine who is not only partly responsible for initiating this Heritage Month, but was always the first Asian Pacific American mayor of a major U.S. city like San Jose, he was also the first Asian Pacific American to be a member of a Presidential Cabinet when he was appointed as Secretary of Commerce in the year 2000 by former President Clinton and now is U.S. Secretary of Transportation appointed by President Bush.

Elaine Chao, another first. Secretary Chao is the first female Asian American Cabinet member, appointed Secretary of Labor by President Bush.

Gary Locke, first Asian American Governor on the mainland United States, elected Governor of the State of Washington in 1996. And I could never forget and my deepest respect to the late Congresswoman Patsy Mink, first Asian American female elected to the U.S. Congress since 1964. Then our late colleague and friend, my dear friend, the late Congressman Bob Matsui, who inspired me and mentored me throughout our time here together as a senior member of the House Committee on Ways and Means.

As a Vietnam veteran, Mr. Speaker, it would be ludicrous for me not to say something to honor the hundreds of thousands of Asian Pacific Americans who have and continue to serve in all the branches of the armed services of our Nation.

I would like to share with you the contributions of tens of thousands of Japanese American soldiers who volunteered to fight our Nation's enemies in Europe during World War II.

Mr. Speaker, we are all aware of the fact that after the surprise attack on Pearl Harbor on December 7, 1941, by the Imperial Army of Japan, there was such an outrage and cry for an all-out war against Japan. In days afterwards, our President and the Congress formally declared war. But caught in this crossfire were hundreds of thousands of Americans, mind you Americans, who happened to be of Japanese ancestry.

□ 2200

Our national government immediately implemented a policy whereby over 100,000 Americans of Japanese ancestry were forced to live in what were called, supposedly, ''relocation camps''; I call them ''concentration camps.'' Their lands, their homes, and their properties were confiscated without due process of law.

It was also a time in our Nation's history that there was so much hatred and bigotry and racism against our Japanese American community. And yet despite all of this, leaving their wives, their parents, their brothers and sisters behind barbed-wire fences in these prison camps, the White House accepted the requests from tens of thousands of Japanese Americans who volunteered to join the Army, and as a result, two combat units were organized.

One was called the 100th Battalion, and the other was known as the 442nd Infantry Combat Group. Both were sent to Europe to fight. And I might say that I am very, very proud to have been associated and been a former member of the 100th Battalion, 442nd Infantry Combat Group out of the State of Hawaii.

Mr. Speaker, in my humble opinion, history speaks for itself in documenting that none have shed their blood more valiantly for our Nation than the Japanese American solders who served in those two combat units while fighting enemy forces in Europe during World War II.

The military records of the 100th Battalion and the 442nd Infantry are without equal. Those Japanese American units suffered an unprecedented casualty rate of 314 percent, and received over 18,000 individual decorations, many awarded posthumously for bravery and courage in the field of battle.

For your information, Mr. Speaker, 52 Distinguished Service Crosses, 560 Silver Stars, and 9,480 Purple Hearts were awarded to the Japanese American soldiers of the 100th Battalion and 442nd Infantry Group. I find it unusual, however, that only one Medal of Honor was given. Nonetheless, the 442nd Combat Group emerged as the most decorated combat unit of its size in the history of the United States Army.

President Truman was so moved by their bravery in the field of battle, as well as the tremendous sacrifices of the African American soldiers in World War II, that he issued an executive order to finally desegregate all of the branches of the armed services.

Senator INOUYE lost his arm while engaged in battle against two German machine gun posts, and he was awarded the Distinguished Service Cross. After a congressional mandate to review again the military records of these two combat units some 5 years ago, I was privileged to attend a White House ceremony where President Clinton presented 19, 19 Congressional Medals of Honor to the Japanese American soldiers who were members of the 100th Battalion and 442nd Combat Infantry. Senator INOUYE was one of those recipients of the Congressional Medal of Honor.

I submit, Mr. Speaker, these Japanese Americans paid their dues in blood to protect our Nation from its enemies. It is a shameful mark on the history of our country that when the patriotic survivors of the 100th Battalion and the 442nd Infantry returned to the United States to be reunited with their families, who were locked up behind barbed wire fences, living in prison camps, and could not even get a haircut in downtown San Francisco, simply because they looked Japanese, they were Japanese, and for that reason alone, even with their uniforms on, they were not given the privilege of getting a haircut.

My former colleague and now U.S. Secretary of Transportation, Norm Mineta, and the late Congressman Bob Matsui from Sacramento both spent some of the early years of their lives in these prison camps. Secretary Mineta told me one of the interesting features of these prison camps was posting of machine gun nests all around the camp, and everyone was told that these machine guns were posted to protect them against rioters. But then Secretary Mineta observed, if these machine guns were posted to guard us, why is it that they are all directed inside the prison camp rather than outside it?

I submit, ladies and gentlemen, my good friends, my colleagues, the wholesale and arbitrary abolishment of the constitutional rights of these loyal Japanese Americans should forever serve as a reminder and testament that this must never be allowed to occur again.

When this miscarriage of justice unfolded during World War II, Americans of German and Italian ancestry were not similarly jailed en masse. Some declared the incident as an outright example of racism and bigotry in its ugliest form.

After viewing the Holocaust Museum in Washington, I understand better why the genocide of some 6 million Jews has prompted the cry ''Never again, never again.'' Likewise, I sincerely hope that mass internments on the basis of race alone will never again darken the pages of the history of this great Nation.

Now, to those who say, Well, that happened decades ago, we must say that we have to continue to be on our guard for this kind of thing to happen again. I remember years ago the case of Bruce Yamashita, the Japanese American born and raised in the State of Hawaii, who was discharged from the Marine Corps after a training program as an officer candidate and an ugly display of racial discrimination.

The Marine Corps superiors taunted Yamashita with ethnic slurs and told him, We do not want your kind around here, go back to your own country. The

situation was made worse when a leading officer of the Marine Corps made a statement on the 60 Minutes program who said, Marine officers who are minorities do not shoot, swim or use compasses as well as white officers.

The Commandant later apologized for his remarks, but it was a little too late. And I am really happy to know that after all of the investigations that the Secretary of the Navy finally awarded Mr. Yamashita his commission as an officer and a captain in the United States Marine Corps.

The tradition continues today of the thousands of Asian Pacific Americans who served in the armed services. Retired General Eric Shinseki was the first Asian Pacific American four-star general who served as U.S. Army Chief of Staff.

Our Asian American Pacific Island soldiers are fighting for freedom in Iraq even as I speak. Just this past weekend I was privileged to witness in Germany the swearing in of a Samoan soldier by the name of Command Sergeant Major Iuniasolua Savusa as the Command Sergeant Major for U.S. Army Europe and the 7th Army.

I am very proud of Command Sergeant Major Savusa for his accomplishments. He is an inspiration and a great role model for our youth and other Asian Pacific Americans who currently serve in the military.

Mr. Speaker, I think at this point I want to defer to my good friend, the gentleman from California (Mr. HONDA) the manager of this special order this evening. And I am sure that he may want to continue portions of his statement as well.

Mr. HONDA. Mr. Speaker, I thank the gentleman from American Samoa for adding so much information to this presentation, because I think that when people listen and hear what it is that we are sharing with this country, there may be many, many people out there that say, I did not know that.

Although we talk about many firsts, accomplishments from members of our communities, I am sure also, that those who are first expect never to be last, that they would continue, that we would continue to contribute to this country. And in order to contribute to our country, we have to also defend the Constitution.

Defending the Constitution and defending the rights of our people also entails the voting rights. This past week, H.R. 9, the Voting Rights Act reauthorization was introduced.

The right to vote is keenly felt by the Asian and Pacific Islander American community. Chinese Americans could not vote until the Chinese Exclusion Acts of 1882 and 1892 were repealed in 1943. First-generation Japanese Americans could not vote until 1952 because of the racial restrictions contained in the 1790 naturalization law.

With the markup in Judiciary Committee tomorrow, we need to ensure that important provisions such as section 203, which has been very vital to the API community's ability to participate in the electoral process, gets reauthorized in this Congress.

Language-minority citizens were often denied needed assistance at the polls. In the 1975 amendments to the Voting Rights Act, such assistance became required in certain situations, and we need to ensure that these provisions continue to remain in current law.

Mr. Speaker, as Americans, we need to ensure that our children receive a quality education, but also provide adequate teacher training, funds for after-school and extracurricular activities and ensuring that college is affordable for every student that deserves to receive a higher education.

According to the U.S. Census, 50 percent of Asians age 25 and over have a Bachelor's degree or higher level of education. However, I would like to emphasize that when we disaggregate the data, when we tease apart the information for the API subgroups, we find that the model minority stereotype is in fact a myth.

Only 9.1 percent of Cambodian Americans, 7.4 percent Hmong Americans, 7.6 Lao Americans, 19.5 percent Vietnamese Americans and 16 percent of native Hawaiians and Pacific Islanders who are 25 years and older have a Bachelor's degree.

These numbers show that we must do a better job of disaggregating data and information about our communities to assess the needs of those hard-working Americans who still falter behind. To address the disparities between subgroups of the larger APIA community, we need Congress to pass the Asian American and Pacific Islander Serving Institutions bill, which my colleague from Oregon, Congressman DAVID WU, will be introducing later this month.

This legislation will provide Federal grants to colleges and universities that have an enrollment of undergraduate students that is at least 10 percent APIA and at least 50 percent of its degree-seeking students receive financial assistance.

As a caucus, we will work to increase the availability of loan assistance, scholarships and programs to allow APIA students to attend a higher education institution; to ensure full funding for teachers and bilingual education programs under the No Child Left Behind law; to support English language learners; and to support full funding of minority outreach programs for access to higher education, such as the TRIO programs to expand services to serve APIA students.

Mr. Speaker, a common misperception of APIAs is that, as a group, we face fewer health problems than other racial and ethnic groups. In fact, APIAs as a group and specific populations within this group do experience disparities in health and health care.

For example, APIAs have the highest hepatitis B rates of any racial group in the United States. APIAs are also five times more likely to develop cervical and liver cancer than any other ethnic and racial group.

According to the Census Bureau, 18 percent of APIAs went without insurance for the entire year in 2000. This means that the uninsured are not only more likely to go without care for serious medical conditions, they are also more likely to go without routine care, less likely to have a regular source of care, less likely to use preventive services and have fewer visits per year.

At the same time, without appropriate language translation services or properly translated materials, limited-English-proficient immigrants cannot receive adequate care, as well as State and Federal benefits for which they may be eligible.

In the APIA community, 76 percent of Hmong Americans, 61 percent of Vietnamese Americans, 52 percent of Korean Americans and 39 percent of Tongans speak limited English. Therefore, eliminating health care disparities in the APIA community must include data collection, linguistically appropriate and culturally competent services, and access to health insurance.

CAPAC has been working with both the Congressional Hispanic and Black Caucuses on the Health Care Equality and Accountability Act to eliminate ethnic and racial health disparities for all of our communities.

I have introduced the Health Care Equality and Accountability Act, which will address expanding the health care safety net by diversifying the health care workforce, combating diseases that disproportionately affect racial and ethnic minorities, emphasizing prevention and behavioral health and promoting the collection and dissemination of data and enhanced medical research.

Mr. Speaker, I would also like to extend my gratitude to the patriotic men and women serving our country in the military, including the 60,813 APIAs serving on active duty in the U.S. armed services, as well as the 28,066 in the Reserves and the National Guard.

□ 2215

I also commend and thank the 351,000 APIA veterans who fought for this country. I would like to highlight and honor the Filipino veterans as my colleague had done who have not been compensated and recognized for their service, which I believe is a national disservice to these brave veterans.

As a country, it is our duty to ensure that these veterans have equal access to all the benefits and treatment that other veterans receive. We believe that our troops should be taken care of when we send them into battle and that they should be given the respect when they return home. Therefore, I stand with my colleagues, Congressman ISSA and Congressman FILNER, to support their bipartisan legislation, H.R. 4574, to restore full benefits to

these veterans who fought for our Nation during World War II. With Congressman ISSA taking the lead and Congressman FILNER in a leadership position in the Veterans' Affairs Committee, we have a great chance to get this bill to the floor in honor of the centennial celebration of Filipinos in Hawaii and to keep the word of Congress that we gave to these brave veterans of World War II.

I am proud of our community's accomplishment, Mr. Speaker, and I would like to recognize many of the APIA firsts in areas of art, film, sports, sciences, academia, and politics. In each effort, these folks, who were first, expect that they are not the last:

In 1847, Yung Wing, the first Chinese American graduated from Yale University and the first APIA to graduate from a U.S. college;

In 1863, William Ah Hang, who was Chinese American, became the first APIA to enlist in the U.S. Navy during the Civil War;

In 1944, An Wang, a Chinese American who invented the magnetic core memory revolutionized computing and served as a standard method for memory retrieval and storage;

In 1946, Wing F. Ong, a Chinese American from Arizona, became the first APIA to be elected to State office;

In 1948, Victoria Manalo Draves, a Filipino American diver, became the first woman to win Olympic gold medals in both the 10 meter platform and the 3 meter spring board events;

In 1956, Dalip Singh Saud, the first Indian American to be elected to Congress;

In 1965, Patsy Takemoto Mink, the first Japanese woman and woman of color elected to Congress who championed title IX;

In 1985, Haing Ngor, a Cambodian American, became the first APIA to win an Academy Award for his role in the movie ''Killing Fields'';

In 1985, Ellison Onizuka, a Japanese American, became the first APIA astronaut whose life was lost in a launching tragedy.

In conclusion, Mr. Speaker, the Asian American Pacific Islander American community continues to fight for our civil liberties and our civil rights as Americans.

Even after the internment of the Japanese Americans during World War II, we as a community did not grow embittered or cowed by discrimination; instead, we progressed and moved forward. I am proud to be a member of the APIA community because we continue to serve as positive contributors to our many communities by investing in education, business, and cultural opportunities for all Americans.

In closing, this Asian Pacific American Heritage Month we take pride in our history, accomplishments, and the promise of our future as we continue to pave the way for a better tomorrow in the name of dreams and challenges of Asian Pacific Americans.

Mr. Speaker, the 6 years I have served here I learned that Asian Americans have a unique contribution to make to this body and to this country, and that we because of our history in this country uniquely understand and recognize that our Constitution is never tested in times of tranquility. Our Constitution is always tested in times of trauma, terror, tension and tragedy. And to the point where we can internalize the principles of our Bill of Rights and our Constitution, and to the point where we understand that defending this Constitution and its people will we be able to face as Members of this body, face overwhelming public approval which could be wrong and stand up to them, say it is wrong because it does not follow the Constitution.

These are the kinds of heritage and contributions Asian Americans have made, will make and continue to make in this country so that we may fulfill the phrase in the preamble of our Constitution that says ''to form a more perfect union.''

In the words of Congressman AL GREEN, ''There will be a tomorrow.''

Mr. Speaker, I yield to my friend.

Mr. FALEOMAVAEGA. Mr. Speaker, how much time do we have remaining?

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). The gentleman has 3 minutes remaining.

Mr. FALEOMAVAEGA. Mr. Speaker, I would like to offer my closing remarks. I say, Mr. Speaker, when I envision America I do not see a melting pot designed to reduce or removal racial differences. The America I see is a brilliant rainbow, a rainbow of ethnicities and cultures with each people proudly contributing in their own distinctive and unique way a better America for generations to come.

Asian Pacific Americans wish to find a just and equitable place in our society that will allow, like all Americans, to grow, to succeed, to achieve and to contribute to the advancements of this great Nation.

I would like to close my remarks by asking all of us here this evening, What is America all about?

I cannot think of it said better than on the steps of the Lincoln Memorial in the summer of 1963 when an African American minister by the name of Martin Luther King, Jr., poured out his heart and soul to every American who could hear his voice when he uttered these famous words, ''I have a dream. My dream is that one day my children will be judged not by the color of their skin, but by the content of their character.''

That is what I believe America is all about, Mr. Speaker. Again, I thank my colleague and my good friend, the gentleman from California, for his management of this Special Order honoring all of the Asian Pacific American community in our country and the contributions that they have made to make our country to form a more perfect union.

I rise today in celebration of Asian Pacific American Heritage Month, to acknowledge the contributions of our Asian Pacific American individuals and communities to the success of our great Nation.

I commend my colleagues who founded this celebration in 1977 by introducing a resolution calling upon the President to proclaim the first ten days in May Asian/Pacific Heritage week—Representatives Norm Mineta and Frank Horton, and Senators DANIEL K. INOUYE and Spark Matsunaga.

The Asian Pacific American community is vibrant and growing, with an estimated 14 million Asian American residents and another 975,000 Pacific Americans.

I am proud to be a member of this Asian Pacific American community, a community that has produced so many inspiring individuals in government, the military, the sciences, sports, entertainment, and business. In government, for example: from Hawaii

Senators Hyrum Fong, DANIEL INOUYE, DANIEL AKAKA.

Governors George Ariyoshi, John Waihee, Ben Cayetano.

Mayors Neal Blaisdell and Mufi Hannemann, Lt. Governors Jimmy Kealoha and Duke Aiona.

Norm Mineta—my good friend was not only partly responsible for initiating APA Heritage Month, but was also the first Asian Pacific American mayor of a major U.S. city (San Jose). He was also the first Asian Pacific American to be a member of the Presidential Cabinet, when he was appointed as Secretary of Commerce in 2000 by former President Clinton and five years ago Mr. Mineta was appointed by President Bush as U.S. Secretary of Transportation.

Elaine Chao—another first, Secretary Chao is the first female Asian-American cabinet member, appointed Secretary of Labor in 2001, also appointed by President Bush.

Gary Locke—the first Asian-American governor on the mainland U.S., elected governor of Washington, 1996.

Patsy Mink—the first Asian-American female elected to Congress, in 1964 from Hawaii.

Bob Matsui—my dear friend and colleague who inspired me and mentored me throughout our time together here as a senior member of the House Committee on Ways and Means.

As a Vietnam Veteran, it would be ludicrous for me not to say something to honor the hundreds of thousands of Asian-Pacific Americans who have and continue to serve in all the branches of armed services of our Nation. I would like to share with you the contributions of the tens of thousands of Japanese-American soldiers who volunteered to fight our Nation's enemies in Europe during World War II.

Mr. Speaker, we are well aware of the fact that after the surprise attack on Pearl Harbor on December 7, 1941, by the Imperial Army of Japan—there was such an outrage and cry for all-out war against Japan, and days afterward, our President and the Congress formally declared war—but caught in this cross-fire were hundreds of thousands of Americans—Americans mind you who happened to be of Japanese ancestry.

Our national government immediately implemented a policy whereby over one-hundred thousand Americans of Japanese ancestry, were forced to live in what were called relocations camps—but were actually more like prison or concentration camps. Their lands, homes and properties were confiscated without due process of law.

It was also a time in our Nation's history that there was so much hatred, bigotry and racism against our Japanese-American community—and yet despite all this—leaving their wives, their parents, their brothers and sisters behind barbed wire fences in these prison camps—the White House accepted the request from tens of thousands of the Japanese-Americans who volunteered to join the Army. And as a result two combat units were organized—one was the 100th Battalion and the other known as the 442nd Infantry Combat Group—both were sent to fight in Europe.

In my humble opinion, history speaks for itself in documenting that none have shed their blood more valiantly for our Nation than the Japanese-Americans soldiers who served in these two combat units while fighting enemy forces in Europe during World War II.

The military records of the 100th Battalion and 442nd Infantry are without equal. These Japanese-American units suffered an unprecedented casualty rate of 314 percent and received over 18,000 individual decorations, many awarded posthumously, for bravery and courage in the field of battle.

For your information Mr, Speaker, 52 Distinguished Service Crosses, 560 Silver Stars, and 9,480 Purple Hearts, were awarded to the Japanese-American soldiers of the 100th Battalion and 442nd Infantry Group. I find it unusual; however, that only one Medal of Honor was ever given. Nonetheless, the 442nd Combat Group emerged as the most decorated combat unit of its size in the history of the United States Army.

President Truman was so moved by their bravery in the field of battle, as well as that of African-American soldiers during World War II, that he issued an executive order to finally desegregate all branches of the Armed Services.

Senator INOUYE lost his arm while engaged in battle against two German machine gun posts and he was awarded the Distinguished Service Cross. After a Congressional mandate to review again the military records of these two combat units 5 years ago—I was privileged to attend the White House ceremony where President Clinton presented nineteen Congressional Medals of Honor to the Japanese-American soldiers who were members of 100th Battalion and 442nd Combat Infantry group—Senator INOUYE was one of those recipients of the Medal of Honor.

I submit, Mr. Speaker, these Japanese-Americans paid their dues in blood to protect our Nation from its enemies. It is a shameful mark on the history of our country that when the patriotic survivors of the 100th Battalion and the 442nd Infantry returned to the United States to be reunited with their families who were locked-up behind barbed wire fences, living in prison camps—and could not even get a haircut in downtown San Francisco because they all looked Japanese—despite the fact that they too were Americans.

My former colleague and now U.S. Secretary of Transportation, Norman Mineta, and the late Congressman Bob Matsui from Sacramento both spent some of the early years of their lives in these prison camps.

Secretary Mineta told of one of the interesting features of these prison camps were postings of machine gun nests all around the camp and everyone was told that these machine guns were posted to protect them against rioters.

But then Secretary Mineta observed—if these machine guns are posted to guard us, why is it that they are all directed inside the prison camp compound and not outside?

I submit, ladies and gentlemen, the wholesale and arbitrary abolishment of the constitutional rights of these loyal Japanese-Americans should forever serve as a reminder and testament that this must never be allowed to occur again. When this miscarriage of justice unfolded during World War II, Americans of German and Italian ancestry were not similarly jailed en masse. Some declare the incident as an example of outright racism and bigotry in its ugliest form. After viewing the Holocaust Museum in Washington, I understand better why the genocide of some 6 million Jews has prompted the cry, "Never Again, Never Again!" Likewise, I sincerely hope that mass internments of the basis of race alone will never again darken the history of our great nation.

To those that say, well, that occurred decades ago, I say we must continue to be vigilant in guarding against such evil today.

Not long ago, we had the case of Bruce Yamashita, a Japanese-American from Hawaii who was discharged from the Marine Corps officer training program in an ugly display of racial discrimination. Marine Corps superiors taunted Yamashita with ethnic slurs and told him, "We don't want your kind around here. Go back to your own country." The situation was made worse by the Commandant of the Marine Corps, a four star general, who appeared on television's "Sixty Minutes" and stated: "Marine officers who are minorities do not shoot, swim, or use compasses as well as white officers." The Commandant later apologized for his remarks, but it was a little too late.

After years of perseverance and appeals, Mr. Yamashita was vindicated after proving he was the target of vicious racial harassment during his officer training program. The Secretary of the Navy's investigation into whether minorities were deliberately being discouraged from becoming officers resulted in Bruce Yamashita receiving is commission as a captain in the Marine Corps.

The tradition continues today of the thousands of Asian-Pacific Americans who serve in the armed services. Retired General Eric Shinseki was the first Asian-American four-star general who served as U.S. Army Chief of Staff. Our Asian-American and Pacific Island soldiers are fighting for freedom in Iraq even as I speak.

Just this past weekend, I was privileged to witness the swearing in of the Samoan soldier CSM Iuniasolua Savusa as the Command Sergeant Major for U.S. Army Europe and the 7th Army. I am very proud of Command Sergeant Major Iuni Savusa for his accomplishments. He is an inspiration and a great role model for our youth and other Asian-Pacific Americans who currently serving in the military.

Other outstanding Asian-Pacific Americans who have made significant contributions to our nation:

Dr. David Ho—pioneered treatment for HIV/AIDS and named by Time Magazine as its "Man of the Year" in 1996.

Dr. Hideyo Noguchi—isolated the syphilis germ in 1911, leading to a cure for the deadly disease.

Dr. Subrahmanyan Chandrasekhar—Nobel Prize winner, evolution of stars, led to modern astrophysics.

Ellison Onizuka—the first Asian-American astronaut, 1985, Died aboard the Space shuttle *Challenger* in 1986.

Kalpana Chawla—Astronaut, first Indian American woman in space.

News, Sports, and Entertainment—

Ellen Nakashima—chief reporter for the Washington Post in Southeast Asia.

Connie Chung—in 1993, became the first Asian American to be a nightly news anchor for a major network.

Keanu Reeves—internationally renown actor.

Apolo Ohno—Olympic Gold & Silver Medalist, speed skating.

Jet Li—movie actor.

Kristi Yamaguchi—Olympic Gold Medalist, figure skating.

Dwayne Johnson—also known as the "Rock," professional wrestler and movie star—Scorpine King, Walking Tell, Doomed.

Dr. Sammy Lee, Olympic gold medalist high diver.

Greg Louganis—Olympic gold.

Michelle Kwan: Olympic Silver and Bronze medalist, Figure skating.

Duke Kahanamokee, gold medalist swimmer.

Angela Perez Baraquio: First Asian American Miss America 2001 (Miss Hawaii).

Sarah Chang: world famous violinist.

Lucy Liu: Actress.

Bruce Lee: Martial Artist and Actor.

Tiger Woods: Golf Professional.

Michelle Wie: Professional Golfer.

Akebono (Chad Rowan): Sumo Wrestler (retired), yokozuna.

Konishiki Salevaia Afigaroe: Sumo wrestler, oyeki.

Musashimaru Peitari, Sumo wrestler, retired, yokozuna.

24 Samoan NFL football players in 2005/2006 season.

9 Native Hawaiian NFL football players.

5 Tongan Americans—NFL football players.

Mr. Speaker, when I envision America, I don't see a melting pot designed to reduce and remove racial differences. The America I see is a brilliant rainbow—a rainbow of ethnicities and cultures, with each people proudly contributing in their own distinctive and unique way—a better America for a generation of Americans yet unborn.

Asian-Pacific Americans wish to find a just and equitable place in our society that will allow them—like all Americans—to grow, to succeed, to achieve and to contribute to the advancement of this great nation.

Mr. Speaker, first as an American, whose roots are from the Asian Pacific Region, I would like to close my remarks by asking all of us here tonight, what is America about? I think it could not have been said better than on the steps of the Lincoln Memorial in the summer of 1963 when an African-American minister named Martin Luther King Jr. poured out his heart and soul to every American who could hear his voice, when he uttered these words: "I have a dream. My dream is that one day my children will be judged not by the color of their skin, but by the content of their character."

That is what I believe America is all about.

RECOGNIZING THE CONTRIBUTIONS OF ASIAN PACIFIC AMERICANS

Ms. BORDALLO. Mr. Speaker, I rise today in honor of Asian Pacific American Heritage Month and to recognize the role that Asian and Pacific Islander

Americans play in our nation. I want to thank Mr. HONDA, the Chairman, and Mr. FALEOMAVAEGA, the Vice Chairman, of the Congressional Asian Pacific American Caucus for their commitment to and leadership of the Caucus and their efforts on behalf of our communities.

Asian Pacific Islanders are leaders in academia, in the arts, in all levels of government and the military, and in the private sector. They contribute to all aspects of American life and, in doing so they enrich the lives of Americans and make this country stronger. This month is set aside to honor their successes and contributions.

As we celebrate Asian Pacific Islander traditions this month, we must remember those pioneers who forged the path on which we walk today. Their work, their sacrifices, and the impacts they made on America provided the foundation of understanding of Asian and Pacific Islander cultures, traditions, and heritage, all of which have opened doors for current and future generations. True to this record, Asian Pacific Islander American achievements today will inspire and support future generations of Asian Pacific Islanders to excel tomorrow.

This year's theme is ''Dreams and Challenges of Asian Pacific Americans.'' It is through these strong dreams that the Asian Pacific Islander community has progressed. As we come together to celebrate another Asian Pacific American Heritage Month, I am reminded of the many contributions and successes of our community. The importance of our community has been recognized by the White House. On May 13, 2004, President Bush signed Executive Order 13339, which created the President's Advisory Commission on the White House Initiative on Asian Americans and Pacific Islanders. This was a significant step in voicing the special needs of the APA community through the Executive branch of government. One of Guam's very own was chosen to serve on this Commission.

Martha Cruz Ruth is one of fourteen APAs appointed by the President to serve on the President's Advisory Commission for the White House Initiative on Asian Americans and Pacific Islanders. The Commission was chosen based on their history of involvement with the APA community and for their expertise in a specific field. Mrs. Cruz's specialties range from media affairs and marketing to local politics, having served a term in Guam's Legislature in 1987, and she brings a unique voice to this Commission.

Asian Pacific Americans have demonstrated a long and distinguished history of service to this country. Many have served in our armed forces. On Guam, our men and women volunteer for military service at higher rates per capita than any state in the union. We owe each and every one of these servicemen and women a debt of gratitude for their service and sacrifice.

Through hard work and dedication, Asian-Pacific Americans have risen through the ranks to the top levels of military leadership. General Eric K. Shinseki, holds the distinction of being the highest-ranking APA in the U.S. Army. Major General Antonio Taguba, who served as the chief investigator during the Abu Ghraib prison scandal, is only the second Filipino American to rise to the position of General in the U.S. Army. Brigadier General Vicente Tomas (Ben) Blaz, of Guam, had a distinguished career with the U.S. Marine Corps, and he made our island proud when he was promoted to Brigadier General in 1977. In 1984, after retiring from the Marines, General Blaz came here to our nation's capital to serve as Guam's Delegate to the U.S. House of Representatives and served in that capacity for eight years.

Among those who have served in the military, I especially want to remember those who have given their lives to protect our freedom, including those who lost their lives in the Global War on Terrorism. Specialist Christopher Jude Rivera Wesley, Lieutenant Michael Aguon Vega, Specialist Jonathan Pangelinan Santos, Specialist Richard DeGracia Naputi, Jr., and Specialist Kasper Alan Camacho Dudkiewicz are five of Guam's sons who were killed in Iraq. In addition, the Micronesian region has lost six of its own sons. Though their deaths sadden us, their courage reminds us that freedom is never free.

The Asian Pacific American communities have embraced America as our home and have thrived through the limitless opportunities this country has to offer.

Today, as we go forward celebrating ''Dreams and Challenges of Asian Pacific Americans,'' let us celebrate the unique histories and stories of our people.

This year the people of Guam will commemorate the 62nd anniversary of our liberation from enemy occupation by U.S. armed forces during World War II. As the only American territory with a civilian population occupied by the enemy during World War II, the people of Guam risked their lives to protect American servicemen from capture and endured great hardships and suffering. I want to recognize the people of Guam for their steadfast loyalty during these trying times.

Guam continues to play an important role in our nation's relations with Asian countries. Recently, Secretary Donald Rumsfeld announced the re-location of marines from Okinawa to Guam as part of a major realignment of forces in Japan. With the impending arrival of 8,000 Marines from Okinawa, our island is planning for a period of tremendous growth. We look forward to making a significant contribution to peace and security in the western Pacific and Asia, and we hope that the realignment of forces will strengthen the U.S.-Japan alliance.

As we celebrate Asian Pacific American Heritage Month, let us honor the contributions of all Asian and Pacific Islander Americans. Let us ensure that their stories are known to the younger generation. Let us celebrate the beauty of our cultures and the richness of our heritage. And let us celebrate how we help make America the great country it is.

Dangkulo na Si Yu'os Ma'ase.

Ms. MATSUI. Mr. Speaker, this month we continue a nearly three decade tradition of Asian Pacific American Heritage. Without the sacrifices and contributions that have been made by Asian Americans, the United States would not be the world leader that it is.

During this special month we have the opportunity to acknowledge and pay tribute to the contributions of the 15-million strong Asian Pacific American community—from I. M. Pei, Maya Lin, and astronaut Ellison Onizuka, to Amy Tan, Yo Yo Ma, and General Eric Shinseki. Our Nation would not be what it is today without their immeasurable input. Their unique contributions enhance the moral fabric and character of this great Nation.

As we celebrate the contributions of Asian Americans and Pacific Islanders to the whole of the Nation, we must rededicate our efforts to ensuring equality and opportunities so that all Americans have a chance to reach their full potential. Together, we can make the American dream a reality for all Americans.

Mr. CASE. Mr. Speaker, I am pleased to join Chairman HONDA and other members of the Congressional Asian Pacific American Caucus in commemorating Asian Pacific American Heritage Month.

I am even more pleased that several Asian Pacific American organizations or governmental initiatives are holding their annual conventions in Hawaii this month. This includes the Federal Asian Pacific American Council and the White House Initiative on Asian Americans and Pacific Islanders.

There are also several Filipino American organizations that will be hosting events this year in Hawaii, including the National Federation of Filipino American Associations, as 2006 marks the centennial of sustained immigration from the Philippines to the United States.

The Filipino Centennial Celebration Commission in Hawaii, led by Elias Beniga, and the Smithsonian Filipino American Centennial Commemoration have done a wonderful job in providing commemorative activities across the country, including in Hawaii and Washington, D.C.

I was pleased that Congress passed in December, H. Con. Res. 218, my resolution recognizing the centennial and acknowledging the contributions of Filipino-Americans to the United States.

While there are many issues of importance, a timely issue I believe should be considered by Congress is the inclusion of my bill, H.R. 901, into any comprehensive immigration reform bill moving through Congress.

H.R. 901 would prioritize the permanent immigration petitions of the sons and daughters of Filipino World War II Veterans who were extended U.S. citizenship under the Immigration and Nationality Act of 1990. Most recently, I wrote to President Bush and Congressional leaders urging their inclusion of this provision in immigration reform legislation.

I believe my bill fulfills one of the bedrock principles of our federal immigration policy—family reunification—and warrants special consideration given the unique history between the United States and the Philippines, as well as the contributions of our Filipino World War II veterans to our country and to U.S. national security interests.

As we commemorate Asian Pacific American Heritage Month, I celebrate the contributions of all Asian Americans and Pacific Islanders who call our country home, and I congratulate the Filipino American community for their centennial celebrations this year!

Ms. WATSON. Mr. Speaker, I rise today to celebrate Asian Pacific American Heritage Month. I want to congratulate my good friend and colleague, Mr. HONDA, for arranging this special order so that we can celebrate Asian Pacific American Heritage Month and acknowledge the important contributions of Asian

Americans. This year's theme, ''Dreams and Challenges of Asian Pacific Americans,'' reflects the Asian and Pacific Islander American community's commitment to fairness and equality.

I represent California's 33rd congressional district. It is one of the most ethnically and culturally diverse congressional districts in the U.S. It is emblematic of the emerging ''majority minority'' demographic of the state of California.

California is home to the largest Korean-American population in the country. More people of Korean heritage live and work in Los Angeles than in any place in the world outside Korea; and more Korean-Americans live and work in the 33rd congressional district than in any other congressional district in California.

I want to comment briefly on the recent and, in many ways, historic visit of Super Bowl MVP Hines Ward to Korea last month. His visit, I believe, embodies this year's theme of fairness and equality. The NFL hero, who is of mixed Korean and African-American ancestry, traveled to his native country to express pride in his Korean roots even though he shunned that side of his heritage after he faced prejudice as a child. His Korean mother accompanied him.

By all accounts, South Korea warmly embraced Hines Ward and received him as a hero. The government made him an honorary citizen. Moreover, his visit not only galvanized the Korean community but also brought attention to the plight of Koreans of mixed ancestry.

Korea has 35,000 people of mixed race, and many are subjected to discrimination. 22 percent are unemployed, and only 2 percent have administrative jobs. The rest are laborers. Statistics suggest that 9.8 percent of mixed-race Koreans leave primary school and 17.5 percent middle school. The average drop-out rate for Korean middle school students is 1.1 percent. The Pearl Buck Foundation notes that international marriages between Koreans and non-Koreans are on the rise and that the mixed-race population in Korea is estimated to grow to 2 million by 2020.

My home state of California is a leader in the growth of mixed-race populations in the U.S. In the 2000 Census, 7 million people self-identified themselves as multiracial. Historically, the West has always been very multiracial due to high immigration levels, the rich mix of different ethnic groups, and the historical absence of legal barriers to interracial marriage. Much work, however, remains to be done as mixed-race children in the U.S. and their counterparts overseas suffer from sleights and discrimination.

Hines Ward's visit to Korea has made a positive difference. The government and the ruling Uri Party recently agreed to grant for the first time legal status to people having mixed-race backgrounds and their families. The Ministry of Justice is now reviewing a plan to grant citizenship or residency status to those who marry Koreans. All acknowledge the impact and importance of Hines Ward's visit.

I want to congratulate Mr. Ward on his triumphal return to his homeland. He has used his celebrity status to bring attention to an issue of mutual importance to both the U.S. and Korea. I also want to congratulate the Korean government for taking positive steps to address an issue that until now has been largely ignored.

Finally, Mr. Speaker, as we celebrate Asian Pacific Heritage Month, let us not overlook those Asian-Americans of mixed race who have also made significant contributions to our nation.

Mr. BACA. Mr. Speaker, I rise today in celebration of Asian Pacific American Heritage Month and to honor the more than 14 million Asian Pacific Americans that contribute to the success of tour great nation.

I am proud to be a Representative from the great state of California, which is home to the largest Asian/Pacific Islander American (API) community in the United States. I truly believe diversity is what makes our country great and California benefits greatly from the API community's presence there.

The theme for this year's Asian Pacific American Heritage Month is ''Dreams and Challenges of Asian Pacific Americans'' and it is an idea that resonates especially for those of us from the Golden State. Indeed, much of California's earliest infrastructure and railways were built by the sweat and labor of Chinese and Japanese immigrants. Despite grueling work and harsh discrimination, these workers played a vital role in developing California's early economy and today, Chinese and Japanese Americans are among the largest, most successful API groups in the state.

The API community has also been at the heart of some of California's saddest and darkest hours. During World War II, our state was home to most of the internment camps that unjustly imprisoned more than 112,000 Japanese Americans between 1942 and 1948. Government-sanctioned racism forced many of these law abiding citizens to lose everything they owned and many families remain seared by the memory of this injustice.

However, the suffering and struggle of the API community didn't stop there. As recently as 1992, Americans witnessed a milestone in Asian Pacific American history as the streets of Koreatown exploded in violence during the Los Angeles Riots. Thousands of Korean Americans watched their American Dream go up in flames and they, too, had no choice but to rebuild and rise again.

And the list goes on. America is the home of Vietnamese, Cambodian, Hmong, Filipino, Thai, Malaysian, Native Hawaiian or other API communities. Each of these groups has overcome heartache, oppression, discrimination, and intolerance to achieve their goals in America. They are proud to be Americans and grateful for the opportunity to live freely and pursue their dreams.

The API community is among the fastest growing minority groups in our country and is succeeding in every arena. Asian Pacific Americans proudly serve in our military; they are among some of the most successful entrepreneurs; and some of them are my esteemed colleagues here in the halls of Congress.

I am proud to honor the Asian Pacific American community today not only for their persistence, but also for their accomplishments, contributions, and leadership.

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I'd like to thank the gentleman from California for putting together this Special Order to celebrate Asian Pacific American Heritage Month.

Mr. Speaker, I proudly represent one of the largest Vietnamese communities in the world outside of Vietnam in Orange County, California.

Many of them came to the United States only about thirty years ago, seeking refuge from an oppressive regime in an unknown land and facing an uncertain future.

These individuals risked everything for a chance to live freely and provide better opportunities for their children and for their families.

Since their arrival, these Vietnamese refugees have become Americans in the finest and truest sense of the word—hard working people trying to create a better future for themselves and their families.

One success story that I love to mention is that of Mr. Chieu Le, founder and chief executive officer of Lee's Sandwiches in Orange County, California.

In 1981, one year after immigrating to the United States from Vietnam, Mr. Le and his family bought their first catering truck and began serving sandwiches in the community.

Twenty years later, they opened the first Lee's Sandwich Shop in Garden Grove, California.

Today, Lee's Sandwiches is the fastest-growing restaurant chain in the West, with over 35 stores in operation or development.

And Mr. Le and his family have given back to the community as well, raising hundreds of thousands of dollars for victims of the 9/11 attacks and the South Asia tsunami.

But Mr. Le and his family are only one example. Dr. Nguyen-Lam Kim Oanh of the Garden Grove Unified School District is the first Vietnamese-American woman elected to a school board in Orange County.

Or actress Kieu Chinh, who has appeared in numerous movies and TV shows including E.R. and The Joy Luck Club, and was the subject of the Emmy-award winning 1996 documentary ''Kieu Chinh: A Journey Home.''

And groups such as the Union of Vietnamese Student Associations—a non-profit, volunteer-run organization that puts together the annual Tet Festival in Orange County, which draws twenty to thirty thousand attendees.

Or the Orange County Asian and Pacific Islander Community Alliance—the largest Pan-Asian Pacific Islander organization in Orange County. Their health outreach programs, after-school programs, and policy advocacy programs make a real difference in the lives of Orange County residents.

Through their hard work and dedication, Vietnamese Americans and other Asian-Pacific individuals and groups like these have become an integral part of the Orange County family—as entrepreneurs, as community leaders, and as activists for worthy causes at home and abroad. On behalf of all my colleagues in the House, I offer them our praise and our gratitude.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to honor Asian Pacific American Heritage Month and to pay tribute to the struggles and enormous contributions of Asian Pacific Americans to our Nation's culture.

It is an honor to pay tribute to the many achievements and honor the countless unique contributions to the United States made by Asian Pacific Americans across our Nation.

May commemorates the arrival of the first Japanese immigrants in 1843. Therefore, it is appropriate that during the month of May we recognize the contributions made by Asian Pacific Americans to our communities.

May 10, 1869 marks the completion of the transcontinental railroad and its completion is

greatly credited to the labor of the Chinese immigrants. Today, there are over 14 million Asian Pacific Americans living in the United States and this represents 5 percent of the population.

The rich history associated with the Asian Pacific American population has been a great contribution to the culture of the United States.

Over the years, the Asian Pacific American communities have made significant contributions to Texas's diverse culture.

The United States is a land of immigrants, and the history reflects a Nation that has greatly benefited from the many contributions of its immigrants.

The Greater Dallas Asian American Chamber of Commerce (GDAACC) is the largest Asian American Chamber in the United States with 1,200 members currently enrolled.

Located in the Asian Trade District in Northwest Dallas, GDAACC, is the focal point of Asian American economic development and cultural exchange.

In recent years, due to great efforts to expand the number of programs that provide assistance to members, sponsors and partners, the GDAACC initiated the Asian Festival and approximately 15,000 people were in attendance.

GDAACC is also responsible for initiating the Leadership Tomorrow Program; the Multi-Ethnic Education and Economic Development Center; and the Texas Asian American Business Symposium in Dallas, Texas.

The Asian Pacific American community is well deserving of the many accolades they receive because their contributions have greatly enriched the culture and history of our Nation.

## IMMIGRATION REFORM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Iowa (Mr. KING) is recognized for half the time remaining before midnight.

Mr. KING of Iowa. Mr. Speaker, as always, I very much appreciate the privilege to address you, Mr. Speaker, and in so doing addressing this great United States of America House of Representatives.

I am a bit breathless because I hustled over here to arrive at the appointed time; and I thank my colleagues, hopefully, they filibustered a few minutes on my behalf as good friends likely would.

Mr. Speaker, I would like to speak to you about a few issues about border control especially on the southern border and primarily on the southern border. I have long spoken about the policy that I think we need to have with regard to the immigration policy across the Nation, about domestic enforcement and shutting off the jobs magnet, and also about the need to stop the bleeding at our southern border.

And so I had gone down to the border about a year ago and spent a long weekend down there, at least 3 days on the ground and in the air, as a guest of the Border Patrol and some of the other agencies that operate the security along the border. And I was given a very good tour and a few rides in helicopters at night and also in the daytime, shining the night sun down along our border to identify where there might be illegals that have come across or future illegals preparing to come across. And I stopped and visited some of the stations and their equipment and talked to the men. I was impressed with the quality of the team people that they had assembled, the equipment they had assembled, and the tactics they had. Yet in that full long weekend, I did not actually see activity which would indicate to a reasonable person that there was not activity to be seen.

In spite all of those hours in the air and the hours on the ground and the night vision equipment, I did not again see any illegal activities, although I got many reports of the success of the interdiction of our border patrol and our other agencies.

Well, as I listen to the debate here in the House of Representatives, Mr. Speaker, and the testimony that comes before the immigration subcommittee which I sit upon, and I sit in those hearings two, three, even four times a week and we will have four, sometimes eight witnesses giving us credible data and good well-informed information on this issue from both sides of the issue, Mr. Speaker, and always the years, the cumulative information has built in me after those years of sitting on the immigration subcommittee, I began to think that I have a pretty decent broad background on the subject. And yet there was a gap, Mr. Speaker, there was a gap in that subject because I had not gone down and spent time on the border more or less unguided, more or less outside the scope of the Border Patrol, but gone ahead and gone down to the border and looked under all the stones and met with the people that were actually more likely to be more frank with me.

So that was my mission this past weekend where I spent perhaps as much as 4 days on the ground in Arizona. And the goal was to meet with the people that are enforcing our laws down there, the ones that are out in the night and those people who have seen this bleeding, this hemorrhaging at our border firsthand, that can describe to me the scope of the bleeding in our southern border.

Mr. Speaker, I am here to say tonight that it is astonishing. It is far worse than I had imagined and my imagination was fairly strong. My predictions and the numbers that I put out were fairly aggressive, at least viewed by some of my critics. But there is nothing I saw down on the border over the weekend, Mr. Speaker, that would cause me to believe that I have overstated the numbers of people who are illegally crossing our border or the amount of drugs, illegal drugs, that are coming across our border, or the amount of violence that is visited because of the drug problem both south of the border, north of the border, and the violence that goes throughout the drug culture in America and the collateral damage to the victims that may not be associate with that at all, but happened to be in the wrong place at the wrong time and are victims of murder, victims of negligent homicide generally in the form of a car accident where the driver who was at fault was under the influence of alcohol or drugs.

So what I did, Mr. Speaker, was go down to visit in a region, starting out on Friday, in a region south of Tucson, south and a little bit east of Tucson. I first met with a special agent who briefed me on a lot of information that had been coming by this individual on a consistent basis. And then I went to Bisbee, Arizona, where I went on down then to the border there to Naco, Arizona, right on the border with Mexico. That is a location that has seen a fair amount of violence and a lot of concentration of illegal traffic going along the border. They finally decided to establish and build a fence, Mr. Speaker.

I was guided to that location by a retired Border Patrol officer and a rancher from that region, both with a passion of patriotism for America, both that have a memory of growing up in an America and that part of Arizona that was a different kind of country than it is today. It was then a place that they could feel safe in their streets and safe in their homes and walk the streets and not lock their homes. And today that region has been flooded with just thousands and tens of thousands and perhaps hundreds of thousands of illegals, many of them carrying illegal drugs through that region.

And cars drive across the border where sometimes there had been an existing fence that was built originally to contain livestock, that fence has essentially been systematically broken down, and vehicles with drugs and illegals in them would drive right through the gaps in the fence, sometimes drive through the fence, and take off across the desert or cut across over to a highway and get up on the highway. And once they were on the highway, for a little ways they were gone, they were free, they were in America, not ever to be captured again, not ever to be accountable again unless they were just simply victims of bad luck.

They realized the magnitude of this problem at Naco, Arizona, and went in and built a fence through there, Mr. Speaker. It is built out of interlocking steel that sometimes can be 10 feet high or higher and then above that in some cases they have welded a kind of wire mesh that goes up another 4 to 6 feet. And when they originally built the fence, people said it would not work. It cannot work. People will go over it. They will go through. They will go under it, or they will go around it. In fact, they do go around it, Mr. Speaker.

At one point they picked up a cutting torch and cut a hole through it and made their own gate in that solid steel fence, and that was a pathway by

which people and drugs traveled into the United States, and some went back through that gate. And the patrol went there and welded the gate shut, and as they kept some maintenance up on the fence, the other side essentially gave up on trying to breech the fence.

□ 2230

Now, the illegal traffic goes around the end as one reason, rather than trying to find a way through a barrier that is a good solid barrier that has been very, very effective.

The Border Patrol officer whom I was there with and the rancher whom I was there with said look at this, and they described the problem they used to have about the thousands of people pouring across there. They said: We do not have that problem anymore. This community is safer than it was. It is more secure than it was. There is far less illegal traffic going through here. There is far less crime of all kinds, far less violence, and far fewer illegal drugs in this community because we built a barrier that kept the elements out that were eroding our quality of life in Naco, Arizona.

That was an interesting trip, and they took me out along the border where that fence essentially stops and diminishes in some locations. There is nothing there, not even a way to define where the border is between the United States and Mexico, but simply open places where illegals can walk across the border and one location just in a dry river bed or they would not be seen by night vision. They were protected by the shrubbery and vegetation. They could simply walk down from Mexico into the United States unimpeded, unobstructed, unobserved and become shadow people here in the United States doing whatever they do.

They were strong advocates of the border barrier and one that is solidly built and one that can be efficient and is becoming a tool that could very much support our law enforcement and let them focus their energy on plans that could be more effective than riding herd on a broad length of an unprotected border. It is ridiculous to think that we could ever hire enough people to sit along the border, especially at night, and watch people come across and then catch them rather than put in a fence that would not allow them to come across in the first place.

That was Naco, Arizona, and again, I learned a lot about the culture and the level of corruption on the south side of the border. It was an interesting conversation.

From there, I went down then to the reservation and was a guest of a number of the Shadow Wolves who are part of the Customs and Border Patrol. Actually, today, they are a part of the Border Patrol. They have been shifted to that, but it is on the Tohono O'odham Reservation, and on the reservation the Native Americans control that land. They have support of the Border Patrol, but they have had an organization there called the Shadow Wolves. They are Federal employees and their responsibility is to guard the border and interdict illegal drugs and illegal aliens. They are focusing on illegal drugs. Their peak recruitment, the top numbers there, Mr. Speaker; were 22, and when they were 22 strong, in fact, that does not sound like a very large group given the size of the reservation and given the miles of border that they have to protect, and I believe that number is 76 miles of border protected and controlled by 22 Shadow Wolves, members of the Tohono O'odham tribe on the reservation; but those 22, in the period of a year, I have got to dig up the statistics so I will be able to release those and publish those, Mr. Speaker, but the information I received, that they had interdicted more illegal drugs in a 12-month period of time with 22 of their Shadow Wolves than all 2,000 Border Patrol agents did in that entire sector for the same period of time.

That is an extraordinary example of effectiveness and efficiency, Mr. Speaker; and it is the kind of thing that we here in this Congress need to endorse and support and encourage and fund and authorize and protect and encourage and enhance, do all of things that we can do to identify the best among us, to encourage them, to grow that culture off beyond the bounds of the reservation, take that same culture of efficiency and enforcement on to the other reservations, whether Native American tribes that control land on our national boundaries with our neighbors, and the level of success that has been there has not been rewarded. It has not been encouraged. It has not been enhanced by the Border Patrol who seems to want to be seeking to undermine their efforts and absorb them into the broader Border Patrol, in which case, if they did that, the Shadow Wolves would lose their identity.

These people have an extraordinary amount of character and courage and conviction and pride in what they do; but like anyone, if they do not see a reward for that, if they do not see some kind of encouragement, if they do not understand that here in Congress we are supporting them, eventually they will be assimilated into the Border Patrol and their level of efficiency will be assimilated into the broader overall level of efficiency in the Border Patrol.

Now, I do not mean to imply that the Border Patrol is not efficient or that they may not have the kind of personnel that I would like to see. In fact, they have some very extraordinarily, brave, noble, hardworking officers, and many of them. The structure has become big and it has become difficult to be efficient. So I am not here to discourage them. I am here to encourage them, and I often shake their hands and thank them for what they do because they are the last line of defense along our border to protect us from the incursions of millions that take place in this country every single night, Mr. Speaker.

But what I saw from the Shadow Wolves was not only some of the history in their legacy and their efficiency and effectiveness, but I went out in the field with them and watched the way that they follow the border. When they see that there has been a border crossing there, they will pick up that sound, that track if you will, and they will follow that track down and hunt down the illegals. Sometimes they are carrying backpacks of illegal drugs. Sometimes they are just people entering the United States illegally, but they will find that track and get on a trot and follow that track and trace them to where they are, pick them up and detain them and then process them in a fashion in accordance with law.

Again, their effort has been extraordinary in some of the things that they showed and taught me, too much to go in depth here, Mr. Speaker, on the floor of the House of Representatives, but quite a lot of extraordinary skill that appears to me would be very constructive if it could be passed along to other agencies out there, particularly the broader Border Patrol.

But the culture is there as well as more important the skills to protect the culture of the Shadow Wolves. It is extraordinary. I was impressed with what they do, and I intend to support and encourage and enhance them. I will be looking for a way legislatively to demonstrate my commitment to their commitment to protect our border and defend us against the illegal incursions into the United States and the thousands and thousands of pounds of illegal drugs that come across our border every single day, many of them still pouring through the Tohono O'odham Reservation and in spite of the best efforts of the now-shrunken Shadow Wolves, down from 22 to 16 to cover those 76 miles of border fence. So, again, I have been extraordinarily impressed, but they have done their job.

From there, I traveled outside the reservation and went over then to the Cabeza Prieta National Wildlife Refuge and met with some people there, some national parks people and Department of the Interior forest rangers. Seventy-five percent of their work, which they signed up to do, would be to protect our natural resources, preserve our parks, enhance our parks, let Mother Nature be enhanced there so that the visiting public could come into these locations, like the Cabeza Prieta National Refuge, and be able to appreciate Mother Nature in its purest form.

That is why our forest rangers and our park officers got into the business, because they appreciate wildlife. They appreciate our plant life. They appreciate how the species of nature have balanced in these regions and how they have grown, and they try to enhance that.

They find that 75 percent of their time, their Border Patrol officers even, 75 percent of their time is spent protecting the border, 75 percent of the

time keeping illegals and illegal drugs out of the park, not a successful effort I might add, and perhaps a futile effort, but an effort that needs to be attempted nonetheless.

With dozens and dozens of abandoned vehicles sitting out across the national wildlife refuge, vehicles that have blazed a trail through there and hundreds of miles of roads have been carved through that national wildlife refuge because that was the most expeditious route for smugglers to drive their suburbans and their 4-wheel drive pickups and you name your vehicle, there, and there will be somebody else behind you, and the next night another and another and another. That formerly pristine desert turns into sometimes a 200-foot wide path after it has been pounded in the desert with traffic enough times it turns into what they call moon dust, just loose dust that lays there in ruts in a way that you can get stuck in that dust, 200 feet wide perhaps.

Before, this was a few less than 10 years ago, in fact, starting about 1998, was when these border incursions began and when they began to create these roads and these trails and tear up our natural resources. The people that are dying in an attempt to get across the desert have gone from a couple of years ago or 3 years ago 150, 175 a year, now across our southern border, as many as 450 a year do not make it across the desert when they seek to walk into the United States. They die of hypothermia, they die of exposure, they die of dehydration, more dehydration than anything else. The desert is not very forgiving, and some of them are not very well prepared. They are not very well-guided, and that human tragedy is exacerbated by the damage to our natural resources which I had a, I will say, less than enhanced appreciation for.

Mr. Speaker, I really learned to respect and appreciate the work that is done by our Department of the Interior, as well as the value of the resources that they are seeking to protect. A case in point I think illustrates this better than anything else would be a rare species of a bat, a long nose bat, and this is an endangered species. It only lives and reproduces in four caves, and those caves are all down in that region.

One of those caves was a cave that was frequented consistently by the illegals who would go up into the region, and then their guide and their track would take them to this cave where the baby bats were born. They began taking a stop off and temporary residence in the cave to the point where they scared the bats off and they would not come back in.

The long nose bat, the lesser long nose bat, left the cave, would not come back to reproduce, and so our National Park Service looked at that situation, said we have to protect this resource; and if this happens in the other three caves, there will be no place for these bats to reproduce, who knows if they will become extinct.

So they put up a wrought iron fence around the opening to this cave, cost $75,000, and there is other labor that was not tallied in, put the wrought iron fence around the cave, and it was built in way to keep the illegals out of the cave. Fortunately, the lesser long nose bats returned to the cave, and they are in there now living there and reproducing, but think about it for a moment if you would, Mr. Speaker, the effect of building a fence just around the entrance of the cave that provided a deterrent that allowed the bats to come back and live there again and reproduce and fly out, and they are really essential. They are essential then to the pollination of certain cactus out there in the desert, without which the cactus would not survive. It has a whole set of chain reactions.

I am submitting that we build a fence on the border because it is a lot cheaper to do than it is to build a fence around everything that is threatened from the illegals and the drug trade that comes from our southern border.

That was the lesson there at the Cabeza Prieta National Wildlife Refuge, that being a second stop or actually a third stop along the way; and then from there I went on over to Organ Pipe National Cactus Monument. Organ Pipe is another national monument location, and that is the location where the National Park Service officer, his name was Chris Eggle, was killed in a shootout with drug lords near the Mexican border in the park property.

I went there with his father, Bob. I visited the location where the shooting took place, where he stood, where the shooter laid, where he fell, where there is a monument there today that was built and placed by his father, Bob, and his mother, Bonnie. Well, they brought stones from their farm in Michigan down to place around the monument, and there is a cross and a picture and a place to remember where this happened, where it happened that Chris was killed by a drug lord or at least an employee of a drug lord who had driven across the Mexican border where there was no barrier. When he was being under hot pursuit by the Mexican police and his vehicle broke down and collapsed and stopped across the border into the United States and Chris Eggle and his partner were called in on that scene, as they split up and converged on the location where the drug smuggler was, Chris was ambushed with an AK–47 that had been brought into the United States, illegal, of course, on a vehicle that was illegal, with drugs that were illegal, across a border that was undefined, let alone defined with a barrier.

□ 2245

Had there been a vehicle barrier there, had there been a fence there, Chris Eggle would be alive today. He is not.

There is a memorial there at the Organ Pipe Cactus National Monument that memorializes him as well. I talked to many of his coworkers that were there. His spirit is alive and his spirit is strong today. The happy Chris Eggle is the one that is remembered. Although he is not with us, his spirit is with us and his sacrifice is something we need to remember.

He is not the only one. He is not the first one. I pray he will be the last one, but I saw nothing down there that would indicate to me, Mr. Speaker, that he will be the last one.

That tragedy taught them something at Organ Pipe after the tragedy of Chris' death at the hands of the drug runner whom the Mexicans were chasing into the United States; and by the way, that drug runner was subsequently shot and killed by the Mexican police department. He was in the United States and shot from their side of the border. That is not an issue with me, but as a matter of full disclosure, I point that out, Mr. Speaker. The lesson learned from that was to close the border, at least shut off the vehicle traffic.

So they have built a vehicle barrier along Organ Pipe and it is most of the way along the Organ Pipe National Monument. It is perhaps 32 miles altogether. As I look at that and travel along the side of that border, it is built so that steel posts full of concrete set in the ground, and then it has got horizontal barriers, about two of those, one about eye height and one about halfway up, designed so that vehicles can't drive through it, but the desert pronghorn can run through it and jackrabbits can run through it and any kind of wildlife can go back and forth through there.

They had trouble with cattle moving in from Mexico, so they stretched a couple of barbed wires in there to keep the cattle on the Mexican side. Of course those barbed wires were cut because the people who were jumping the border thought it was an obstruction to have to climb over one barbed wire, so they cut the fence.

We drove through and picked a place where the illegal traffic was going across and they were demonstrating how that tracking takes place as they did with the Shadow Wolves on their reservation. What I saw in a number of places, it got to where you could pick it out easily, every night, traffic coming into the national monument and paths that are beaten so smooth, one of the officers said, Well, one day we'll shut off this illegal traffic and it will be a nice path for citizens to come down here and visit our park, because it is already smoothed out, it is kind of graded out by all the foot traffic.

In fact, in one of those locations, Mr. Speaker, the traffic goes across the fence and right by a sign and the sign says, Do not enter into the United States.

This is a dangerous place. The sun is hot. You can die in the desert. There

isn't water for you. There are snakes. There are scorpions. It's dangerous. Turn back. Cynically, the path goes right by the sign. The sign is in Spanish. If they can read, they can read that. But in a way, I think it is cynically they go by that sign just to send us a message.

Fifty-eight percent of Mexicans believe they have a right to come to the United States. Mr. Speaker, they are utterly wrong, but we need to convey that message to them so that they can understand that the United States needs to be committed to enforcing our borders.

The incidents that happened down there illustrate what I saw. First, the argument, as I asked the officers, retired Border Patrol or current officers who were at the point of retiring or quitting and giving up, those were the kind of people that would talk to me. They were the people that would open up to me.

One of them was an officer at a station. No one would talk to me because the orders were, You don't speak to a Member of Congress. You don't talk to anybody from government. Your job is to do your job, but not to tell anyone what that job is, what the statistics are in your area. So they sent me to an individual there who is near retirement and that individual was willing to speak.

In fact, numbers of those individuals were willing to speak with me, some ready to quit, some ready to retire, some retired. They would talk to me straight up and open. They didn't care about the consequences for that. They care about this country. They care about our border security and our border control and they understand that you can't be a nation if you don't have a border. You can't call it a border if you don't defend your border, Mr. Speaker.

I hear the testimony here in Congress as the Border Patrol testifies before the Immigration Subcommittee, and consistently it is, we stop 25 to 33–1/3 percent of the illegals that are traveling across our border. I have used that number consistently in my remarks across this country and I ask that question of the people that are down there in the line, on the line, defending our national security, and I would say, What percentage do you stop? Where do you stand?

They would hesitate in their answer, and I would say, 25 to 33 percent? Do you stop a fourth? Do you stop a third? How many do you stop? They would laugh and give me a number. One of them burst out in hysterical laughter when I submitted that they could be successful in stopping 25 percent of the illegal traffic. He responded back to me, No, it's more like 3 percent of the illegal traffic, of the illegals coming into the United States do we stop and perhaps 5 percent of the illegal drugs. It's not 25 percent. It's not 33 percent. In fact, it's not 10 percent.

But of the informed answers that I got down there, and I asked it at every stop, the informed answers that I got, I never got an informed answer above 10 percent, of anybody that was involved in actual protection of the border and processing people that were coming through that border. Ten percent.

Now, think about it for a moment, 10 percent, Mr. Speaker. Last year, we apprehended about 1,188,000 illegal entrants into the United States on our southern border, on that 2,000-mile run. 1,188,000. If that number is correct on 10 percent, if you move that decimal point one over, that is 11,880,000 attempts to cross the border. You can take perhaps a couple of million off that if you wanted to be generous and take it down to 10 million succeeded. I don't think actually 10 million succeeded coming into the United States, but I do think the number is far higher than the numbers that we are working with in the media today.

We have used the number here, 11 million illegals in America. We used the number for 3 years while 4 million people a year at least were coming across the border, maybe a lot more than that. And over 3 years the number didn't accumulate, but about 500,000 a year, even less. So after 3 years we finally raised the number to 12 million, but no one now pays attention to that. We are still back stuck in that 11 million mode of illegals in America.

Mr. Speaker, that number is far higher than 11 million.

Maybe we are successful in stopping 10 percent. Maybe the individual who advised me that 3 percent of illegals and 5 percent of the illegal drugs, maybe he was off by a factor of, oh, let's say two. Maybe it is 6 percent of the illegals and 10 percent of the illegal drugs. However you measure this, it is astonishing in its magnitude in the cost to this country. In fact, we are headed down a path, it won't be very much longer that everyone who wants to come to the United States will be here. The message was sent January 6, 2004, when our esteemed commander in chief gave a speech, it is called in America, ''the amnesty speech.'' It was the one that said, here is the policy that we want to have, it is one of a guest worker/temporary worker as the only solution.

If you have too many illegals in America, I suppose the quickest and cheapest and the most guaranteed solution one could have, Mr. Speaker, is simply legalize them all, give them all amnesty, give them a path to citizenship, voila, no problem. We have fixed the problem because we have legalized them all by a version of amnesty.

The American people, Mr. Speaker, reject amnesty in this country. They understand that we have to have a rule of law, that citizenship must be precious, that you must respect the rule of law. There is more to being an American than having somebody stamp automatic citizenship on your green card or on your matricular consular card.

There is more to being an American than that, Mr. Speaker. Being an American is rooted in and based upon a common culture, an understanding and a common sense of experience and history, of reverence and respect for our borders, for the sovereignty of the United States of America, for the destiny of this country, for the assimilation that has made us so great, that have been able to take immigrants in from all over the world, bring them into this great giant melting pot of America, give them this opportunity and let them reach out and earn and succeed in this opportunity for success.

The legal immigrants in America have performed extraordinarily well. In fact, the vigor that they bring to our society and our economy surpasses much of the vigor that we find in the native-born Americans that are here.

All of us in this Congress, Mr. Speaker, support a rational immigration policy that is designed to enhance the economic, social and cultural well-being of America. But if we have an open borders policy and the people that advocate for an open borders policy are really advocating for an unlimited amount of immigration, everyone who might want to come here to the United States could come here; and if all 6 billion people on the planet want to arrive here in the same year, that is fine with them.

They don't take a stand that there is such a thing as too much immigration, even too much illegal immigration. They will not stand in the way of one of them. They will not stand up and say, The best thing you can do for your country is to stay in your country, grow its economy, be part of the solution, bring reform to the governments of places like Mexico and points south, places that are so utterly corrupt that the economy is strangled, places that are so corrupt that there has to be protection paid at every stop along the way, that you can't get a birth certification when you are born in a country unless you happen to be born into a family that has the connections and maybe is willing to pay the kind of funds to pay off the Madrina network that is there so that you can get your birth certificate and somebody identify who you are and be able to move around in this society or that society.

The level of corruption is astonishing. It runs deep. I would add to this that in spite of all the statistics that I could tell you, in fact, I will go to some of those statistics in a moment, Mr. Speaker, but first I would like to recount a few incidents that really bring home the circumstances and reality.

As I was there on the Tohono O'Odham reservation with the Shadow Wolves, there was a drug smuggler who was pulled over and stopped. We were out in the desert tracking some illegals and getting a feel for how that worked and excellently being guided. While this was on, there was a call to an emergency and a number of the Shadow Wolves mobilized and they called in a Black Hawk helicopter that was there to aerially observe a vehicle that

was escaping from the ground people. They followed the vehicle and got it trapped up into a dead-end road and the driver took off and ran and they followed him and finally apprehended him.

They brought him and the pickup, the small truck as I would say to some of my other friends in America, Mr. Speaker, into the compound there where the Shadow Wolves headquarters is and looked the vehicle over. It looked like it had been reworked, that they had taken it through a body shop and created a false floor underneath the bed of that pickup. The bed itself had a plastic liner in it so you couldn't see the bodywork that had been done. We looked that over and they pointed out to me how that work was done. It was done in a chop-shop in Mexico.

Once they got the clearance to go ahead and search the truck, they went in with the jaws of life and peeled the bed of that vehicle up and apart. In there we carried out 18 large bales of marijuana, about 10 pounds or more per bale, at least 180 pounds of marijuana lying underneath that 6- to 8-inch false floor of that vehicle. The alleged perpetrator, and I did lay eyes on him and evaluated him, I guess, for my own perspective, he had a 13 tattooed on his arm, many other tattoos all over his chest and arms. It was clear to the people there that he was MS–13, Mara Salxatrucha 13, the most dangerous gang that we have ever seen in this continent.

That dangerous gang, of course, is smuggling drugs up into the United States. They had collared one of their members, one of their perpetrators who was then in that holding cell.

I was there to help unload the drugs from the pickup, there to observe this entire process. There recorded and there to burn it into my memory, Mr. Speaker, that we think of a large quantity of drugs where I come from, it might be, oh, perhaps a few pounds. Occasionally we get larger loads coming up through Iowa, of course. But when somebody says a lot of illegal drugs, we are thinking of a quantity substantially smaller than 180 pounds. They think of 180 pounds or 200 pounds of illegal marijuana as a decoy, a decoy that might be designed to draw the law enforcement down another path so that when the path clears, when all the law enforcement pounces on the decoy, then the larger loads can come through, the 1,000 pounds, the 2,600-pound loads, the full semi loads can start up the road.

It is a fact that on those drug routes, those highways that flow from the southern part of Arizona up into the rest of the United States, on those small mountains that are there, there are lookouts on every strategic point.

□ 2300

Those lookouts are manned by two people, and they are supplied regularly and they stay on that mountain for 2-week stretches at a time. They are well armed. They have good equipment. They have night vision goggles. Infrared equipment. For daylight they have top-notch optical equipment, and they have automatic weapons of all kinds, and they have good food and good support, and they sit up there. And they have good communications so that they can radio from mountaintop to mountaintop and be able to tell each other where our drug enforcement people, where our Border Patrol are, where the ICE people are, where the special agents are, where the Park Service people are, so that when the coast is clear, they can run their large load of drugs up through the corridors.

Now, this is an astonishing thing to be able to see that military positions in the United States are occupied by the drug lords and their troops, and that they are well equipped and well armed and well maintained and well supplied, and they are manned 24/7 by two people, and we are sitting down here on the floor of this Congress, Mr. Speaker, thinking we can get a handle on this some other way. But the numbers coming across the border, Mr. Speaker, are astonishing and the positions that are taken on those mountaintops where the lookouts are are shocking that we would tolerate that in this country, know they are there but not go up and take them out.

The volume of drugs, again, is something beyond my imagination before going down there. I had never seen such a pile of illegal drugs. Our Federal agencies report that 90 percent of the illegal drugs in the United States come across the Mexican border, and the value of those drugs is in the area of $60 billion a year. And we sit here in the United States of America, we tolerate such a thing, such a thing that we would let foreign interests, foreign economic interests, illegal interests violate our laws and enrich themselves with the wealth of a Nation.

And the drug addiction that is here in America, of course, feeds it, Mr. Speaker; and that is another subject for another time. That is something that we need to address.

That is one incident, the interdiction of about 180 pounds of marijuana by the Shadow Wolves during a later afternoon down on the Tohono O'odham Reservation.

But the following evening, as I was looking around, I went down to a place called Sasabe, and that again is on the border with Mexico. I visited a port of entry there that is manned by the Border Patrol. They didn't expect that I was coming. I didn't call in advance. I just drove down there and got out of the vehicle and began to talk to them. Good people. They are doing their job there, and they are doing it well as far as I can see.

As I began to have a conversation with them, there was an emergency call. There had been a drug deal that had gone bad on the other side of the border in the Mexican community just on the south side of that port of entry.

Usually, it is a shooting, Mr. Speaker, but this was a knifing. And the subject who was knifed had a large wound in his abdomen about 3½ inches wide, entered in below the ribs on the right side and up through and it did end up lacerating his liver. It didn't get his lung as far as I know.

But the word came that the ambulance was going to cross from Mexico into the United States. And they prepared for that. They called in a Medivac from the hospital in Tucson. And the Medivac, by the time it arrived, there had been two U.S. ambulances that had arrived. The Mexican ambulance didn't have any oxygen, didn't have bandages, had only surgical gloves on it was a paramedic that was with me lent himself right to the task and began to stabilize the patient. When the oxygen came, they put oxygen on the patient and held him stable until they could load him onto the helicopter and airlift him out to the Tucson hospital, all at the cost of the American taxpayer, Mr. Speaker. And the cost of this I will get compiled over time.

The ambulance that came across from Mexico simply parked on the United States side. Two ambulances came in, one from near Tucson, one from 24 miles away. One brought oxygen. The other was there for support. And all lent a hand to get him loaded on the helicopter and flew him up to University Hospital in Tucson where they do a great job, and they have the only trauma center in all of southern Arizona.

It was a real eye opener for me to see this individual who had been knifed in this fight, covered with tattoos and substantially pierced and inebriated with alcohol and cocaine, at his own admission, as part of the contributor, I think, to the violence on the other side.

And I am advised that that kind of incident wasn't just a fluke. And I kidded the Border Patrol officer, you staged this for me. Of course he didn't. He didn't know I was going to be there. But it happens about four times a quarter in that location alone, roughly 16 times a year. More shootings than stabbings, when we evacuate people out from Mexico into United States hospitals.

And so I followed up yesterday, Mr. Speaker, and visited the hospital and visited the patient. And he had been stabilized and his life had been saved. Without that extraordinary effort, it is likely he would not have survived the next few hours. But his life appears now that it has been saved, and I am grateful for that.

But I also met with the hospital administrators and they are eating millions of dollars of costs in funding the people who are generally illegals in the United States. They don't separate that cost from those that are evacuated from an injury or a wound that takes place on the Mexican side of the border.

But the American taxpayers fund this. The American ratepayers fund this. And the hospital swallows a fair amount of it. And there have been occasions where residents and American citizens of Tucson aren't able to be treated because all the beds are full, full of people who are illegally in the United States. And so that health care for the Tucson residents, the Americans occasionally will go to Phoenix, and then the family members that live in the city have to drive to Phoenix to visit their family. And just the travel time puts their lives at risk as well.

That's two incidents, Mr. Speaker. And I did follow up on those, and I will follow up on the information that comes from it.

I would add the third incident was I went down to the border last night, down to the San Miguel Gate on the reservation, sat in the dark for 3 hours and listened. And it wasn't difficult to hear the vehicles bring the illegals down near the border, drop them off and hear them talking, hear them hush up and then single file, go through the desert brush, cross the border into the United States and be off to points unknown.

I used to believe that it was the illegal traffic into the United States that was the biggest problem, and that illegal drugs was a problem that was part of that. And I am informed that when we put the barriers in there, the vehicle barriers, that since they can't drive across the border with illegal drugs any longer, Mr. Speaker, in some of the locations there are many places where they can, they simply put 50 pounds of marijuana in a backpack, on one young male Mexican or Central American, generally Mexicans, and each one takes a backpack of 50 pounds each. Maybe 10 of them at a time, maybe 25 at a time. They have caught as many as a hundred at a time, walking each with 50 pounds. And they can walk through 10 or 15 or more miles of desert on the Mexico side, 25 or more miles of desert on the U.S. side, and arrive up at a transportation predetermined location, and then drop off their illegal drugs there. And many of them turn around and walk back to Mexico where they pick up another load.

So the illegal crossings, many of those illegal crossings are people coming into the United States with illegal drugs, turning back around and walking back into Mexico to get another load of illegal drugs. Sometimes I wonder if we wouldn't be better off in this country if they would simply stay here and get a job, illegal or not, Mr. Speaker. And I don't advocate that, certainly.

So as I listened and was there while illegals were creeping across our border in the dead of the night, not even 24 hours ago, Mr. Speaker, and it is another dimension entirely, to see the drugs, the interdiction of the drugs, the violence on the border, the knifing, the blood, the lack of health care that is there, the incursions on our border, the volume that is backpacked up into the United States, the volume that is trucked into the United States, and to understand that if we can seal this border and seal it with confidence, we could shut off 90 percent of the illegal drugs that get by in the United States, at least until they find another route to go around.

But we can build an effective barrier. And as I submitted that to the people down there working on the border, consistently, they realize that if we build a good solid barrier, one that couldn't be cut through, one that couldn't be driven through, one that was solid and one that would make it easy for them to drive the trail and enforce it, that it could be the most effective tool that we could have.

It costs us $6 billion a year, Mr. Speaker, to incarcerate the illegals here in the United States. Twenty-eight percent of our prison population are criminal aliens.

That is our city, our county, our State and our Federal penitentiaries, 28 percent criminal aliens, $6 billion a year. We can build one tremendous barrier with $6 billion and a one-time expenditure.

Of course, we wouldn't get it all built in 1 year, so we could spread it out over 3 or 4 years, and we could concentrate on the areas that needed it the most. We must do that, stop the bleeding, stop the bleeding first. Shut off the leaky pipe, and then we can begin to have a legitimate debate in this country on what to do about the mess it has left.

But I submit that we shut off the jobs magnet, and we end birthright citizenship.

Another interesting little anecdote down in that same hospital was a Mexican national who was pregnant with multiple births. They took care of her prenatal care out of the hospital in Tucson, and they also set up the provider in Mexico so that they could have the equipment to arrange for and give her good care for multiple births.

Instead, she waited until she went into labor, waited close to the border, came into the United States, went into the hospital in Tucson and delivered five children there to the tune of six figures times X. Those children all have birthright citizenship. They all have now the right and the ability to bring in by chain migration their extended family members. Who knows what that costs, Mr. Speaker?

Our compassion knows no bounds, I understand; neither do the borders of the United States of the America, apparently. The United States Senate needs to pass the legislation 4437 that we passed in this House, send it to the President for his signature, establish enforcement, Mr. Speaker, and then we can have a legitimate discussion on whether or not we might want to have guest workers in this country.

□ 2310

## THE BLUE DOG COALITION

The SPEAKER pro tempore (Mr. INGLIS of South Carolina). Under the Speaker's announced policy of January 4, 2005, the gentleman from Arkansas (Mr. ROSS) is recognized for the time remaining until midnight.

Mr. ROSS. Mr. Speaker, I rise on behalf of the 37-member strong, fiscally conservative Democratic Blue Dog Coalition. There are 37 of us that are Democrats. We are fiscal conservatives and we are concerned about the debt and the deficit that plagues this great Nation ours.

In fact, you can see here, the Blue Dog coalition today, the United States national debt is $8,361,683,340,530 and some change. Now, for every man, woman and child, including those born today, their share of this enormous national debt is about $28,000. It is what we call the debt tax, d-e-b-t. That is one tax that cannot go away until we get our Nation's fiscal house in order.

It is hard now to believe that from 1998 to 2001 we had a balanced budget in this country. Things were going pretty well. Now, what do we have? We have gasoline prices that are up 80 percent, health care up 50 percent, higher education, college costs up 40 percent. Things are not going so well. Mr. Speaker, I submit to you, it is directly related to this debt, the largest debt ever in our Nation's history, this deficit, the largest deficit ever in our Nation's history.

You know, the projected deficit for fiscal year 2007 is $348 billion. But the reason it is $348 billion is because they are borrowing, our government is borrowing from the Social Security trust fund. The projected deficit for fiscal year 2007, not counting the Social Security surplus; in other words, if the politicians in Washington kept their hands off the Social Security trust fund, the real deficit for fiscal year 2007 is $548 billion.

The first bill I filed as a Member of Congress was a bill to tell the politicians in Washington to keep their hands off the Social Security trust fund. Now I am beginning to understand why the Republican leadership would not give me a vote, even a hearing, on this bill, because they are now using the Social Security trust fund to run our government to pay for tax cuts to those earning over $400,000 a year in this manner of reckless spending that we are seeing going on, in fact, for the sixth year in a row.

The 2006 deficit, $372 billion. Not counting the Social Security surplus, it was $605 billion. In fiscal year 2005, it was $318 billion; if you don't count the Social Security surplus, Social Security trust fund, it was $494 billion. Fiscal year 2004, $412 billion deficit, and it goes on and on.

My point is this, Mr. Speaker, our Nation is borrowing $1 billion a day. We are spending $279 million every day to Iraq. But don't ask this administration for a plan on how that money is

being spent. Don't ask this administration to be accountable for that $279 million a year tax money going to Iraq every day, because if you do, they will tell you they are unpatriotic. $57 million every day going to Afghanistan, and billions more going to pay for tax cuts for folks earning over $400,000 a year.

Mr. Speaker, I submit to you this reckless spending that we are seeing in this country must end. As members of the Blue Dog Coalition, we have a plan, we have a 12-point plan for meaningful budget reform that will get our Nation's fiscal house in order. We will talk more about that in a little bit. We will talk more about the budget that may come to the floor of this Chamber in a little bit.

The other point that I want to make is in addition to the billion dollars a day that our Nation is borrowing, the debt is already $8.3 trillion. It is going up to the tune of about $1 billion every day. So it is $8.3 trillion and growing.

On that $8.3 trillion in debt, our Nation is spending about half a billion dollars a day simply paying interest on the debt we already got. No principal, just interest.

Some people say, well, none of this really matters. But it does, and it should matter to everybody in America, because that is a half a billion dollars a day that cannot go to fund America's priorities until our government gets its fiscal house in order.

In my congressional district, which spans about half of Arkansas, I have got I–49 on the western side of the State. We need $1.5 billion to complete that interstate that can create all kinds of jobs and economic opportunity. That is a lot of money until you look at it this way and you realize, oh, my goodness, we could finish that interstate with just 3 days' interest on the national debt.

On the eastern and southern part of my district we have I–69 under way. I need $1.6 billion to finish it. Again, just for 3 days, interest on the national debt, I could complete I–69 in Arkansas. I could four-lane U.S. highway 167 from Little Rock to El Dorado on 1 day's interest on the national debt. Give me a few hours interest of the national debt, I can finish that expressway around Hot Springs National Park, Arkansas.

My point is that whether it is education, health care, roads, whatever it might be, America's priorities continue to go unmet until we get our Nation's fiscal house in order.

Now, in a little bit, we will be talking more about our foreign debt and about the Blue Dog 12-point plan to budget reform, which includes a balanced budget amendment. We will be talking more about the budget that may come to the floor of this Chamber this week.

But at this time, I am pleased to turn this microphone over to a real leader within the Blue Dog Coalition, someone that really understands fiscal discipline and someone that I am very pleased and honored to have join me this evening. That is the gentleman from Georgia, my friend, David Scott.

Mr. SCOTT of Georgia. Mr. ROSS, it is always a pleasure to come down on the floor and talk with you about the pressing issues facing our Nation and the world today.

You know, Mr. ROSS, you talked about the debt, and you talked about the budget. It is the budget that provides us with the blueprint.

Just this morning, on my way, before I got on the airplane to get up here, I was talking with one of my constituents out in Cobb County, a town called Austell.

□ 2320

I was talking to Ms. Winnie Smith, putting in a yard sign in her yard. She came up to me and she said, ''Congressman, our country is moving in the wrong direction. If you could just do four things. The four things I wish you all could do something about right away, one is secure our borders. We have a terrible problem with our borders. If we could just protect this country and protect our porous borders.''

Then she said, ''Bring down these gas prices. Please do something about the gas prices.''

Then she asked me, she said, ''Lord, if you could just do something and get our young men and women home out of this mess in Iraq. And then, Congressman, if you could just do something about this debt.''

I told her, ''Ms. Smith, you hit four things right there on the button.''

I want to just talk, if I can just take a few brief moments on each of these little points, and I want to use the budget that we probably may vote on, I hope we don't, because I truly believe that there are enough Republicans who are able to look through this smoke and mirrors of this budget and see that it is not the blueprint, it is not the direction that we want to go.

Mr. ROSS, if we could just take the first item that Ms. Smith, my constituent down there on Clay Road in Cobb County talked to me about this morning, and that is our borders. I thought I would get here and I would try to go through the budget here for a moment, because it is the blueprint.

There is a howl and a cry the likes of which I have not seen in my whole 32-year history of being an elected official. For 32 years, every other year my name has been on the ballot somewhere in Georgia. Thank God the people of Georgia have voted me in each of those 30-some years, and I appreciate what the people of Georgia have done.

But the cries from the people of Georgia and all across this Nation, nothing is as piercing and as meaningful as what they feel about the insecurity of the borders. Immigration issues, all of the other issues aside, what we do with the 11 million or 12 million illegals that are here, how we deal with that, all registers with folks, but the most important thing is what are we going to do about the borders?

So I got here today and I went to work, and I want to report on exactly what this Congress, what the President, is proposing to do to secure the budget.

You can have a lot of talk. I just listened intently to our friend Mr. KING here a few minutes ago talking eloquently and very passionately about the border and the need to do so, and I concur with him. But the point is, what are we doing about it?

Well, the American people need to know. I want to point out tonight what shows the shortcoming in this budget for four of the most pressing issues facing the American people today.

The 9/11 Commission has given this Congress and this President a D on collaboration on border security. The 9/11 Commission December 2005 report card, Washington Republicans got a D on international collaboration on border security. The commission points out that there has been no systematic, diplomatic effort to work with other countries on shared terrorist watch lists to ensure terrorists cannot get across our borders.

I start off with the motive of terrorism rather than immigration so the people understand that the insecurity of our borders is paramount in our war on terror.

But as we get down to the immigration fight, and we just look at the one most important area, there are 1,000 fewer additional Border Patrol agents than were promised in the 9/11 act. This Congress, under the leadership of Republicans, and I must say that, not to be partisan, because I want to correct something immediately here. There are Republicans and Democrats who are equally concerned about this issue. That is why that budget has not passed yet. So I don't want this to be just purely partisan. This is not a Republican or a Democrat issue. This is an American issue, and this President and the Republican leadership of this Congress, not all the Republicans in the Congress, are clearly out of step, for they have broken the promise made on funding for additional Border Patrol agents. Quite honestly, Mr. ROSS, we need at least three times as many agents.

Immigrant enforcement agents and detention beds. Specifically in 2004 Congress enacted the 9/11 act, the Intelligence Reform Act, for those watching C–SPAN and want to check it, it is Public Law 108–458, which mandated an additional 2,000 Border Patrol agents being hired over each of the next 5 years. Yet for this fiscal year 2006, this Republican-led Congress has funded only 1,000 additional agents.

Is it any wonder that our own citizens are taking it upon themselves, called Minutemen, to patrol our borders, because our government is letting them down, and it is clear in this budget. We funded only 1,000. The 9/11 act also mandated an additional 800 immigration enforcement agents over the

next 5 years. Yet in this FY 2006 budget the Congress has funded only 350 additional agents. It mandated an additional 8,000 detention beds, yet in the 2006 budget the Congress funded only 1,800 additional beds. So it is no wonder that they are having difficulty getting this budget increased.

Now, let me just say on this point of immigration, because I want everybody to understand exactly where this Congressman is coming from, earlier tonight I was watching on TV the Asian Pacific Caucus on this floor. It was a very moving presentation by them about the contributions that the Japanese Americans and Asian Americans have made, and particularly the Japanese Americans, particularly during World War II as their people were being interned in camps. Yet, similar to African Americans, they still fought for this country in the face of tremendous bigotry and odds, because they wanted to show we are Americans.

That is what this immigration fight is about. Yes, we want to secure the boarders, but it is about being Americans.

I was just in Miami, Mr. ROSS, this past weekend with my wife. I was down there with the congressional wives and their foundation. I took it upon myself to visit and to do a little field work there.

While I am at it, I want to give congratulations and kudos to the hospitality that the people of Miami Beach showed and the leadership KENDRICK MEEK and his wife provided for us as the host. It was wonderful.

But the one interesting thing about Miami Beach that I found was most everybody is from somewhere else. If you want to see a melting pot, really want to see immigration and America at work at the same time, visit Miami Beach. I haven't been there for a while.

I spent 3 days there this weekend. I talked to everybody. Whether they were Cuban or Mexican or Latin American or Caribbean or Jamaican or Haitian or Asian, they are all there in different ways.

One of the things I did, Mr. ROSS, was every time I would say thank you, I would add the phrase when I said thank you and shook their hand, I would say, ''You are a good American.'' And when I said ''you are a good American,'' a smile came over their face. I ask you to try it sometime, or anybody in country to try it sometime, and you will see people in this country understand and they get the point.

This is America. We must translate that to some of those who are slipping and sneaking into this country to understand this is America, to understand it is one America, to understand that there is one language, English, there is one flag, there is one National anthem, there is one set of values. We have got to work to get that through.

That was the story that came through so passionately on this floor earlier today with the story of the contributions of the Japanese Americans, because it says we are a country of immigrants.

But on this issue, we want people to be legal, to pay their taxes and work hard the American way, learn our language, learn our values, as everybody else did. But the most important thing before we get to all that point is to secure our borders.

I want to just mention quite quickly what we Democrats are doing, because a lot of times when we come up here and we talk, we talk about what the Republicans and the President are doing. Here is what I want the American people to understand, what we are doing on border security.

□ 2330

On border security, since 9/11 House Democrats have repeatedly tried to increase appropriations for border security. For example, Representative DAVID OBEY, our senior Member on Appropriations offered a motion to recommit the conference report on the fiscal year 2005 supplemental appropriations bill with instructions to add $284 million to fund an additional 550 border patrol agents. That is securing your border.

And also an additional 200 immigration agents. That is dealing with the immigration problem where it counts, and border aerial vehicles, using our technology. But Republicans defeated that motion to recommit by a vote of 201–225.

Senate Democrats on the other side, as far as border security, Senate Democrats have also repeatedly fought to increase the border security appropriations. Senator ROBERT BYRD of West Virginia offered an amendment to the fiscal year 2005 supplemental appropriations bill to increase funding for border security by $390 million, providing for the hiring of additional border patrol agents and the operation of unmanned aerial vehicles.

With support from 21 Republicans, Democrats succeeded in adopting the Byrd amendment by a vote of 65–34. That is what I said earlier. It is not just a Democratic fight, there are Republicans who are working with us on this.

However, most of this additional border security funding was removed by the Republicans in conference. That is why when you look at the polls, when you look at what the American people are seeing, it is not just us here. The American people are not dumb. They know who is running this place. They know who is responsible for these high gas prices. They know who is responsible for the lack of appropriations and a lack of a budget with a proper blueprint that shows the vision this country ought to have on these critical areas.

And these Republicans, they have got to plan for the blame for this bad situation with our budget and our deficit.

Mr. ROSS. Mr. Speaker, I thank the gentleman, Mr. SCOTT from Georgia for joining me this evening. I appreciate his leadership within the 37 Member strong fiscally conservative Democratic Blue Dog Coalition. We are here on the floor talking about the budget, the debt, the deficit late into the evening on Tuesday because America, America has a debt that is out of control.

It has a deficit out of control. Mr. Speaker, it is time to restore some common sense and fiscal discipline to our Nation's Government.

Mr. SCOTT just talked about priorities, about how this Republican Congress is clearly in the majority for the first time in well over 50 years. They control the White House, the House, the Senate, and now the Supreme Court. And they voted against funding border security.

And yet the budget that will be presented on this floor this week calls for $228 billion, that is with a B, in tax cuts that primarily benefit those earning over $400,000 a year.

Mr. SCOTT, I do not know about in your district, but I do not have a lot of folks in my 150 towns and all the square miles that I represent that earn $400,000 a year. I yield.

Mr. SCOTT of Georgia. And the people are not asking for these tax cuts. They are not demanding these tax cuts. They are demanding that the borders be secure. They are demanding that gas prices come down. And it is a shame that this budget is not addressing this.

And the President is about tax cuts. Well, they are not really tax cuts. They are deferred tax increases. Somebody has got to pay for those. And the tragedy is, Mr. ROSS, that we are at the mercy in borrowing money from foreign governments.

And not just any foreign governments. It is very important that we take a look at the major players on the international stage now as far as our basic fiscal insecurity is concerned.

90 percent, 90 percent of everything we are spending to run this Government of the United States today is on borrowed money. From China, nearly $300 billion. From Japan, nearly $700 billion. From Taiwan, $118 billion.

From Hong-Kong, $127 billion. From the OPEC nations of Saudi Arabia and others in the Middle East, staggering, over $200 billion.

You look at those countries, Mr. ROSS, and you must realize that those are some of the same countries that are eating our lunch on this oil. The other countries that are eating our lunch on oil, Iran, Iraq, where we are mired, Saudi Arabia, again, where we are, and the Middle Eastern countries underneath have about 30 to 40 percent of all of the known oil reserves at this time.

So if on the one hand you are borrowing money from the very same people who are holding you hostage for oil, that is a bad situation to be in. And the American people want us to address those issues. And they realize it takes resources to do that.

Furthermore, we have to pay for these tax cuts, Mr. ROSS. It is so disheartening to me that to pay for those

tax cuts on the backs of our veterans. We are cutting veterans programs by $1.2 billion. We are raising their copay for their insurance that they use to buy their medicines over 100 percent.

That is wrong, Mr. ROSS. That is not what the American people are after. And that is why they are expressing it. As I said before, the American people have had it up to here.

Mr. ROSS. Mr. Speaker, the gentleman makes an excellent point. And look, I am not against tax cuts. I voted for the biggest tax cut in 20 years back before 9/11. It was back before Iraq, Afghanistan. It was back when we had a surplus. We were really giving people some of their money back.

But this notion that you can give tax cuts in times when you do not have a surplus, in times of deficit spending to provide tax cuts for those earning over $400,000 a year, and to accomplish that and pay for that by cutting programs like Medicaid and Medicare and student loans, and borrowing the rest from places like China and Japan, that may be a tax cut on these earning over $400,000 dollars a year today, but it is a tax increase on our kids. It is a tax increase on our children and our grandchildren.

Mr. Speaker, it is about priorities. We have $3 dollar gasoline. There is a lot of talk from the Republican leadership. Well, there was one proposal where they want to give us $100 close to election time. They want to give us $100 and tell us to get over it and get used to it.

Mr. SCOTT of Georgia. Mr. Speaker, under today's prices, that $100 would get you two fill-ups if gas is at $3.25

Mr. ROSS. Let me tell you, as a Member of the House Energy and Commerce Committee, I can tell you that these are the facts. The Republican leadership talks a lot about alternative and renewable fuels. Biomass refineries, grants to create biomass refineries for all of America for the next 365 days totals $100 million.

We will send nearly three times that much money to Iraq in the next 24 hours. It is about priorities. This President has announced already that if this supplemental appropriations bill includes funding for disaster payments for our farm families here in America who have suffered through one of the worst droughts in this Nation's history that he will veto it, the first veto of this administration after 6 years.

Again, it is about America's priorities, and America's priorities are found all over this Republican budget for fiscal year 2007. A budget that should reflect the priorities and values of our Nation, a budget that may very well be debated and voted on on the floor of this chamber sometime this week.

Well, Mr. Speaker, the Republican majority has had a difficult time bringing a proposal to the floor for a vote. This is because they cannot find consensus within their own party about the choices made to cut programs that are essential to the most vulnerable in our Nation, while increasing record deficits by providing tax cuts to those making over $400,000 a year.

□ 2340

If they fail to pass a budget, it will be the first time in three decades that the House has not adopted a blueprint, a budget blueprint. But if they succeed, the damage to our Nation and those we represent will be devastating.

Since this administration took office, it has requested and this Republican controlled Congress has provided four increases, four increases in the statutory debt ceiling totaling $3 trillion. Under this budget, the statutory debt by 2011 will increase by another $2.3 trillion for a total increase of $5.3 trillion. As you can see, as of tonight our national debt, $8,351,683,340,530 and some change.

While Republicans say their objective is to restore fiscal discipline to our Nation, this budget does not lead us in that direction. While tremendous cuts are made to programs that serve a majority of Americans, the Republican budget includes $228 billion in new tax cuts that will benefit only a small few, mostly those earning over $400,000 a year. As a result, their budget resolution continues to deficit spend over $400 billion for the next 5 years.

These deficits mean that under Republican policies, the five largest deficits in history will have occurred in the five consecutive years that they have controlled this Congress, the White House, this Senate, and the Supreme Court. This is not how the American people want our government to function.

The American people want a good dose of common sense. They want an end to all this partisan bickering. They want to see one America again. Cutting vital programs for those who are most in need to provide a tax cut to the wealthiest among us is morally unconscionable.

The Republican proposal eliminates 42, 42 education programs including those that support vocational education, college-readiness programs for low-income students, and family literacy programs. Overall, both the President's budget and the House Republican resolution cut funding for the Department of Education by $2.2 billion below the comparable 2006 level.

This is the second year in a row that the Republicans will cut Federal education funding despite the need for school districts to meet demanding standards under the federally mandated No Child Left Behind law. This funding level does not meet the educational needs of America's students. It fails to provide assistance to nearly 4 million children eligible for title I services and 2 million children eligible for afterschool services that enhance student achievement.

For the many families that are trying to send their children to college, their proposal cuts aid for students to help pay for college. It freezes the maximum Pell grant award at $4,050 right where it has been since 2003, while the average tuition and fees at 4-year public colleges have risen nearly $1,400. As a parent with a child who will be attending college in the next couple of years, I understand firsthand the increasing costs of tuition and the need to provide assistance to those seeking higher education

Some of the most egregious cuts in the Republican budget adversely impact the most vulnerable Americans. The Republican proposal is largely consistent with the President's budget in its effect on safety net programs such as housing, child care, and nutrition assistance. The President's budget eliminates over $100 million for the commodity supplemental food program which provides nutrient-rich food packaging for low-income women, infants, children, and senior citizens. The program serves 420,000 elderly and 50,000 mothers and their children each month.

The House Republican budget imposes even deeper cuts to these type of programs than the President's budget. Like the President's budget, the Republican proposal freezes child care for 2007 at the 2006 level and cuts funding for the following years. These are just a few examples of the misplaced priorities that this Republican-controlled Congress has for our country and why it is important to oppose these cuts.

I urge my colleagues to reject these cuts and take action to begin an honest dialogue to pass legislation that will provide needed resources for the majority of our Nation. It is time to pass a budget that reflects America's priorities. Not the priorities of a divided America, but the priorities of a united America.

Mr. Speaker, I am convinced we can do that. We can do that, and we can have a balanced budget. It is about priorities. It is about making the difficult decisions that will allow us to pay down this debt, to stop this deficit spending. We can do it. We can do it by beginning with one of the Blue Dog proposals which requires our Nation to have a balanced budget, something 49 States are required to do, something I helped do as a State senator in Arkansas for 10 years.

With that, I yield to my friend, Mr. SCOTT from Georgia.

Mr. SCOTT of Georgia. Again, Mr. ROSS, we must repeat because it is very important, we are here to do America's business. Every waking moment this Congress should be preoccupied with the three or four basic concerns that are threatening the quality of life in this country and very well threatening our own security, our borders.

We have not heard enough of what we are going to do to secure our borders. We need to hear from this leadership, and we are hearing it from Democrats. I assure you, Democrats will control our border. Democrats will put the military on our borders.

Let me tell you something, Mr. ROSS. I worked for a while as a teacher, and my favorite subject to teach as was history because it taught you so much. And one of the things that you look back on history is that history teaches us a couple of things. It teaches us that if you forget your history, you are doomed to repeat it. And if you forget the bad parts of your history, they will certainly reoccur.

We are at a very, very serious point in our country of having a very, very significant time of keeping our progress moving forward on each level of security.

Let us first of all talk about this Nation's security. History shows us when we look back and we evaluate how we came about to formulate what is now called the National Guard was a need to do exactly what the National Guard was set up to do, guard our Nation. The first order of business to secure our borders is, number one, to put in the process of hiring and tripling the number of agents, putting forth the technical surveillance on our borders. But until we can get up to speed on that, we need to put our military strategy on our borders and send a message.

We cannot take any more illegal immigrants coming into this country. It threatens the country. Even our immigrants who are here are saying the same thing. We can no longer not have our borders secure because of the war on terror.

□ 2350

CNN is doing a wonderful report on our borders, and I am not just talking about the Mexican border. I am talking about the Canadian border as well, and if I am watching CNN and you are watching CNN, and Anderson Cooper is doing this wonderful special on CNN, I hope people will watch it because it is very revealing. I saw it this weekend.

It showed about this little area up in Canada on the Canadian border somewhere north of Minnesota or something where the border is so porous up there that a guy comes in, goes into a little shack, opens the shack, speaks into a microphone, looks into a camera, and says I am so and so, I am crossing the border, thank you very much, and that is it, for those who will stop.

I am scratching my head and I am saying, in this time of terror, if I am watching this, surely al Qaeda's watching it. I am telling you, it is just a matter of time before we get an attack as a result of not checking our borders.

Some of our law enforcement people who are working some of these borders are saying that some of that may have already happened. I am telling you, if we do not check our borders, it is the most significant thing you can do, and you look at this budget and you show me in this budget where there has any priority or urgency to close down these borders. This is why the American people are upset. It is their security. It is their way of life. It is what we fought for. It is what generations have fought for.

America, it is on the verge of being threatened out of existence. It has happened before. History is cluttered with the bleached bones of many great past civilizations who woke up too late to respond. Go back, look at your history books, look at Rome, look at the Ottoman Empire, look at the Netherlands particularly when it came to energy, and to a degree Great Britain. All of these powers lost because of those four things: global overreach, and not taking care of home and their border; dwindling resources at home; and the third thing, you guessed it, debt in the hands of foreign governments.

We are headed down that path, and the American people are looking for us to change that direction. That is what my folks down in Georgia are saying. That is what they want us to do, and we have got to do it. That is why I am so proud that we are here as Blue Dogs, pointing the way, showing how we will be fiscally responsible. Nobody can take that away from us. There has been nobody manning the watch, watching this debt, long before it was up to this level of priority than the Blue Dog Coalition who have been at the front, Democrats at the front of the line, talking about financial responsibility and, foremost, paying down this debt.

What a tragedy it is for this administration, this Congress to just lark along, borrowing all of this money, putting this extraordinary tax increase on the backs of our children and our grandchildren, and America's getting this.

I was surprised this morning when I was down there in my district in Cobb County, and she mentioned those four things. Iraq, I knew; immigration, I knew, that is hot, that is heavy, oil prices, that is heavy. But then she says: And the debt. America is waking up and understanding this debt situation is placing this country in a very precarious position, and we have got to change it and be responsible.

That is why it is important for us to put in pay-as-you-go measures, measures we have been preaching about for a long time. The American people are ready for that because if we do not, we, too, can go the way of so many of those past civilizations who woke up too late.

Mr. ROSS. Mr. Speaker, I appreciate the gentleman from Georgia for joining me this evening, and he is right. I am concerned, as he is, about America's security.

Some people will say, well, there has not been another attack in America since 9/11, and I submit to you that is true and we have been real lucky. We have been lucky. We have been lucky because it is very clear that our border is not secure with Mexico or Canada. It is clear that while we take our shoes off and we go through the metal detectors at the airport and while our suitcases are X-rayed, the freight which can take up as much as a quarter to half of the belly of a plane continues to go unchecked. All the containers, for the most part, coming into our ports remain unchecked.

I submit to you that instead of having a budget that is going to be debated on this floor this week that calls for $228 billion in tax cuts for folks earning over $400,000 a year, let us invest in America's security. Let us make those ports secure. Let us make our borders secure. Let us check the freight on the belly of those commercial airplanes. Let us invest in America again.

Mr. SCOTT of Georgia. This is exactly right. America's not crying out here for tax cuts for the top 1 percent. As a matter of fact, Bill Gates and several others said we do not want it; Mr. President, we do not need it. Those farmers need it for the drought. Those counties need it for the community block grant programs that is a lifeline of these counties. The children need it for their student aid programs and their loans, they need it. Firemen need it. Our first responders need it, and we need it to provide the incentives in place to help with our patrol.

I want to mention because there was so much we wanted to cover tonight, but I cannot leave without saying this one thing. It really points an example of our lack of response, we have talked about it, to the border security problem, but look at our lack of response properly in this budget to our gas problem. Every basic issue that needs to be responded to, American people know we did not get to this point by just one thing. Oil companies have a lot to do with it, but their profits are not the real reason.

The real reason is we have a serious shortage because we are being held hostage by most of the petroleum producing countries and because we have not planned properly with our refineries and because we have not planned properly with our automobiles and our guzzlers, and even when we move to do that, with one example, I just point out to you, the hybrid cars. The one good program that we could use would be that.

There is nothing in the budget that even approaches what we need to do to give our American people true incentives, serious tax incentives to purchase hybrid cars, hybrid cars whose engines are run on a combination of electric batteries and gasoline. The key to our success, as far as bringing down these energy crises and stop making us so dependent on these other volatile Nations for our energy is to lower our consumption of oil, and to lower our consumption means we need to go elsewhere to find the fuel mix to do it. We can do it. We have got the American know-how.

You take the hybrid engine. They have got, what is it, $2,000 for the tax credit now. It is going up to $3,400, but then there is all kind of complications in that make it so confounding that dealing with it is for the first manufacturer to produce 60,000 cars, then it goes down every quarter. It just gets so

complex that the poor American people do not even have a clear angle with which to attack it and go out and purchase the automobiles. We need to clear that up.

We need to put in this budget that we will give a 50 percent increase at least on the tax incentives and make that a going up scale so that we can get more hybrid cars running. We need to go and start giving incentives to farmers who are producing corn and soybeans, creating a new industry with which to produce ethanol, and mix that with our gasoline to be able to carry our fuel much like Brazil is doing. We need to enrich conservation programs to conserve our energy, and then, finally, we have got to do all we can to get the American people out of their automobiles, the commuter rail and with mass transit.

But where is the will? Where is the direction? Where is the encouragement? Where is the inspiration to say let us go, America, we can do it? That is what the American people are waiting on, and we have got to provide the direction for them to do it. It is not this budget, and that is why it is not passing.

Mr. ROSS. Mr. Speaker, I thank the gentleman from Georgia. Mr. Speaker, if you have any comments or concerns or questions for us, you can e-mail us at bluedog@mail.house.gov. That is bluedog@mail.house.gov.

Next Tuesday night, Mr. Speaker, I will return to this House floor to talk about the plight of our farm families across this country, the disasters they face this year ranging from droughts in parts of the country to the needs in other parts of the country, to the hurricanes, a real concern among the Blue Dog Coalition about the plight of the family farmer. It is every bit as critical to our Nation's security so that our farm families can provide us with a safe and secure source for food and fiber. That is just as critical to us as our energy sources are. We will be talking more about that on the floor next Tuesday night.

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CARDOZA (at the request of Ms. PELOSI) for today and the balance of the week on account of a death in the family.

Mr. DAVIS of Kentucky (at the request of Mr. BOEHNER) for today on account of his wife's surgery.

Mr. MURPHY (at the request of Mr. BOEHNER) for today and May 10 on account of a death in the family.

Mr. OSBORNE (at the request of Mr. BOEHNER) for today and until 5:00 p.m. May 10 on account of business in the district.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. LEE) to revise and extend their remarks and include extraneous material:)

Mr. DEFAZIO, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. ETHERIDGE, for 5 minutes, today.

Ms. LEE, for 5 minutes, today.

(The following Members (at the request of Mr. FITZPATRICK of Pennsylvania) to revise and extend their remarks and include extraneous material:)

Mr. MCHENRY, for 5 minutes, May 10 and 11.

Mr. POE, for 5 minutes, today and May 10 and 11.

Mr. DREIER, for 5 minutes, today and May 10 and 11.

Mr. KENNEDY of Minnesota, for 5 minutes, May 10.

Mr. NORWOOD, for 5 minutes, May 11.

Mr. BURTON of Indiana, for 5 minutes, today and May 10 and 11.

Mr. GUTKNECHT, for 5 minutes, May 10.

Mr. BILIRAKIS, for 5 minutes, May 10 and 16.

Mr. HUNTER, for 5 minutes, May 16.

Mr. BISHOP of Utah, for 5 minutes, today and May 11.

Mr. DAVIS of Kentucky, for 5 minutes, May 10.

Mr. GINGREY, for 5 minutes, today.

Mr. BASS, for 5 minutes, May 11.

Mr. GILCHREST, for 5 minutes, May 10 and 11.

(The following Member (at her own request) to revise and extend her remarks and include extraneous material:)

Ms. ROYBAL-ALLARD, for 5 minutes, today.

## ENROLLED BILL SIGNED

Mrs. Haas, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 83. Joint resolution to memorialize and honor the contribution of Chief Justice William H. Rehnquist.

## ADJOURNMENT

Mr. ROSS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at midnight), the House adjourned until today, Wednesday, May 10, 2006, at 10 a.m.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

7336. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the Department's ''Country Reports on Terrorism: 2005,'' pursuant to 22 U.S.C. 2656f; to the Committee on International Relations.

7337. A letter from the Deputy Director, Defense Security Cooperation Agency, transmitting pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, Transmittal No. 06-29, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services; to the Committee on International Relations.

7338. A letter from the Chairman, United States Sentencing Commission, transmitting a report of amendments to the sentencing guidelines together with the reasons for these amendments, pursuant to 28 U.S.C. 994(o); to the Committee on the Judiciary.

7339. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Headlands Beach State Park, Mentor, Ohio [CGD09-05-105] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7340. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone—Toledo, OH, Maumee River [CGD09-05-106] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7341. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Erie Bayfront Ground Breaking Fireworks, Presque Isle Bay, Erie, PA [CGD09-05-107] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7342. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Celebrate Erie, Dobbins Landing, Erie, PA [CGD09-05-109] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7343. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Carly's Crossing, Buffalo Outer Harbor, Buffalo, NY [CGD09-05-110] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7344. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Menominee Fireworks Display, Lake Michigan, Menominee, MI [CGD09-05-111] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7345. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Calumet-Saginaw River, Chicago, IL [CGD09-05-116] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7346. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone;

Fairport Harbor, Fairport, Ohio [CGD09-05-121] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7347. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Port of Toledo — Anthony Wayne Bridge, OH, Maumee River [CGD09-05-124] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7348. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Bonneville Power Administration Over Water Cable Operations, Snake River, WA [CGD13-05-032] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7349. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Puget Sound Crossing For Kids, Puget Sound, Washington [CGD13-05-035] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7350. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Ribault to St. Johns River [COTP Jacksonville 05-110] (RIN: 1625-AA87) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7351. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Intra Coastal Waterway, Indian River, Brevard County, FL [COTP Jacksonville 05-111] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7352. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Kings Bay to the Sea Bouy at the Entrance of St. Marys River, GA [COTP Jacksonville 05-122] (RIN: 1625-AA87) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7353. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Port Canaveral Entrance Channel to Trident Basin, Port Canaveral, FL [COTP Jacksonville 05-123] (RIN: 1625-AA87) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7354. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Port Canaveral Jetties, Port Canaveral, FL [COTP Jacksonville 05-124] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7355. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Port Canaveral Entrance Channel to Trident Basin, Port Canaveral, FL [COTP Jacksonville 05-125] (RIN: 1625-AA87) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7356. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Trident Basin, Port Canaveral, FL to the Sea Buoy at the Entrance of the Port Canaveral Channel [COTP Jacksonville 05-126] (RIN: 1625-AA87) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7357. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Trident Basin, Port Canaveral, FL to the Sea Buoy at the Entrance of the Port Canaveral Channel [COTP Jacksonville 05-130] (RIN: 1625-AA87) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7358. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone, Plantation Key, FL [COTP Key West 05-004] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7359. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Pensacola Caucus Channel and Pensacola Bay Channel, Pensacola, FL [COTP Mobile-05-010] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7360. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; GICW MM60 to GICW MM128, Longbeach, MS to Dauphin Island Bridge, AL [COTP Mobile-05-016] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7361. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Gulfport, MS thru Bayou La Batre, AL [COTP Mobile-05-017] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7362. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; GICW MM128 to GICW MM155, Mobile, AL to Gulf Shores, AL [COTP Mobile-05-018] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7363. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; GICW MM155 to GICW MM251 Orange Beach, AL to Highway 331 Choctawhatchee Bay Bridge, FL [COTP Mobile-05-019] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7364. A letter from the Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Homeland Security, transmitting the Department's report on Capabilities and Readiness to Fulfill National Defense Responsibilites, pursuant to Section 426 of the Maritime Transportation Security Act of 2002; to the Committee on Transportation and Infrastructure.

7365. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A321-100 Series Airplanes [Docket No. FAA-2006-23935; Directorate Identifier 2005-NM-060-AD; Amendment 39-14492; AD 2006-04-11] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7366. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; AvCraft Dornier Model 328-100 Airplanes [Docket No. FAA-2005-22813; Directorate Identifier 2002-NM-117-AD; Amendment 39-14493; AD 2000-24-03 R1] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7367. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes [Docket No. FAA-2005-23221; Directorate Identifier 2005-CE-51-AD; Amendment 39-14459; AD 2006-02-07] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7368. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Cessna Model 650 Airplanes [Docket No. 2002-NM-332-AD; Amendment 39-14158; AD 2005-13-21] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7369. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes [Docket No. FAA-2005-21275; Directorate Identifier 2005-CE-28-AD; Amendment 39-14515; AD 2006-01-11 R1] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7370. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Dassault Model Falcon 2000 and Falcon 2000EX Airplanes [Docket No. FAA-2006-23716; Dirctorate Identifier 2006-NM-008-AD; Amendment 39-14466; AD 2006-03-02] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7371. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; McDonnel Douglas Model DC-9-14, DC-9-15, and DC-9-15F Airplanes; Model DC-9-20, DC-9-30, DC-9-40, and DC-9-50 Series Airplanes; Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) Airplanes; Model MD-88 Airplanes; and Model MD-90-30 Airplanes [Docket No. 2002-NM-105-AD; Amendment 39-14441; AD 2006-01-02] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7372. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Pacific Aerospace Corporation Ltd. Model 750XL Airplanes [Docket No. FAA-2005-23473; Directorate Identifier 2005-CE-54-AD; Amendment 39-14451; AD 2005-26-53] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7373. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes [Docket No. FAA-2005-21275; Directorate Identifier 2005-CE-28-AD; Amendment 39-14450; AD 2006-01-11] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7374. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal, Inc., Formerly Textron Lycoming, Formerly Avco Lycoming) T3509, T5311, T5313B, T5317A, T5317A-1, and T5317B Series [Docket No. FAA-2004-18038; Directorate Identifier 2004-NE-01-AD; Amendment 39-14444; AD 2006-01-05] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7375. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream 100 Airplanes; and Model Astra SPX, and 1125 Westwind Astra Airplanes [Docket No. FAA-2005-22511; Directorate Identifier 2005-NM-120-AD; Amendment 39-14440; AD 2006-01-01] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7376. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Frakes Aviation (Gulfstream American) Model G-73 (Mallard) Series Airplanes and Model G-73 Airplanes That Have Been Converted To Have Turbine Engines [Docket No. FAA-2005-23440; Directorate Identifier 2005-NM-256-AD; Amendment 39-14452; AD 2006-01-51] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7377. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 747-100, 747-100B, 747-200B, 747-200C, 747-200F, 747-400F, 747SR, and 747SP Series Airplanes [Docket No. FAA-2005-22289; Directorate Identifier 2005-NM-101-AD; Amendment 39-14446; AD 2006-01-07] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7378. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; BAE Systems (Operations) Limited Model Avro 146-RJ Airplanes [Docket No. FAA-2005-22792; Directorate Identifier 2005-NM-084-AD; Amendment 39-14447; AD 2006-01-08] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7379. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes [Docket No. FAA-2005-22035; Directorate Identifier 2005-NM-016-AD; Amendment 39-14442; AD 2006-01-03] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7380. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146-100A and -200A Series Airplanes [Docket No. FAA-2005-22791; Directorate Identifier 2005-NM-083-AD; Amendment 39-14448; AD 2006-01-09] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7381. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model C4-605R Variant F Airplanes (Collectively Called A300-600 Series Airlanes); and Airbus Model A310 Series Airplanes [Docket No. FAA-2005-22053; Directorate Identifier 2004-NM-74-AD; Amendment 39-14449; AD 2006-01-10] (RIN: 2120-AA64) received April 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7382. A letter from the Acting General Counsel, Department of Defense, transmitting a copy of legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2007; jointly to the Committees on Armed Services and Financial Services.

7383. A letter from the Secretary, Federal Trade Commission, transmitting the fifth annual report pursuant to the College Scholarship Fraud Prevention Act of 2000; jointly to the Committees on Education and the Workforce and the Judiciary.

7384. A letter from the Regulations Coordinator, CMS, Department of Health and Human Services, transmitting the Department's ''Major'' final rule — Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2007: Annual Payment Rate Updates, Policy Changes, and Clarification [CMS-1485-F] (RIN: 0938-AO06) received May 2, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Ways and Means and Energy and Commerce.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMAS: Committee of Conference. Conference report on H.R. 4297. A bill to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006 (Rept. 109–455). Ordered to be printed.

Mr. BOEHLERT: Committee on Science. H.R. 5143. A bill to authorize the Secretary of Energy to establish monetary prizes for achievements in overcoming scientific and technical barriers associated with hydrogen energy; with an amendment (Rept. 109–456). Referred to the Committee of the Whole House on the State of the Union.

Mr. TOM DAVIS of Virginia: Committee on Government Reform. House Resolution 752. Resolution requesting the President to transmit to the House of Representatives not later than 14 days after the date of adoption of this resolution documents in the possession of the President relating to the receipt and consideration by the Executive Office of the President of any information concerning the variation between the version of S. 1932, the Deficit Reduction Act of 2005, that the House of Representatives passed on February 1, 2006, and the version of the bill that the President signed on February 8, 2006; adversely (Rept. 109–457). Referred to the House Calendar.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 805. Resolution waiving points of order against the conference report to accompany the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006 (Rept. 109–458). Referred to the House Calendar.

Mr. COLE of Oklahoma: Committee on Rules. House Resolution 806. Resolution providing for consideration of the bill (H.R. 5122) to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2007, and for other purposes (Rept. 109–459). Referred to the House Calendar.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. YOUNG of Alaska (for himself, Mr. HAYWORTH, Mr. RENZI, Mr. COLE of Oklahoma, Mr. RAHALL, Mr. OBERSTAR, Mr. PALLONE, Mr. BACA, Mr. CASE, Ms. BORDALLO, Mr. HONDA, Mr. UDALL of New Mexico, Mr. KILDEE, and Mr. WAXMAN):

H.R. 5312. A bill to amend the Indian Health Care Improvement Act to revise and extend that Act; to the Committee on Resources, and in addition to the Committees on Energy and Commerce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GERLACH (for himself, Mr. KIRK, Mrs. MILLER of Michigan, Mrs. BIGGERT, Mr. WELDON of Pennsylvania, and Mr. REICHERT):

H.R. 5313. A bill to reserve a small percentage of the amounts made available to the Secretary of Agriculture for the farmland protection program to fund challenge grants to encourage the purchase of conservation easements and other interests in land to be held by a State agency, county, or other eligible entity, and for other purposes; to the Committee on Agriculture.

By Mr. SHAW (for himself, Mr. KIRK, Mr. FOLEY, Mr. COLE of Oklahoma, Mr. WELLER, Mrs. MILLER of Michigan, Mrs. BIGGERT, Mr. RAMSTAD, and Mr. DAVIS of Kentucky):

H.R. 5314. A bill to amend the Internal Revenue Code of 1986 to improve and expand education savings accounts; to the Committee on Ways and Means.

By Mr. CARDOZA:

H.R. 5315. A bill to amend the Federal Financial Management Improvement Act of 1996 to require the head of an agency to be reconfirmed by the Senate unless the agency is found to be in compliance with the requirements of such Act, as reported by the Comptroller General; to the Committee on Government Reform.

By Mr. YOUNG of Alaska (for himself, Mr. OBERSTAR, Mr. TOM DAVIS of Virginia, Mr. OBEY, Mr. SHUSTER, Ms. NORTON, Mr. SHAW, Mr. RAHALL, Mr. BAKER, Mr. DEFAZIO, Mr. BACHUS, Mr. COSTELLO, Mr. BUYER, Mr. NADLER, Mr. MICA, Ms. CORRINE BROWN of Florida, Mr. FOLEY, Mr. FILNER, Mrs. KELLY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. LATOURETTE, Mr. TAYLOR of Mississippi, Mrs. MYRICK, Ms. MILLENDER-MCDONALD, Mr. WAMP, Mr. CUMMINGS, Mrs. EMERSON, Mr. BLUMENAUER, Ms. GRANGER, Mr. BOSWELL, Mr. PICKERING, Mr. HOLDEN, Mrs. JO ANN DAVIS of Virginia, Mr. BAIRD, Mr. MILLER of Florida, Ms. BERKLEY, Mr. BONNER, Mr. MATHESON, Mr. COLE of Oklahoma, Mr. HONDA, Mr. BOUSTANY, Mr. LARSEN of Washington, Mr. JINDAL, Mr.

CAPUANO, Mr. KUHL of New York, Mr. WEINER, Mr. POE, Ms. CARSON, Mr. BISHOP of New York, Mr. DAVIS of Tennessee, Mr. CHANDLER, Mr. HIGGINS, Mr. CARNAHAN, Ms. SCHWARTZ of Pennsylvania, and Mr. FORD):

H.R. 5316. A bill to reestablish the Federal Emergency Management Agency as a cabinet-level independent establishment in the executive branch that is responsible for the Nation's preparedness for, response to, recovery from, and mitigation against disasters, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Homeland Security, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HAYES (for himself, Mrs. KELLY, Mr. MCHENRY, and Mr. WILSON of South Carolina):

H.R. 5317. A bill to amend the Internal Revenue Code of 1986 to increase the incentives for E-85 fuel vehicle refueling property; to the Committee on Ways and Means.

By Mr. SENSENBRENNER (for himself, Mr. COBLE, Mr. SMITH of Texas, Mr. FEENEY, Mr. SCHIFF, and Ms. PRYCE of Ohio):

H.R. 5318. A bill to amend title 18, United States Code, to better assure cyber-security, and for other purposes; to the Committee on the Judiciary.

By Mr. FITZPATRICK of Pennsylvania (for himself, Mr. KIRK, Mrs. MILLER of Michigan, Mr. WELDON of Pennsylvania, Mr. ENGLISH of Pennsylvania, Mr. DAVIS of Kentucky, and Mr. CASTLE):

H.R. 5319. A bill to amend the Communications Act of 1934 to require recipients of universal service support for schools and libraries to protect minors from commercial social networking websites and chat rooms; to the Committee on Energy and Commerce.

By Mr. ANDREWS:

H.R. 5320. A bill to amend the Occupational Safety and Health Act of 1970 to provide for coverage under that Act of employees of States and political subdivisions of States, and for other purposes; to the Committee on Education and the Workforce.

By Mr. BASS (for himself, Mr. MCDERMOTT, and Mr. SAM JOHNSON of Texas):

H.R. 5321. A bill to establish a pilot project to demonstrate the impact of payment for more frequent hemodialysis treatment under the Medicare Program; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. GINNY BROWN-WAITE of Florida:

H.R. 5322. A bill to amend the Internal Revenue Code of 1986 to increase the contribution limits for individual retirement plans, defined contribution plans, and salary reduction plans, and for other purposes; to the Committee on Ways and Means.

By Mr. FARR (for himself and Mr. HOBSON):

H.R. 5323. A bill to require the Secretary of Homeland Security to provide for ceremonies on or near Independence Day for administering oaths of allegiance to legal immigrants whose applications for naturalization have been approved; to the Committee on the Judiciary.

By Mrs. CUBIN:

H.R. 5324. A bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare Program, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DOOLITTLE:

H.R. 5325. A bill to direct the Federal Trade Commission to revise the do-not-call telemarketing rules to permit individuals to opt out of receiving telephone calls from certain political organizations; to the Committee on Energy and Commerce.

By Mrs. EMERSON (for herself and Mr. FILNER):

H.R. 5326. A bill to amend title 10, United States Code, to increase the amount of educational assistance available to members of the reserve components called or ordered to active service for more than nine consecutive months or more than 18 total months during any 24-month period; to the Committee on Armed Services.

By Mr. ISRAEL (for himself and Mr. DAVIS of Kentucky):

H.R. 5327. A bill to amend the Servicemembers Civil Relief Act to protect the credit of servicemembers deployed to an overseas combat zone and to facilitate awareness of a servicemember's rights under such Act, and for other purposes; to the Committee on Veterans' Affairs, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. MILLENDER-MCDONALD (for herself, Ms. NORTON, Mr. CUMMINGS, and Mr. WYNN):

H.R. 5328. A bill to grant certain Library of Congress employees the same competitive status for appointment granted to certain employees of the judicial branch, and to extend to displaced Library employees the same career-transition assistance extended to employees of the executive branch; to the Committee on House Administration, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GARY G. MILLER of California (for himself, Mr. CALVERT, and Mr. YOUNG of Alaska):

H.R. 5329. A bill to authorize the Secretary of Transportation to carry out certain transportation projects in the State of California to relieve congestion on State Route 91; to the Committee on Transportation and Infrastructure.

By Mr. GEORGE MILLER of California:

H.R. 5330. A bill to provide coverage under the Railway Labor Act to employees of certain air and surface transportation entities; to the Committee on Transportation and Infrastructure.

By Mr. POMEROY (for himself and Ms. KAPTUR):

H.R. 5331. A bill to promote energy production and conservation, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Agriculture, Resources, and Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ROTHMAN:

H.R. 5332. A bill to authorize grants to carry out projects to provide education on preventing teen pregnancies, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ROYCE (for himself, Mr. SHERMAN, Mr. WELLER, Mr. LANTOS, Ms. ROS-LEHTINEN, Ms. WATSON, Mr. ISSA, Mr. CARDOZA, Mr. POE, Mr. MCCOTTER, Mr. WILSON of South Carolina, Mr. ISRAEL, and Ms. BEAN):

H.R. 5333. A bill to reduce the threat of terrorists acquiring shoulder-fired missiles; to the Committee on International Relations.

By Mr. SWEENEY:

H.R. 5334. A bill to provide for low-interest disaster loans when a small business concern is affected by a small-scale disaster; to the Committee on Small Business.

By Mrs. JOHNSON of Connecticut:

H. Res. 802. A resolution encouraging all eligible Medicare beneficiaries who have not yet elected enroll in the new Medicare Part D benefit to review the available options and to determine whether enrollment in a Medicare prescription drug plan best meets their current and future needs for prescription drug coverage; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. FOXX:

H. Res. 803. A resolution providing for the concurrence by the House with amendments in the amendments of the Senate to H.R. 1499; considered and agreed to.

By Mr. ENGLISH of Pennsylvania (for himself, Mr. SULLIVAN, Mr. LIPINSKI, Mr. ROHRABACHER, Mr. KENNEDY of Minnesota, Mr. MCCOTTER, Mr. WOLF, Mr. CHABOT, Mr. SOUDER, Ms. BORDALLO, Mr. HYDE, and Mr. RADANOVICH):

H. Res. 804. A resolution condemning the unauthorized, inappropriate, and coerced ordination of Catholic bishops by the People's Republic of China; to the Committee on International Relations.

By Mr. TOM DAVIS of Virginia (for himself, Ms. LORETTA SANCHEZ of California, and Ms. ZOE LOFGREN of California):

H. Res. 807. A resolution endorsing reforms for freedom and democracy in Vietnam; to the Committee on International Relations.

By Mr. KELLER (for himself and Mr. MCKEON):

H. Res. 808. A resolution expressing the sense of the House of Representatives in support of the goals of National One-Stop Month; to the Committee on Education and the Workforce.

By Ms. SLAUGHTER:

H. Res. 809. A resolution directing the Secretary of the Department of Homeland Security to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the Secretary's possession relating to any existing or previous agreement between the Department of Homeland Security and Shirlington Limousine and Transportation, Incorporated, of Arlington, Virginia; to the Committee on Homeland Security.

## PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII,

Mr. SHERMAN introduced a bill (H.R. 5335) for the relief of Tarveen Kaur Anand; which

was referred to the Committee on the Judiciary.

## ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 9: Mr. RUSH, Ms. MILLENDER-MCDONALD, Mr. LARSON of Connecticut, Mr. WILSON of South Carolina, Mr. SHAYS, Mr. HOLT, Mr. KELLER, Mr. HAYES, Mr. BARROW, Mr. FORBES, Mrs. MALONEY, Mr. CARDIN, Mr. WAXMAN, Mr. SERRANO, Mr. DAVIS of Florida, Ms. WASSERMAN SCHULTZ, Mr. HIGGINS, Ms. BERKLEY, Mr. PETERSON of Minnesota, Mr. PENCE, Mr. MELANCON, Mr. LANTOS, Mr. REYES, Mr. GEORGE MILLER of California, Mr. FILNER, Mr. ABERCROMBIE, Mr. UDALL of Colorado, Ms. VELÁZQUEZ, Mr. PRICE of North Carolina, Mr. ETHERIDGE, Mr. ISRAEL, Mr. KUCINICH, Mr. DAVIS of Tennessee, Mr. PALLONE, Mr. SCHIFF, Mr. KENNEDY of Rhode Island, and Mr. RUPPERSBERGER.

H.R. 49: Mrs. MALONEY.

H.R. 176: Mrs. MALONEY.

H.R. 198: Mr. MICHAUD and Mr. UDALL of Colorado.

H.R. 215: Mr. RAMSTAD.

H.R. 309: Ms. ZOE LOFGREN of California.

H.R. 408: Mr. BLUMENAUER.

H.R. 479: Mr. CRENSHAW.

H.R. 503: Ms. MILLENDER-MCDONALD, Ms. CORRINE BROWN of Florida, Mr. KELLER, and Mr. BACHUS.

H.R. 865: Mr. TOM DAVIS of Virginia and Mr. WALSH.

H.R. 910: Mr. CLEAVER.

H.R. 944: Mr. MATHESON.

H.R. 997: Mrs. JOHNSON of Connecticut.

H.R. 1105: Mrs. JONES of Ohio.

H.R. 1298: Mr. REYNOLDS.

H.R. 1333: Mr. LATHAM and Mr. WATT.

H.R. 1366: Ms. BERKLEY.

H.R. 1384: Mr. ISTOOK.

H.R. 1578: Mr. BLUNT.

H.R. 1588: Mr. BOSWELL.

H.R. 1709: Ms. MATSUI.

H.R. 1742: Mr. MCINTYRE.

H.R. 1898: Mr. FITZPATRICK of Pennsylvania.

H.R. 1955: Mr. MILLER of North Carolina, and Mr. FILNER.

H.R. 2051: Mr. CUMMINGS.

H.R. 2071: Mr. ALLEN and Mr. FILNER.

H.R. 2072: Mr. BOUCHER and Mr. DAVIS of Illinois.

H.R. 2076: Mr. RAHALL.

H.R. 2088: Ms. FOXX and Mr. ISTOOK.

H.R. 2230: Mr. REHBERG.

H.R. 2238: Mr. MICHAUD, Mr. LIPINSKI, and Mr. FARR.

H.R. 2343: Mr. BROWN of Ohio.

H.R. 2421: Mr. LARSEN of Washington and Mr. PASCRELL.

H.R. 2429: Ms. HOOLEY.

H.R. 2517: Mr. WYNN.

H.R. 2671: Mr. PASTOR.

H.R. 3022: Mr. LINCOLN DIAZ-BALART of Florida.

H.R. 3055: Ms. BALDWIN, Ms. KILPATRICK of Michigan, Mr. HASTINGS of Florida, Mr. HONDA, Mr. OWENS, and Mr. BISHOP of Georgia.

H.R. 3072: Mr. SERRANO.

H.R. 3151: Mr. MATHESON.

H.R. 3194: Mr. TOWNS.

H.R. 3319: Mr. COSTA.

H.R. 3323: Mr. KLINE.

H.R. 3352: Mr. WYNN.

H.R. 3385: Mrs. BONO, Mr. MARKEY, and Mr. CUMMINGS.

H.R. 3420: Mr. CROWLEY.

H.R. 3427: Mr. PETRI, Mr. HOLDEN, and Mr. FOSSELLA.

H.R. 3476: Mrs. JONES of Ohio and Mrs. WILSON of New Mexico.

H.R. 3478: Mr. KUCINICH.

H.R. 3547: Mr. DAVIS of Tennessee.

H.R. 3575: Ms. WASSERMAN SCHULTZ.

H.R. 3584: Mr. WEXLER.

H.R. 3628: Mr. HINOJOSA.

H.R. 3858: Mr. PALLONE and Mr. DOYLE.

H.R. 3861: Ms. WATERS and Mr. ANDREWS.

H.R. 4059: Mr. PASCRELL.

H.R. 4157: Mr. KIRK and Mrs. MILLER of Michigan.

H.R. 4158: Ms. CORRINE BROWN of Florida.

H.R. 4188: Mr. DEFAZIO and Ms. BERKLEY.

H.R. 4294: Mr. BAIRD.

H.R. 4341: Mr. MELANCON, Mr. NUNES, Mr. REYNOLDS, Mr. SHIMKUS, Mr. JINDAL, and Mr. HOSTETTLER.

H.R. 4347: Mr. RUSH and Ms. NORTON.

H.R. 4365: Miss MCMORRIS.

H.R. 4429: Mr. MCDERMOTT.

H.R. 4542: Mr. MURTHA and Mr. WELDON of Pennsylvania.

H.R. 4547: Mr. ISTOOK.

H.R. 4562: Mr. ALLEN.

H.R. 4613: Ms. CARSON and Ms. LORETTA SANCHEZ of California.

H.R. 4681: Mrs. BIGGERT, Mr. HULSHOF, and Mr. DOYLE.

H.R. 4695: Mr. CLAY and Mr. STARK.

H.R. 4703: Mr. WELDON of Florida.

H.R. 4705: Mr. FORD and Mr. BOEHLERT.

H.R. 4730: Mr. PRICE of Georgia.

H.R. 4753: Mr. MCDERMOTT.

H.R. 4755: Mr. WYNN, Mr. PITTS, Mrs. JONES of Ohio, Mrs. WILSON of New Mexico, Mr. COOPER, Mr. SAXTON, and Mr. VAN HOLLEN.

H.R. 4761: Mr. MANZULLO.

H.R. 4767: Mr. BROWN of Ohio, Ms. ESHOO, Mr. BISHOP of Georgia, Mr. PITTS, Mr. YOUNG of Florida, and Mr. RAHALL.

H.R. 4790: Mr. CHABOT.

H.R. 4856: Mr. BROWN of Ohio and Mrs. MCCARTHY.

H.R. 4860: Mr. CARDIN.

H.R. 4894: Mr. DAVIS of Kentucky.

H.R. 4903: Mr. PALLONE.

H.R. 4946: Mr. TAYLOR of North Carolina and Ms. HERSETH.

H.R. 4992: Mr. DEFAZIO.

H.R. 4993: Mr. MICHAUD.

H.R. 5005: Mr. ISTOOK.

H.R. 5009: Mr. BONNER.

H.R. 5013: Mr. ISTOOK, Ms. FOXX, Mr. PETERSON of Minnesota, and Mr. BAKER.

H.R. 5014: Ms. JACKSON-LEE of Texas.

H.R. 5022: Mr. FILNER.

H.R. 5037: Mr. WICKER, Mr. MURPHY, Mr. SNYDER, Ms. MILLENDER-MCDONALD, Mr. SHUSTER, Mr. PENCE, Mr. MCCAUL of Texas, Mr. MCHUGH, Mr. LOBIONDO, Mr. POMEROY, Mr. ENGEL, Mr. BOYD, Ms. WATSON, Mr. MCINTYRE, Mr. GUTIERREZ, Mr. ROSS, MR. MCGOVERN, Mrs. DRAKE, Mr. HERGER, Mr. CUMMINGS, Mr. RADANOVICH, Mr. PASCRELL, Mr. JEFFERSON, Mr. SCOTT of Georgia, Mrs. JONES of Ohio, Mr. HAYES, Mr. SOUDER, Mr. CANTOR, Mrs. SCHMIDT, Mr. MELANCON, and Mr. DENT.

H.R. 5052: Mr. STARK, Mr. PALLONE, Mr. ISRAEL, Mr. BERMAN, Mr. FILNER, and Ms. BERKLEY.

H.R. 5053: Mr. GOODE, Mr. RYAN of Ohio, Mr. SOUDER, Ms. NORTON, Mr. WHITFIELD, Mrs. NORTHUP, Mrs. BLACKBURN, Mr. DAVIS of Kentucky, Mr. MCCOTTER, and Mr. ROGERS of Kentucky.

H.R. 5102: Mr. LIPINSKI.

H.R. 5113: Mr. STARK and Mr. GEORGE MILLER of California.

H.R. 5126: Mrs. Schmidt, Mr. TOWNS, Mr. CASE, Mr. DAVIS of Kentucky, Mr. MATHESON, Mr. BASS, Mr. DICKS, Mrs. BONO, Mr. BOUCHER, Mr. UPTON, Mr. BILIRAKIS, Mr. PICKERING, Mr. GILLMOR, Mr. SHIMKUS, Mr. FERGUSON, Mrs. MYRICK, Mr. FOSSELLA, Mr. BUYER, and Mr. BURGESS.

H.R. 5134: Mr. FORD, Mr. MORAN of Kansas, and Mr. RAMSTAD.

H.R. 5143: Ms. LORETTA SANCHEZ of California, Mr. REICHERT, and Mr. JOHNSON of Illinois.

H.R. 5148: Mr. MORAN of Virginia, Mr. CUMMINGS, Mr. VAN HOLLEN, Mr. NADLER, Mr. CONYERS, Mr. GEORGE MILLER of California, Mr. WYNN, Mr. SCHIFF, Mr. KENNEDY of Rhode Island, Mr. GRIJALVA, Mr. MCNULTY, Mr. JEFFERSON, Ms. WOOLSEY, Mr. MCGOVERN, and Ms. ROYBAL-ALLARD.

H.R. 5159: Mr. MCNULTY, Mrs. CAPITO, Mr. ROGERS of Michigan, Mr. ABERCROMBIE, Mr. RANGEL, Mr. LIPINSKI, Mr. SESSIONS, and Mr. SALAZAR.

H.R. 5166: Mr. MARIO DIAZ-BALART of Florida, Mr. PRICE of North Carolina, Mr. BERRY, Mr. ISTOOK, Mr. DAVIS of Illinois, and Mr. PRICE of Georgia.

H.R. 5170: Mrs. MUSGRAVE, Mr. WICKER, Mr. HENSARLING, Mr. FEENEY, Mr. BURTON of Indiana, Mr. GARRETT of New Jersey, Mr. WELDON of Florida, and Mr. CHABOT.

H.R. 5171: Mr. UPTON, Mr. OTTER, and Mr. SIMPSON.

H.R. 5200: Mr. FORD, Mr. LEWIS of California, Mr. EVANS, Mr. BUTTERFIELD, Mr. ALEXANDER, Ms. HOOLEY, Mr. HOLDEN, Mr. RYAN of Ohio, Mr. TANNER, Mr. BLUMENAUER, Mr. GORDON, Mr. GOODE, Mr. PASTOR, Mr. SHAYS, and Mr. OXLEY.

H.R. 5201: Mr. MOORE of Kansas, Mr. LYNCH, Mr. GOODE, Mr. GERLACH, Mr. MCNULTY, Mr. SERRANO, Mr. HIGGINS, Mr. CLYBURN, Mrs. MCCARTHY, Mr. DOYLE, Ms. SOLIS, Mr. WALSH, and Mr. RAHALL.

H.R. 5204: Mr. MCNULTY, Mr. WYNN, Mr. STRICKLAND, Mr. MELANCON, Mr. CONYERS, and Mr. GORDON.

H.R. 5216: Mr. ACKERMAN, Mr. LEWIS of Georgia, and Mr. SKELTON.

H.R. 5220: Ms. HARRIS, Mr. MCCOTTER, Mr. ALEXANDER, and Mr. STRICKLAND.

H.R. 5230: Mr. TOWNS.

H.R. 5232: Mr. DENT, Mr. GERLACH, and Mr. HOLDEN.

H.R. 5252: Mr. CLAY, Mr. CROWLEY, Mr. WILSON of South Carolina, Mr. BAKER, Mr. OXLEY, Mr. BOYD, Mr. LEWIS of Kentucky, Mr. JEFFERSON, Mr. ALEXANDER, Mr. CLYBURN, Mr. LINCOLN DIAZ-BALART of Florida, and Mr. BONNER.

H.R. 5255: Mr. HUNTER, Mr. POE, and Mr. GARY G. MILLER of California.

H.R. 5262: Mr. PAUL and Mr. FLAKE.

H.R. 5278: Mr. DENT, Mr. KING of New York, and Mr. NORWOOD.

H.R. 5279: Ms. SCHAKOWSKY.

H.R. 5293: Mr. MCKEON, Mr. REGULA, Mr. PETRI, Mr. PORTER, Miss MCMORRIS, Mr. FORTUÑO, and Mr. BOUSTANY.

H.R. 5304: Mr. ALEXANDER.

H.J. Res. 53: Mrs. MUSGRAVE and Mr. TANCREDO.

H.J. Res. 73: Ms. MATSUI.

H. Con. Res. 42: Mr. MARKEY.

H. Con. Res. 179: Mr. COSTELLO.

H. Con. Res. 254: Mr. PASCRELL.

H. Con. Res. 289: Mr. LIPINSKI.

H. Con. Res. 380: Mr. GOHMERT.

H. Res. 158: Mr. MILLER of Florida, Ms. ZOE LOFGREN of California, Mr. PORTER, Mr. MCDERMOTT, Mr. OLVER, Mr. EMANUEL, and Mr. PASCRELL.

H. Res. 490: Mr. MCCOTTER, Mr. JEFFERSON, and Mr. LYNCH.

H. Res. 498: Mr. BACA.

H. Res. 521: Mr. MARKEY, Ms. MATSUI, and Ms. SCHAKOWSKY.

H. Res. 526: Mrs. LOWEY.

H. Res. 608: Mr. ENGLISH of Pennsylvania.

H. Res. 723: Ms. BALDWIN, Mr. DENT, and Mr. ALLEN.

H. Res. 731: Mr. CARTER and Mr. BAKER.

H. Res. 759: Ms. NORTON, Mr. SANDERS, and Mr. BISHOP of Georgia.

H. Res. 773: Mr. ETHERIDGE, Mr. BURGESS, Mr. BERMAN, Mrs. LOWEY, and Mr. RAMSTAD.

H. Res. 777: Mr. LINCOLN DIAZ-BALART of Florida.

H. Res. 788: Mr. MCHUGH, Mr. MCNULTY, Mr. LOBIONDO, and Mr. MCCOTTER.

H. Res. 793: Mr. KENNEDY of Minnesota, Mr. ADERHOLT, Mr. MCHENRY, Mr. GINGREY, Mr. POE, Mr. DREIER, Mr. SAM JOHNSON of Texas, Mr. FORBES, and Mr. MILLER of Florida.

H. Res. 795: Mr. SAXTON, Mr. FOLEY, Mr. COLE of Oklahoma, Mr. PENCE, Mr. CHOCOLA, Mr. BARRETT of South Carolina, Ms. HART, Mr. SULLIVAN, Mr. MCHENRY, Mr. SHUSTER, Miss MCMORRIS, Mr. KUHL of New York, Mr. PEARCE, Mr. BONNER, Mr. HAYES, and Mrs. KELLY.

## DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 5289: Mr. BOREN.

## AMENDMENTS

Under the clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 5122

OFFERED BY: MR. COLE OF OKLAHOMA

AMENDMENT NO. 1: At the end of section 346 (page 98, after line 11) insert the following new subsection:

(e) EXCEPTION FOR NON-LINE-OF-SIGHT CANNON SYSTEM.—This section does not apply with respect to the obligation of funds for systems development and demonstration of the non-line-of-sight cannon system.

United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, TUESDAY, MAY 9, 2006 No. 55

# Senate

The Senate met at 9:45 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, our Father, the way, the truth, and the life, lead us to Your truth. Keep us from twisting the truth to conceal our mistakes. Keep us from evading the truth we do not wish to see. Keep us from silencing the truth because we are afraid of people.

Infuse Your Senators today with a passion for truth that will save them from false words or cowardly silence.

Teach us all to speak Your truth in love.

We pray in Your holy 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, leadership time is reserved.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

## SCHEDULE

Mr. FRIST. Mr. President, in just a few minutes, at 10 a.m., the Senate will proceed to the vote on invoking cloture on the motion to proceed to the small business health plan bill. Chairman ENZI is here, and there will be a few minutes for closing remarks before that vote. If cloture is invoked, I hope we will be able to proceed to the bill today and begin debate on the substance of the legislation.

Today, the two party policy luncheons will occur between the hours of 12:30 and 2:15 p.m. Once we determine when we will be able to proceed to the small business health plan bill, we will then set up a recess to accommodate those two meetings.

## HEALTH INSURANCE MARKETPLACE MODERNIZATION AND AFFORDABILITY ACT OF 2006—MOTION TO PROCEED

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration on the motion to proceed on S. 1955.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 417, a bill (S. 1955) to amend title I of the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the Senator from Wyoming, Mr. ENZI, and the Senator from Massachusetts, Mr. KENNEDY, or his designee.

The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I am here this morning to ask this body to support the motion to proceed to the debate. All we are voting on is whether we are going to get to debate, not whether we are going to have health insurance for small businesses. But if this vote does not get 60 votes, we will not have the opportunity in this Congress to see whether we can help out small businesses across this country.

The bill before us will provide for small businesses to be able to join across State lines to negotiate against the insurance companies with enough power to make a difference. This is something which the small businesses have been asking for for almost 15 years. In the last 12 years, it has passed the House eight times but has never even gotten out of committee in the Senate until this year. The reason it got out of committee is because we have drastically changed the bill. We are not talking about the old association health plans we had in the past. This is one which has had some modifications that have been helped with insurance companies and State insurance commissioners. It still keeps the power of oversight and consumer protection in the hands of the State insurance commissioners, but it does allow the ability to unify things so that we can get across State lines.

How is it doing? Well, the Washington Post says it went too far. The Wall Street Journal says it didn't go far enough. So maybe we are somewhere right there in the middle. But unless we get to debate this issue, we will never know until we can get through the motion to proceed and possibly 30 hours of still debating whether we are going to debate before we ever get to a motion. So I am hoping that this morning we can pass this motion to proceed.

I can't believe that any Senator here hasn't heard from enough small businessmen that he wouldn't allow us to proceed to the debate. I am hoping that following that motion to proceed to debate, we can limit the hours of debating that particular motion and get on with the substance of trying to perfect a bill.

In my 9 years in the Senate, I have never seen a perfect bill. I am not saying this is a perfect bill. I am saying it is one that has come out of compromise, long discussions, and has moved away from the point of huge objection on the Senate side to less objection on the Senate side. It is a bill that can be worked out, can be passed, and can have a significant difference for

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

small companies across the United States.

Will it make a difference? There are several surveys that say it will make a difference. I am saying that from the amount of advertising which was done before we even had the motion to proceed, there must be a lot of big bucks in savings in this thing to have the kind of opposition we have already had on it. But we will never know unless we get the right to debate. So I am asking my colleagues to vote aye on the motion to proceed so that we can proceed to a debate, sometime within the next 30 hours, hopefully.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair to let me know when I have 1 minute remaining.

Mr. President, this should be a historic week. The Senate has the opportunity at last to have a debate on the basic questions of health care. Senator ENZI has put forward a proposal that deserves debate and the opportunity for amendment, and I commend him for his diligence in bringing forward his proposal. But after careful study and debate, I believe the Senate will conclude that the course laid out in this proposal is the wrong one for health care.

The legislation will make health care coverage less affordable and less accessible for millions of Americans. It will raise premiums for Americans when they are older or when they fall ill. It will mean the end of laws to guarantee coverage for cancer, for diabetes, for mental health parity, and other essential services. It will undermine the laws that protect consumers from fraud and abuse, and it will give no real help to the self-employed.

We have a better approach. The proposal offered by Senators DURBIN and LINCOLN will allow small businesses to band together to get the same low rates offered to larger employers. It provides real help for small businesses with the high costs of health care through tax credits and reinsurance programs to defray the cost of the most expensive claims.

When our debate concludes, I believe the Senate will agree with the over 200 organizations that have written letters of opposition to this legislation. These organizations represent patients with diabetes and cancer and mental health needs. They represent older Americans, workers, health care professionals, small businesses, and Americans in all walks of life. They represent the over 15,000 Americans who have called the Senate to ask this body to oppose legislation that will take a step backward from our commitment to quality health care, and they represent the millions more who will be harmed if we do not reject the legislation before us.

We have heard from Governors, insurance commissioners, and attorneys general from Maine to Hawaii and from Florida to Alaska, and all of them—all of them—have urged the Senate to reject this bill.

I urge my colleagues to oppose the current legislation, but I hope they will vote to proceed to consideration of this bill. The Senate has been denied the chance to take action on major health priorities for too long. Next week, seniors will be forced to pay a steep penalty if they are unable to navigate through the tangle of confusing Medicare plans and options. The Senate ought to vote on Senator NELSON's proposal to let seniors make their choice without the threat of heavy fines if they do not meet this arbitrary deadline.

The Republican Medicare law also includes a provision so contrary to commonsense that people hardly believe you when you tell them it was included. The legislation makes it illegal for Medicare to bargain for discounts on drugs for seniors. We have a proposal to end that shameful prohibition, and we should vote on that proposal.

On Medicaid, we should take action to end the cruel cuts imposed on the poorest of our fellow citizens by the Deficit Reduction Act, which paid for tax cuts for the wealthy through health cuts for the poor.

We have been promised and promised that the Senate would vote on drug importation, but the vote never comes. Senator DORGAN, Senator SNOWE, Senator MCCAIN, and I have a proposal that will allow safe importation of lower cost medicines from Canada and elsewhere. Surely, Health Week is the time for a vote.

Before the week is out, the Senate should see that the promise of stem cell research—stem cell research—is no longer denied to the millions of patients and their families who look on with anger and bewilderment as the bill passed by the House languishes for month after month after month in the Senate. And we have failed year in and year out to fulfill the promise of this century of the life sciences by making quality care a right for every American. Let us at long last take action to extend quality care to every American.

So I say to my colleagues: Vote for cloture on this motion. Vote for a health care debate. Vote for a chance to go on record with your answer to these important questions on Medicare, on Medicaid, on stem cell research, on drug importation, on coverage, and on many other health priorities. Let's have a debate, and let's let the Senate decide where it stands.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. Who yields time?

Mr. ENZI. Mr. President, I thank the Senator from Massachusetts for his encouragement on his side of the aisle to vote for the motion to proceed. I think that will get us into a debate that will make a difference for the working people of America, the people up the street and across the street, the working families that are a part of small business.

Today, there are 45 million people in the United States who are without health insurance in this country. Twenty-two million people own or work for small businesses or live in families that depend on small business wages, and another 5 million are unemployed. Those are the 27 million people we are talking about whom this health care bill will be making decisions for in the next few days.

It is long past time for Congress to take some action. The American people aren't going to accept excuses any longer. It has been a long time getting to this debate. I am pleased that it sounds like we will be able to have it. I welcome any amendments that are alternate approaches or improvements to this bill. I know what the complaints are out there, I know what the counters to those are, and I know what the concerns are. It is very important that when we walk away from this week, we walk away with a plan which will help the small business people of the United States, the ones working for small businesses, the ones owning them, and their families who need the help.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. Who yields time? Each side has 1 minute remaining.

Mr. KENNEDY. Mr. President, I will mention at this time some of the organizations. We will have a chance during the course of the debate to get into the reasons why. The American Academy of Pediatrics; the American Cancer Society; the Diabetes Association; the Nurses Association; Families USA; the lists of Governors—and I will include those—more than probably 15, 18 Governors; the attorneys general. I think there are probably close to 40 of the attorneys general representing States North, South, East, and West who have opposed this bill. The Insurance Commissioners of the States—a whole list of those. At the appropriate time, I will include those in the RECORD.

I hope our colleagues will put their ear to the ground and find out what people are saying back home, what your cancer society, diabetes, pediatric nurses and doctors are saying about this, what the attorneys general are saying about this, and what those in the medical profession are saying about this. We think we have a better way to help small business, and during the course of the debate, we will show how that can be done.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Wyoming has 56 seconds.

Mr. ENZI. Mr. President, I thank the Senator from Massachusetts for listing those 200 organizations. I have never done a count on them, and I am not familiar with quite that many; I am only familiar with about 40 that have expressed some concern that I suspect will be taken care of in amendment if we can get to the amendment process.

I would like to mention that there are over 200 business organizations that are looking forward to being able to unite these people across State lines to get lower rates for their people. There are actually 80 million employees in those businesses, in those organizations. The realtors are going to be here with 9,000 people next week, expecting that we will have already taken action. The National Federation of Independent Businesses is another big one that is supporting this. I could mention a lot more. Even some of the associations that have concerns about it want to be sure that this bill passes so their employees can be covered.

I yield the floor.

CLOTURE MOTION

The PRESIDENT pro tempore. By unanimous consent, pursuant to rule XXII, the chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 417, S. 1955, Health Insurance Marketplace Modernization and Affordability Act of 2005.

Bill Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Richard Shelby, Larry Craig, Ted Stevens, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, Pat Roberts, Craig Thomas, Richard Burr.

The PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 1955, the Health Insurance Marketplace Modernization and Affordability Act of 2005, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. ROCKEFELLER) is necessarily absent.

I also announce that the Senator from North Dakota (Mr. CONRAD) is absent due to illness in family.

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

The yeas and nays resulted—yeas 96, nays 2, as follows:

[Rollcall Vote No. 117 Leg.]

YEAS—96

| | | |
|---|---|---|
| Akaka | Cantwell | Dorgan |
| Alexander | Carper | Durbin |
| Allard | Chafee | Ensign |
| Allen | Chambliss | Enzi |
| Baucus | Clinton | Feingold |
| Bayh | Cochran | Feinstein |
| Bennett | Coleman | Frist |
| Biden | Collins | Graham |
| Bingaman | Cornyn | Grassley |
| Bond | Craig | Gregg |
| Boxer | Crapo | Hagel |
| Brownback | Dayton | Harkin |
| Bunning | DeWine | Hatch |
| Burns | Dodd | Hutchison |
| Burr | Dole | Inhofe |
| Byrd | Domenici | Inouye |
| Isakson | McCain | Schumer |
| Jeffords | McConnell | Sessions |
| Johnson | Menendez | Shelby |
| Kennedy | Mikulski | Smith |
| Kerry | Murkowski | Snowe |
| Kohl | Murray | Specter |
| Kyl | Nelson (FL) | Stabenow |
| Landrieu | Nelson (NE) | Stevens |
| Lautenberg | Obama | Sununu |
| Leahy | Pryor | Talent |
| Levin | Reed | Thomas |
| Lieberman | Reid | Thune |
| Lincoln | Roberts | Vitter |
| Lott | Salazar | Voinovich |
| Lugar | Santorum | Warner |
| Martinez | Sarbanes | Wyden |

NAYS—2

Coburn DeMint

NOT VOTING—2

Conrad Rockefeller

The PRESIDING OFFICER. On this vote, the yeas are 96, the nays are 2. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. ENZI. Mr. President, I ask unanimous consent that the postcloture debate on the motion to proceed be divided as follows: From now until 11 a.m. will be under majority control; from 11 to 11:30 will be under minority control; 11:30 to 12 will be under majority control; and noon to 12:30 will be under minority control.

The Senate will stand in recess from 12:30 to 2:15 p.m. I ask that time count under the provisions of rule XXII. The time from 2:15 to 2:30 will be equally divided between the majority and minority; from 2:30 to 3 we begin majority control, with the next 30 minutes under minority control, and each 30 minutes rotating in this format until the hour of 5:30 p.m.

Before the Chair rules, we would like to make out a time certain to begin consideration of the bill. In the interim, this unanimous consent allows the Senate to have an orderly debate for speakers.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I thank virtually all Members in the Senate for their help in getting the motion to proceed. That will allow us to do 30 more hours of debate before we actually get into the substance of making any changes in the bill. I hope we can work out a unanimous consent agreement that will shorten that time and get us into the meat of the debate. I will push for some rapid consideration of some amendments so we can get this resolved for the small businessmen of this country in short order.

I will address some of the charges made against this bill. I listened yesterday and the day before to the minority leader's speech to the Senate on Friday. I was surprised by several of the statements he made regarding this bill. If I had not already known that he was talking about S. 1955, I would never have guessed it.

The first comment the minority leader made was that our bill threatens the coverage of those who have insurance now and does nothing to extend coverage to those who need it. I make two points in response to that. First, it seems to me the status quo is what is truly threatening the coverage of those who are insured now. Prices are going up dramatically. Small business has no leverage. No one can afford more of the same or more excuses from Washington.

Blocking an honest debate on this bill is a vote for more of the same. It is a vote for health insurance costs continuing to rise dramatically, for more small businesses dropping coverage for their employees, and for more uninsured American families. Year after year of more of the same is what is truly threatening America's health care security.

Second, this bill will indeed extend coverage to more people who need health insurance. If you do not believe me, listen to our nonpartisan CBO. The CBO says this bill will reduce health insurance costs for three out of every four small businesses. The CBO also said the bill will extend private health coverage insurance to 750,000 more people than have it today.

Is that a comprehensive solution to the problems of health care and the uninsured? Of course not. I understand this is not a comprehensive solution to the problem of health care costs and the uninsured, but it is definitely a step in the right direction and a building block for the future.

I have more comments about statements made about the bill in ads and in editorials, but at this point, I release the remainder of our time until 11 o'clock to the Senator from Missouri who has been working on this in the House for years in a totally different version but has brought his expertise, talent, and knowledge to this side of the building. He has been a strong advocate for doing something for small businesses. He has been extremely cooperative in finding ways to do things so we can have something for small businesses.

I relinquish the floor to the Senator from Missouri, Mr. TALENT.

Mr. TALENT. Mr. President, I thank the Senator from Wyoming for his kind words and his great work and his comments regarding my involvement with the idea of small business health plans. What he said is true regarding my involvement. I am not the father of this idea, but I think I probably ''midwifed'' it years and years ago when I served in the House in 1997. It has passed the House on a regular basis ever since then and, as the chairman knows, on a very strong bipartisan basis because the idea of small business health plans is fully within the mainstream of both parties' thinking which is one of the very powerful arguments in favor of it.

The No. 1 issue facing small business today as a whole is not energy costs, although certainly they are too high. It is not immigration, although that is definitely an issue. It is not taxes, although we all hear our share of complaints from small business people about that. It is the rising cost of health insurance and the number of

people who do not have health insurance. That is largely a small business problem.

There are 45.8 million Americans who are uninsured today, 4 million more than 2001. That number has grown every year, in years of prosperity or recession. The vast majority of those uninsured people are working people. And most of those working people are people who work for a small business. They work for a small business, they own a small business, or they are dependents of someone who works for or who owns a small business.

The smaller the business is, the worse the problem gets. Only 40 percent of businesses with 3 to 6 employees today have health insurance for their employees and that number is down from 52 percent in 2004 and 58 percent in 2002.

We are entitled to ask ourselves, Why? I have heard a lot of explanations over the years. Why does small business have a problem providing health insurance for its employees whereas bigger companies don't? You would be surprised at the explanations offered. I had one witness from the Government Accountability Office tell me that he did not think employees of small business wanted health insurance. I have other people speculate that small employers did not care as much about their people who work for them as big companies do. That certainly will come as a revelation to Senators that big corporate employers care more about their employees than the small business owners and managers do—the small business people who work on a daily basis with their employees, the small business people who would like to get health insurance themselves from the small business if they could figure out a way for the small business to provide that health care to the employees.

It is not a question of the small business people caring enough. The problem is, the cost and complexity of getting health insurance for a small business is greater than it is for a big business. It will surprise no one who has common sense that it is harder to insure a small market, a small group, than a big group. The cost of insurance is less if you can spread it across a bigger pool of people. This has been studied extensively, and that very commonsense conclusion has been validated.

I will go over some of the figures for the Senate. Health insurance premiums for small business people increased by 10.9 percent in 2001, 12.9 in 2002, 13.9 in 2003, 11.2 percent in 2004, and 9.2 percent in 2005.

The smallest firms have always seen bigger increases in premiums. Why? Well, the SBA's Office of Advocacy has found that small businesses typically spend much more than large businesses for the same benefits. Not that the benefit packages are different, not that small businesses are trying to buy more expensive benefit packages; they have to spend more to get the same benefits because the administrative costs of some benefits are almost 14 times more for the smallest firms than for their largest counterparts.

According to the Government Accountability Office, from 20 to 25 percent of small employer premiums typically go toward expenses other than benefits compared with about 10 percent for large employers. The small business people are paying more to get the same benefits because they have higher overhead costs and higher administrative costs. They do not enjoy the same economies of scale the big companies enjoy.

The American people know this. I have a lot of stories from Missouri I could tell. I do not have the time. But the American people are living with this every day.

Jim Henderson is the president of Dynamic Sales in St. Louis. It is a third-generation family business that sells welding accessories and other products. It is a small business. He has eight employees. Health insurance has been a problem for 16 years for Jim. He spoke with his insurance agent, who suggested raising the deductible to keep the premium the same, so he has raised the deductible. It has gone from zero to a $1,000 deductible in the last 10 years. So despite that huge increase in the deductible, to this day, he experiences huge increases each time he tries to renew the policy. When he asked his carrier about the enormous increases and why they are raising his premiums so much, the carrier responded: Well, because we can.

Tammy Herbert is a certified optician from Farmington, MO. She is a cancer survivor. She had breast cancer. She is a single, working mom. She is an inspiration when you talk to her. She told me because of her history of breast cancer, 2 years ago her employer's insurer canceled all the individual policies for her and her colleagues.

People talk about small business health plans resulting in cherry-picking. They ought to see what is happening today in the small group market.

Renee Kerckhoff is the second generation owner of Rudroff Heating & Air Conditioning, in Belton, MO. She can only afford to cover a small portion of employee insurance premiums—about $150 a person per month. As a result, and despite her best efforts, her employees are having to drop their health insurance because they cannot afford the copays and the premiums they have to make and are going on public assistance.

These stories are happening all over Missouri and all over the country. Sometimes I will get with a group of people and ask them: Look, if you had a history of medical illness, and you had the choice of working for a big company or a small company, and all you cared about was health insurance, and all you knew about the companies was that one was a big Fortune 500 company and the other was a small company, which one would you work for? I have never had anybody raise their hand and say: I would work for the small company because the assumption is I am going to get better health insurance from the small business.

They know, because it is a matter of common sense, insuring a large pool of people is more efficient, more economical and, therefore, less expensive than insuring a small group of people.

Just look at the people who are insured in the country. Virtually everybody who has health insurance, except for the employees of small business people, have it as part of a big national pool. It may be public, it may be private, but it is a big national pool. They work for a big company. They are in a labor union. They are on Medicare or Medicaid or they are a Federal employee or a retired Federal employee or in the VA.

All these other organizations could insure on a small group basis if they wanted to. The Federal Government could go out and take each section of Federal employees in different cities and divide them all up and insure them in a small group. There is no law against that. Microsoft could do the same thing. Hallmark in Missouri could. Anheuser-Busch in Missouri could. They could insure each little section if they wanted to. Well, they do not because it does not make any sense. It would cost them more money to do it. Yet small business people have to do that every day.

So what is the answer? Well, there is a simple answer that is out there. Everybody tries to make it more complicated than it is, but it is simple: Empower the small business people to do what the big business people can already do. Allow them to pool together through their trade associations and get health insurance as part of a big, national, voluntary, efficient, economical pool.

I give an example: I think it is the best way to describe it. Take a restaurant owner such as my brother, who owns a little restaurant. It is kind of a tavern restaurant. It is a great place. It has great chicken sandwiches. And I highly recommend it to you if you get to Missouri. He does not have health insurance for his people. It is too expensive. It is complex and foreboding for him. He and my sister-in-law run the business. They do not want to have to wrestle with big insurance companies. They are afraid if something goes wrong, they could get sued. He would like to have health insurance. Then he could get it through the business, too.

Now, what if the National Restaurant Association could contract with big insurance companies? They could be his employee benefits section, just like big companies have an employee benefits section. By joining the National Restaurant Association, he automatically would have the right to join the big pool. They would send him the papers. They would show him the options he

has, and he could decide how much he wants to pay. He could let his employees pay the rest and join the pool. He could have health insurance as part of a big pool. It would be must-offer, must-carry. They would have to let him join the National Restaurant Association and would have to offer the health insurance to him.

When I chaired the Small Business Committee in the House, we studied this issue. And I have seen a lot of other studies since then. The best estimates I saw were that it would reduce premiums for small employers by 10 to 20 percent; a recent study came out and said 12 percent. There would be a million fewer people uninsured.

It costs the taxpayers nothing. It is not a Government program. It is empowering small business people to do what big business people already can do. I think the impact would be much greater than the studies have shown because right now the psychology of health insurance, if you are a small business, is so negative. I think you would see whole segments of the economy, which traditionally have not provided health insurance to their employees, begin to provide health insurance. And the restaurant business is one of them. It is one of the reasons the National Restaurant Association is so strongly in favor of this concept.

Now I have talked about this for almost 10 years. I lay it out for people, and they say to me: Well, who would oppose this? I actually get that question a lot: Who is opposed to it? And that is a good question. It is fully within the mainstream of both parties' philosophy. It is empowering the little guy, just like farm co-ops. It passes the House with a strong, bipartisan majority every year. And why shouldn't it?

What is the downside of it? The downside is: It does not work as well as we hope it is going to work. Not as many people go into it as we hope and believe will go into it.

It is not as though the taxpayers are going out on a limb. So who is opposed to it? Well, nobody will be surprised to hear that the big insurance companies have opposed it, and they have come up with all sorts of excuses over the years. I am not going to go heavily into it because the chairman has worked very hard to get as much consensus as he can get. But I will say this. I think they oppose it not because they are afraid it will not work but because they believe it will work. And they control most of the small group market now. I do not have time to go through those figures. But the concentration of the small group market within the five largest carriers has grown and grown and grown. And small business health plans would be a powerful, new competitive force in that market.

The State insurance commissioners have been concerned because these small business health plans would be national and they felt the State would not be able to regulate it. In fairness, I have to say, I have never agreed with that. Remember, the big companies already operate free of State regulation. That has been the law for 30 years. And we have not had any disasters as a result of that. I do not believe anything that has happened in the last 10 years or so is proof that we can trust the big companies more than we can trust the small companies.

If I had to decide who was going to be free of State regulation, I think I would rather have the small businesses free of that. And it is not as though the market the States have regulated never has any problems. There are a lot of insurance companies that go bankrupt, and the States have to take them over.

But the good news is that the chairman has squared this circle. He has worked out an arrangement for the regulation of small business health plans where many of the State regulations and much of the State regulatory authority will still apply. I am not saying the State insurance commissioners are standing up for his bill, but I think it is safe to say that many of their objections have been ameliorated, and the chairman has made much progress on that front.

Folks who tend to be sincerely on the ideological extreme on health care issues—and maybe ''extreme'' is the wrong word, but they want to go one way or the other—have been lukewarm about small business health plans. There are some who wish to eliminate the employer system and take the Federal tax deduction and pass it through to individuals and let them go out and buy health insurance on their own, and there are others who want a total Government solution. And this is not any one of those things.

It is a substantial and important and meaningful but incremental change in the world we are in. It makes things better for people on a day-to-day basis who are out struggling in the real world. Maybe it is not the reform that any of the think tanks on the right or left would come up with, but it makes a difference. It will help. There is little or no downside to it. We need to help the real people who are really hurting.

Finally—and this I understand entirely; I struggled with this myself in the years I had this bill—the groups that have worked to get various disease mandates in the States have been concerned. Because if you worked hard to get a mandate so that mammogram screening is covered in your State as a matter of right, and small business health plans go into a national pool, just like the big companies, if we do not do something, they would not be subject to those State mandates.

I have made a point in talking with these groups over the years saying that, look, the big company plans, the big pools that exist out there—the labor unions, the company plans, the Federal employee plans; all those sorts of things—they usually cover all those mandated coverages, anyway, because most of them are pretty common sense.

Again, remember, if you have been sick, and you have a choice of working for a big company that is not covered by the State mandates or a little company that is, which do you think has the better health insurance? The folks I have talked to over the years say: Well, we would go with the big company.

But I think we are going to be able to square that circle as well. Senator SNOWE is going to offer an amendment which will represent progress in this area. It will provide that if 26 States cover a mandate, that mandate applies to small business health plans, and it is protected in the States that have it. So this is progress. It is not just net progress; it is absolute progress for these various groups that have sought these protections because they are going to have, if that amendment passes—and, certainly, I am going to support it—they will have protections on the Federal level for the first time for these various coverages.

So I am very hopeful they will take a look at this. I believe with the amendment Senator SNOWE is going to offer, the concerns they had not only do not apply anymore, but actually they are going to be better off because for the first time we are going to have national pools set up under Federal law with certain basic patient protections and coverages that are guaranteed. As I said, I do not think those would be necessary because I think the pools would cover them, anyway. Most of those are pretty common sense. But we can put them in the law and reassure everybody. And I think we can make the bill better if we do that.

I see my time is running out, Mr. President.

So what is left? Why should we oppose this? I do not want to be presumptuous. I have lived with this bill for so long that maybe there are weaknesses I do not see. But this is something we can do for people. It passes the House regularly. They like it over there. It has a strong measure of bipartisanship, anyway. There is no real downside to it.

Let's debate the bill, and let's resolve that we are going to debate it with a view toward actually voting on it.

I hope nobody filibusters this bill. We can work out agreements about debate, work out agreements about amendments, and have a chance to help people. This is a problem. This is a case where people are hurting. I know politics is important here; I know this is an election year; I know all of that. But we can make a difference for real people on the ground every day who are worried about losing their health insurance or who do not have health insurance and are worried about getting sick. We ought to do it.

I thank the Senator for yielding. It looks as though my time has expired. I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Connecticut.

Mr. DODD. Mr. President, I yield myself 20 minutes. Senator KENNEDY is

not here right now, but pursuant to previous agreement, I would like to be notified when 15 minutes expires so I can conclude my remarks in the 20 minutes.

I spoke yesterday about this legislation. I want to begin by saying to my friend from Wyoming, the chairman, I have a great deal of regard for him. I have enjoyed working with him on the HELP Committee. We do a lot of work together. I have enjoyed that relationship. It is with a note of sadness that I disagree with him about this bill. We had a lengthy markup. He was very patient to listen to all of our ideas and the amendments we offered during the markup. I appreciated his willingness to do so. But as happens from time to time, we have disagreements. They are not personal. They are ideas on which we have a different point of view. Today is one of those occasions. These remarks are in no way intended to denigrate the work of the chairman of the committee or those who agree with him.

There are those of us who believe strongly that this proposal would do a lot more harm than good, that, in fact, the cure being proposed with this legislation creates far more problems than presently exist, as bad as the present situation is. We know, as a matter of fact, that over the last 3 years, the premium cost for health care has risen: 9 percent in 2005, 11 percent in 2004, 14 percent in 2003. These costs continue to rise. A family of four today is paying about $11,000 in premiums for health care coverage. The problem is significant.

I regret in some ways—and this is not the fault of the chairman of the committee—that we are not debating in a broader sense how we might address the far more significant issue, as important as this one is, when we have 45 million fellow Americans with no health care coverage at all. I regret that we are not having a larger debate on that issue.

Secondly, I believe it is a legitimate issue to raise the issue of how small business is dealt with when it comes to insurance. In the next 2 days, we will offer a substitute to the proposal authored by the chairman of the committee, the Senator from Wyoming, that we believe will deal far more thoroughly with the legitimate issues that smaller businesses face. In fact, we redefine small business to mean businesses not with 50 employees or less but 100 employees or less, thereby covering more small businesses than would be covered by the legislation before us.

The problems are huge in the area of health care. If you do surveys of the American public and ask them to identify what are the largest concerns they have, if not the No. 1 issue—from time to time other issues may be more important to people—consistently year in and year out, people will tell you their great concern is about the fear of watching a family member or themselves be hit with a major health care crisis and not having the resources to pay for it, not being able to get the doctors, not being able to have the kind of care they would want for their families because they cannot afford the premiums that would provide them broader coverage, if they have any kind of coverage at all. They may not have any kind of health care. This is a major problem. We ought to be spending a lot more time addressing this issue than we are.

Having said that, let me talk about this proposal. I am deeply worried about it. It isn't just my concern. Many Governors, more than three-quarters of the attorneys general of the States which we represent, not to mention the health insurance commissioners of many States, have raised very serious concerns about this legislation. They are very worried about what this bill will do to their constituents, the States that we represent as Senators.

Let me share a letter from the Connecticut Business and Industry Association. This association represents 5,000 small employers in my State. This is not an organization that is known for its liberal tendencies. Quite the contrary, it is a very conservative business group. Listen to what my business group that represents the small businesses of my State has to say about this bill.

> We believe that in Connecticut federally certified AHPs would destabilize the small business insurance marketplace, erode carefully crafted consumer protections and raise premium rates for small businesses with older workforces and those that employ people with chronic illnesses or disabilities.

The letter goes on to say:

> Although the passage of AHP legislation would present us with opportunities to expand our CBIA health connection's product customer base as a regional offering, we do not believe that the proposed legislation represents a sound public policy for providing more affordable coverage or access to health care benefits. The proposed legislation does little to address the underlying causes of health care inflation, which is the most important barrier to small employers providing health care benefits.

That is a strong letter from an organization that represents 5,000 small employers in the State of Connecticut. They are worried about what this bill will do to smaller employers in my State in terms of their costs. They are deeply worried about this legislation and what it may mean.

Let me also share with my colleagues a second chart. This was a chart that was produced by Families USA, with estimates from the Agency for Health Care Research and Quality, a medical expenditure panel, and from the U.S. Census Bureau. It tells us the number of people that will be losing State regulatory protections if this bill is passed. What we are doing is shrinking the amount of benefits that can be offered. In my State, we offer a range of 30 different benefits—that was passed by my State legislature—that insurance companies must cover. If you are going to do business in my State, then you have to provide coverage for these 30 areas that we believe are important.

I note this morning an editorial in the Wall Street Journal that criticizes those of us who have raised issues about this bill. They say in one paragraph:

> Some provider groups are opposed for nakedly self-interest reasons since it would allow plans to bypass state regulations mandating coverage for, say, chiropractors.

Chiropractors provide some decent services to people. But with all due respect, I would suggest that it is a lot more than chiropractors who get bypassed with this legislation. It is things such as diabetes, cancer screening, infant health care, mental health care, pregnancy, Lyme disease, to mention a few. I know several of my colleagues have had family members affected by Lyme disease. My State thinks that is an important area to provide coverage. This bill would eliminate coverage for Lyme disease because this legislation would mandate that Federal law would supersede State law. Regardless of what your State thinks is important, this bill will decide what will be covered. Everything else goes. That is an overreach, in my view. As a result, the analysis of the legislation presented on this chart suggests that in the State of Alabama, 1.7 million people who would be adversely affected if this legislation is passed. In Connecticut, more than a million people would lose benefits that the State legislature requires the insurance industry to cover. In State after State, the numbers are at least in the six-figure category. In California, 12 million people would be adversely affected, Kentucky over a million people, Kansas over a million people, Illinois almost 4 million people, and the like.

I will leave this chart so my colleagues will be able to see how many people will be affected in their States, according to data collected by those who have examined what it would mean to a Federal mandate that tells every State in the country: We don't care what you have done, we don't care what benefits you think are important, this bill will tell you what kind of coverage you are going to have.

We also prohibit the States by preempting their ratings rules, which is my second point. This legislation preempts the States from having rating rules that will actually determine what the difference in cost would be between young and healthy workers and older, sicker workers, to make sure they are not going to price the product so beyond the reach of an older, less healthy person that it would be unaffordable. It is de facto exclusion if you allow the insurance industry to set that price by preempting the States from determining whether there ought to be a cap on how much an insurance company can charge. By limiting benefits and by preempting the States from determining rates and holding them down,

we make it very difficult for literally millions of people to be positively affected by this legislation.

Those are the two major concerns we have. There are other areas that we will certainly raise. I mentioned earlier in my State, more than a million people will lose access to cancer screening, well childcare, diabetes supplies, alcoholism treatment, mental health care, the treatment for Lyme disease, to mention some. The list goes on with my State.

In addition to seeing their benefits disappear, millions of Americans will see their health insurance premiums skyrocket as well. This bill preempts State laws that currently protect older workers, those with serious illnesses such as diabetes, cancer, and heart disease, even expectant mothers, from seeing their premiums increase. This bill will allow the insurance industry to charge people more based on the fact that they are sick or pregnant or simply older.

I have many insurance companies in my State, as my colleagues know, that do a wonderful job in many ways. But don't have any illusions about this. They are going to be offering as few benefits as they can get away with and charge as much as they can. That is what they are in business for. This is not the Vista Program or AmeriCorps. These are private companies. If we give them a green light to limit the benefits you can provide and take the caps off what they can charge, then, obviously, they are going to take advantage of it. I am greatly concerned, as the major business organization in my State warns. When the Connecticut Business and Industry Association says this bill would hurt the businesses in my State, we ought to take note of it. This organization has a strong record of protecting the interests of smaller businesses.

It doesn't take an expert to predict what will happen. Insurance companies are going to offer plans with minimal or no benefits, hoping to attract young and healthy workers. Older, sicker people are going to be left without a plan that meets their needs. Every analysis of this bill reaches the same conclusion.

Listen to what the Congressional Budget Office says. They found the bill ''would tend to reduce health insurance premiums for small firms with workers who have relatively low expected costs for health care and increase premiums for firms with workers who have relatively high expected costs.

In other words, instead of attacking the real problem, the rising cost of health care, this legislation would simply shift costs to small businesses with older and less well workers.

In fact, another study commissioned by the supporters of this legislation concluded this bill ''is not going to address the underlying causes of high health insurance premiums, which are high health care costs.''

Again, Governors, State attorneys general, the State insurance commissioners have all reached the same conclusion, as have an enormous number of groups representing health care providers and patients. All of them say the same thing. They all can't be wrong. When your Governors, attorneys general of the States, insurance commissioners, not to mention almost every single health care group in the country warns about the passage of this bill, then we ought to take note of it. When you hear that you will have literally millions of people losing benefits passed by State legislative bodies that require the insurance industry to cover them, then we ought to take note of that as well.

I know my colleagues will be offering amendments to allow lifesaving stem cell research to go forward, to strengthen Medicaid, reduce prescription drug prices, and ensure access to mental health care. I look forward to having an opportunity to debate those amendments, many of which I will be supporting. We should also consider an amendment to extend the Medicare prescription drug plan enrollment deadline which is causing a huge problem. These are the kinds of issues that ought to be part of our debate today. Medicare beneficiaries have only until this coming Monday, May 15, to enroll in a prescription drug plan, if they are to avoid financial penalty. Why don't we take that as an amendment and extend that time to allow people to come forward. As we are all aware, for many of the Nation's 41 million Medicare beneficiaries, the new prescription drug plan offers more confusion than assistance and, frankly, extending that date would make sense.

I intend to offer an amendment to protect newborns and children from the damage inflicted by this legislation. Right now, 25 states have enacted mandates requiring insurers to provide benefits to the children of their enrollee; 31 States require insurers to cover the cost of childhood immunization.

I am going to ask my colleagues to support language that would see to it that newborns and children are protected in every State, instead of allowing the insurance industry to pick plans that would exclude child immunization and well-child care.

This legislation would completely preempt these State laws, leaving babies and children unprotected. That is a major step backward. Instead, families will be faced with health insurance that doesn't cover routine care for children. They might be forced to pay out of pocket, drastically driving up health care costs, or to forego care entirely. My amendment would ensure that those State laws not be preempted by this Federal mandate that we are about to adopt.

I will also offer an amendment that would prevent health insurers from deciding how much to charge a person for health insurance based on how healthy they are. That is something we have done across the country in State after State.

Many States, including my own, have laws preventing the insurance industry from charging more based on health status. Unfortunately, this legislation would remove those State protections. It would allow the insurance industry to charge more based on health status. We ought to make sure we don't allow that to occur in this bill.

Without these protections in place, it just makes good business sense for an insurance company to increase premiums for people with diabetes, HIV/AIDS, cancer survivors, pregnant women, or anybody with health needs that are outside of the ordinary. As a result, the people who need insurance the most will find they would be the first to lose it.

Finally, I will offer an amendment to protect those patients that admirably choose to participate in clinical trials from undue costs resulting from their routine care. Currently, 19 States, including my own State of Connecticut, have enacted mandates requiring insurers to provide coverage for routine patient care costs while those patients are participating in potentially lifesaving clinical trials. But this legislation, as crafted, would completely preempt these State laws, leaving patients without needed coverage for items such as blood work and physician visits. And this legislation would preempt States like mine that provide benefits for people who are willing to become part of a clinical trial.

Clinical trials save lives. Just 50 years ago, less than one in four women with breast cancer survived for 5 years or more. Compare that to today when 96 percent of women with localized breast cancer reach the 5-year mark. This legislation would create a powerful disincentive to patients weighing the option of whether to participate in a clinical trial. Tragically, we know that only 3 percent of adults suffering from cancer participate in clinical trials. Compare this to the 60 percent of children with cancer that enroll in a trial.

Mr. President, there are a number of amendments we would offer to try to improve this piece of legislation. While I respect the intent of the authors, the bottom line is that it would do great damage to the gains that have been made in State after State across the country, by controlling the costs of premiums and seeing to it that benefits are offered to people out there. The States made these decisions, and the insurance industry, if they want to do business in their States, should comply.

This legislation would mean that the Federal Government would wipe out protection in State after State that has provided for the protection of its people—listen to your Governors, your attorneys general, your health commissioners, insurance commissioners; listen to the groups out there that pay attention to this kind of legislation. Listen to the business groups that have warned what this would do to smaller businesses across the country.

Mr. President, I hope that when the appropriate time comes, we will either adopt amendments that will improve the bill substantially or, more important, adopt the substitute that will be offered by Senator LINCOLN of Arkansas and Senator DURBIN, which would allow people to have the same kind of benefits each and every one of us have as Members of Congress, as part of a Federal health benefit program here that allows for the pooling of people, that would cover 100 employees or less, far beyond what this bill would cover with 50 or less. It would not mandate that benefits provided by States be eliminated, and it would not preempt the States from setting caps on premiums when it comes to older and sicker workers. That is the way to go.

If you really want to make a difference, why don't we adopt this alternative. That would be a major gain for smaller businesses and people who work with them. I understand this is an important issue. Small businesses could use help, but we are not helping them with this bill, with all due respect. We can help them if we take the right steps.

I urge my colleagues to adopt the alternative, or at least improve the bill with the amendments we will be offering in the next few days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, as I understand it, we are rotating back and forth. Could the Chair tell us how much time we have on this side?

The PRESIDING OFFICER. Nine minutes remain.

Mr. KENNEDY. Well, Mr. President, I thank my friend from Connecticut for an excellent presentation and summation of the principal concerns about this legislation. I ask the Chair to let me know when there is 1 minute remaining.

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I thank the chairman of our committee, Senator ENZI, for his diligence in the development of the legislation. It is legislation that I cannot support. But the chairman of our committee has put his finger on an area of health policy, which is enormously important for us to consider, and that is the general kind of challenge that is out there for small businesses in this country. By and large, they pay two or three times higher premiums than many of the very large businesses in their States, and they are also seeing a turmoil in the market.

More often than not, they are changing companies every year, or every other year, and increasing numbers of those small businesses have to drop coverage. This is a real problem.

If the proposal that is before us, the Enzi bill, was only to deal with that particular issue, it ought to be given focus and attention and full debate and support. But his bill goes far beyond that. Fortunately, we have an alternative, as the closing remarks of my friend and colleague from Connecticut pointed out, in the Durbin and Lincoln legislation, which addresses the small business needs. It does it creatively and effectively, and it does it without threatening the health protections that are there for States. The message and word ought to go out to all those who support the Durbin-Lincoln proposal that workers in those small businesses will effectively have the same kind of health care coverage that we have in the Senate of the United States. That has been certainly a goal of mine for all Americans in the time I have been in the Senate, and it still is.

We have an opportunity for the small business community, and for the workers in those companies of 100 or less, to provide for them the same things that we have for the Members of the U.S. Congress and Senate. That statement cannot be made by the Senator from Wyoming. His bill does not do that. It has all kinds of adverse impacts in terms of workers and health care protections.

So as we start this debate, we ought to recognize that there is an alternative which we on this side strongly support which will focus and give attention to the small business community. The other proposal by Senator ENZI does not do that.

Mr. President, I am going to take a few minutes, because that is all I have, to review what I think are the most dangerous aspects of this legislation. The fact is, today, as has been pointed out, there are some 85 million Americans who have protections that will be effectively lost with the Enzi proposal. Those are protections for screening on cancer, for help and assistance in terms of diabetes, for medicines. There are different protections that are given to other diseases that are threatened, and it threatens American families. Those have been discussed in local communities and in States that are now providing those protections; and effectively, under the Enzi bill, those will be prohibited. There are a number of groups.

First of all, this is what the State insurance commissioners say, and why they are important is because they have a responsibility in terms of protecting consumers. This is what they have pointed out, Mr. President:

> Standardizing the rating laws among States will do little or nothing to reduce health insurance costs.

And also:

> S. 1955 will result in older and less healthy employees being priced out of the market as a result of expanding the rate bands.
>
> Small New Jersey employers with older and sicker employees would see a dramatic rise and increase under the Federal approach, effectively driving them from the insurance market and leaving them vulnerable citizens without adequate health coverage.

They are talking about ratings. Insurance companies are going to be able to charge for the proposal that the Senator from Wyoming has talked about. They are going to have a flexibility of up to 26 percent difference—26 times the difference in terms of premiums. Do you understand that? If you are an older worker and have had sickness in your family, you will pay a rating that will be up through the roof.

That is not true in Massachusetts. In Massachusetts, no matter how sick or young you are, you are still within a 3-point or 3 times rating increase. That has worked very effectively. That is something that every older worker, every family that has had some kind of health challenges ought to recognize—that they, under the Enzi bill, could well be priced out of the market.

This is what the attorneys general have said:

> The Health Insurance Marketplace Modernization And Affordability Act should be more appropriately labeled the Health Insurance Cost Escalation Act.

That was the attorney general from Minnesota.

The attorney general of New York said:

> This legislation is not the answer here. It eliminates many of the protections that consumers enjoy, without addressing the underlying problem of cost containment.

They are also eliminating protections, as we have mentioned, for breast cancer and diabetes.

Another one by the attorneys general:

> There are no legitimate grounds for exempting the type of insurance plan for State laws that provide essential safeguards for persons covered by insurance.

It is not just Democrats, but Democrats and Republicans; 41 out of the 50 attorneys general charged with protecting consumers are saying this bill doesn't get it.

Mr. President, this is very interesting by the New Hampshire Governor on S. 1955:

> In 2003, New Hampshire passed a law establishing rating rules similar to those contemplated under S. 1955.

New Hampshire passed almost the identical bill that is now being considered in the Senate.

> With the rules allowing insurance companies to discriminate against businesses with sick workers, or based on geography, this law sent small business health insurance costs skyrocketing across New Hampshire. Small business could not grow, could not hire new workers, and some considered ending their health insurance plans altogether.

They have done it. It is rare around here when you have a new proposal that you have had experience with—and the State of New Hampshire has it—and they ended up withdrawing that proposal.

Finally, we have the various patient groups. Here is the American Diabetes Association:

> S. 1955 would result in millions of Americans with diabetes losing their guarantee of diabetes coverage.

The Cancer Society said:

> Passage of this legislation would represent a retreat in this Nation's commitment to defeat cancer.

The National Partnership for Women and Families said:

Instead of making health care more affordable for those who need it most, S. 1955 would roll back the reforms adopted by many States to require fair pricing.

We look forward on this side to debating these issues—the Durbin-Lincoln proposal and the Enzi proposal—and we also look forward to debating stem cell research, the real Medicare alternative in the prescription drug debate, the ability of Medicare to be able to negotiate lower prices for our senior citizens, and drug importation. If we are going to have a health care debate, let's make sure we are going to deal with many of the issues that people in our country want us to deal with.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ENZI. Mr. President, as we wait on a couple of people to speak, I would like to make a few comments on the comments that have been made. I do appreciate the spirit in which they have been made. I know there are amendments waiting to modify several of the things that have been suggested, but my biggest concern is that there were some comments about the Attorneys General of the United States and the insurance commissioners who are against it, and even the Connecticut business associations who are apparently saying they are against the bill.

But what I need to correct is the comments they are making are not on this bill. What they are talking about is the bill that the House has passed eight separate times: the associated health plans bill. Associated health plans are different than this bill. It would be nice if some of the people who are going national and public on this would actually check with us on some of their comments to see if they are remotely right.

We have put forward a solution which they said that 85 million people would lose their benefits from. That would be just as ridiculous as me saying that all 27 million people who are uninsured who work for small business would be covered by this bill. Neither of those things is going to happen. There is a medium in there where there will be more people who are insured. The difficult parts that were talked about concerning things being taken away from people I am confident are not going to happen. There are a couple of reasons they are not going to happen.

First of all, there are experiments across the country which in a small way have done what we are talking about in the small business health plans, and in those experiments, they have worked: Taking away the mandates that States have and actually making a point of mandating that we take away the mandates. Around here, ''mandates'' is a bad word. Mandates means you are forcing somebody to do something and you are not paying for it. You are saying you have to have this, and whether you can afford it or not, we are going to make you do it. So your choice is to take the mandate or drop your insurance.

When we are talking about these mandates, a lot of them we are talking about are regular maintenance of your body, and we ought to be having everybody do those. It shouldn't matter whether they are covered by insurance or otherwise. In fact, in Wyoming, we have gone to great lengths to have more things done by public health for free. That means your insurance doesn't have to pay for it and you don't have to pay your insurance company for it and you don't have to pay your insurance company for the administration of that service. But you can get that service. Then we have some other screenings that are covered in a very reasonable way. We have a program in Wyoming trying to get everybody to have mammograms, and it is focused on Mother's Day, which is coming up this next weekend: Get a mammography for your mom. Show that you care. And thousands of people in Wyoming do exactly that.

I will cover some of the other issues, but I see that Senator HATCH, the Senator from Utah, has arrived and has some comments in this regard, and he has been a very diligent worker on all of the small business problems. So I yield time to the Senator from Utah.

Mr. HATCH. Mr. President, I thank my distinguished chairman who I think has done a terrific job on this bill. I understand the distinguished Senator from New Hampshire needs about 3 minutes, so I ask unanimous consent that he be given 3 minutes, and then the time be returned to me.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. SUNUNU. Mr. President, I wish to speak to the legislation before us and in particular to address some of the remarks that were made earlier by Senator KENNEDY from Massachusetts. He raised concerns about the State of New Hampshire and suggested that this legislation would be bad for the State of New Hampshire and that the State of New Hampshire had already enacted legislation identical to this. I think it is wrong for someone to provide information that is not entirely accurate. I think that is inaccurate, and it is not inaccurate in some very key areas.

First, the bands that were discussed that were enacted in the State of New Hampshire were much smaller than the rating bands contemplated in this legislation, and they did it in New Hampshire without any transition period. Those are two very significant, specific differences between this legislation and what was attempted in New Hampshire.

Second, as with any legislation, it cuts both ways. There were some employers that saw increases in their premiums 2 and 3 years ago that some claimed were a result of the legislation in New Hampshire, but many businesses—in fact, the NFIB would suggest the majority of businesses—in New Hampshire saw some great relief because they are the smaller businesses that we are talking about, those who would be allowed to improve their negotiating position through the provisions in this bill. Moreover, this isn't a debate about one State. This is a debate about providing increased access—increased access—to plans that are negotiated by associations, by the members of small businesses and, as a result, negotiating lower prices.

Finally, there was discussion about community rating and how objectionable it is that there will be an ability to differentiate on price based on a number of factors. I think the truth is, when you force that kind of price control, you force adverse selection because if I tell you that you have to charge the exact same price to anyone, no matter what region, circumstance, or situation, then the insurer will automatically market to the healthiest people because they won't want to take on the additional costs associated with those who might have significant needs that result in higher prices.

So if you go to price control, which is exactly what the other side is suggesting, forcing the same price for everyone no matter who is covered, businesses will naturally—naturally—only market to those who are healthy and, as a result, reduce the accessibility and availability of health insurance to those who might need it most.

It is a dramatic, unintended consequence, and that is the exact outcome that will be the result of the policies that are being suggested by the other side. We need to be accurate in what we represent. This is a good bill for small business and, as a result, it is an excellent bill for New Hampshire because in New Hampshire, small businesses make up over 95% of all firm with employees. If we want to do something about the uninsured, the majority of whom are working as self-employed or for small businesses, we need to take up the exact kind of provisions that are in this bill: Increased access of health insurance for those working in the smallest firms.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). Senator HATCH is recognized.

Mr. HATCH. Mr. President, I rise in support of S. 1955, the Health Insurance Marketplace Modernization and Affordability Act. This is a good bill, with good intentions. The lack of health insurance, particularly for employees of small businesses, is a significant problem in Utah and throughout the Nation.

We cannot afford to sit by the sidelines and bemoan this problem, taking little action while millions of American families suffer. The House of Representatives has acted and we should do the same.

Immediately upon its passage though, we were besieged by complaints about House legislation, principal among them the complaint that it overrides State insurance law.

I give the Health, Education, Labor and Pensions Committee Chairman MIKE ENZI a lot of credit.

Chairman ENZI didn't sit idly by.

He studied the House bill, he held extensive hearings, and then he drafted a compromise that resolved many of the concerns expressed about the House bill. This was no easy job.

Immediately, the HELP Committee effort—a solid effort I might add—was besieged by criticism. Much of this criticism I must hasten to add, is not valid.

''It isn't going to cover cancer care,'' the naysayers decry.

''It isn't going to cover diabetics and their supplies,'' they allege.

''It isn't going to cover prenatal care or OB/GYN care for women,'' is a recent complaint.

''It is going to run chiropractors, podiatrists and optometrists out of business,'' say hundreds of form letters that have flooded our offices.

The problem is, these complaints aren't even true. While the standard plan employees must be offered under this bill may not cover all those things, S. 1955 clearly provides an alternative. Employees must be offered an enhanced plan, based on the coverage that public employees receive in the five most populous States, if their employer's standard plan is not consistent with State law.

Most, if not all, of these services would be included in those enhanced plans that employers must offer under S. 1955.

But, let's talk about our basic goal here.

We want to provide affordable health insurance coverage to those who currently do not have coverage.

If we could afford to give them coverage for every possible illness, condition, or procedure, if small businesses could afford to give them coverage for every possible illness, condition or procedure, don't you think it would have been done by now?

Of course it would.

That is the genius of the Enzi bill. It allows a basic level of coverage—perhaps not every single service imaginable, but good solid health care insurance—and for those who want to pay more, there is a plan with more coverage.

In that way, the millions of Americans without health insurance will have access to coverage.

You may ask yourself, ''Who doesn't have health insurance coverage?''

Today, over 45 million Americans do not have health insurance.

Over 25 percent of self-employed individuals are uninsured.

Over 30 percent of people who work for small businesses with fewer than 25 employees are uninsured.

Over 20 percent of the people who work for small businesses with fewer than 100 employees are uninsured.

Something clearly needs to be done.

And that's why we are here, today, debating S. 1955.

I want to illustrate why passage of this legislation is necessary.

Ramona Rudert and her husband, Michael, have owned Professional Automotive Equipment in North Salt Lake for 28 years. They have 12 employees and they offer health insurance to them.

The Ruderts contribute $200 per month to their employees' health care premiums.

Their employees have to pay approximately $500 per month for family coverage.

Their health insurance plan has a $1000 deductible.

So at least there is potential coverage. But here's the kicker: only one of Professional Automotive Equipment's 12 employees decided to be covered by their company's health policy, besides the Rudert family. The rest of their employees cannot afford it.

The interesting twist about this story is that Ramona and Michael have a daughter with juvenile diabetes. They recognize that the basic plan may not cover all the services their daughter needs.

But when asked why she supports S. 1955, Mrs. Rudert replied that she is ''always looking for ways to improve her employees' access to health care'' and that while she has a daughter with Type 1 diabetes, her greatest concern is about the affordability of insurance premiums for her employees.''

Passage of this bill is the top priority for Mr. and Mrs. Rudert, and thousands of Utah businesses. They recognize that affordability is a key component to making that happen.

Let us not make perfect the enemy of the good.

It is an economic fact of life that a Federal requirement for small businesses to cover every small business employee for every possible health care-related service is neither appropriate nor affordable.

Those who decry this bill because it does not guarantee small business employees a comprehensive plan, must be reminded that most employees of small businesses do not have a choice today, if they are fortunate to have health insurance coverage. The legislation before the Senate will create new options for small businesses and, the potential for more choices.

Today, smaller employers do not have the purchasing power of larger employers. If they offer different types of health plans to their employees, the administrative costs of offering these choices are much higher for small employers.

But by leveraging their combined purchasing power, some local small business associations are offering plans that give employers more choice. I believe that similar models could be created regionally and nationally through S. 1955 through regional and national associations.

The goals of S. 1955 are simple. We want to create more affordable health insurance options through choice and competition.

And we want to end the decades-long deadlock and give real relief to America's small businesses and working families.

Who can argue with that?

And small businesses support the freedom to band together across state lines, even without self-funding. Insurance companies support the creation of a level playing field with Small Business Health Plans.

Most important, according to a Mercer study released on March 7, 2006, it is predicted that costs will go down 12 percent for small employers and coverage of the working uninsured will go up 8 percent, approximately 1 million more working Americans.

An added benefit is that the Congressional Budget Office, CBO, believes that passage of S. 1955 will reduce net spending in the Medicaid Program. This is due to the enrollment in employer-sponsored insurance plans of people, who under current law, would be covered by Medicaid.

CBO estimates that enacting S. 1955 would reduce direct spending for the Federal share of Medicaid expenditures by $235 million over the 2007–2011 period and $790 million over the 2007–2016 period. In addition, the bill would result in estimated Medicaid savings to States totaling $180 million over the 2007–2011 period and $600 million over the 2007–2016 period.

CBO estimates that by 2011, approximately 600,000 more people would have health insurance coverage. The majority of these newly covered individuals would be employees of small companies and their dependents.

S. 1955 has been endorsed by a host of organizations: The Small-Business Health Plan Coalition; the National Association of Realtors; the Chamber of Commerce, the National Federation of Independent Business; the National Restaurant Association; the National Association of Manufacturers; the Associated Builders and Contractors; the National Association of Home Builders; the National Retail Federation; the Association Healthcare Coalition; the Textile Rental Services Association of America; the Motor & Equipment Manufacturers Association; the Precision Metalforming Association; the American Council of Engineering Council; Women Impacting Public Policy; National Association of Wholesaler-Distributors; Wendy's International which includes Tim Hortons, Wendy's, Baja Fresh and Cafe Express; Cendant Corporation; American Institute of Architects; Federation of American Hospitals; National Funeral Directors Association; HR Policy Association; Motor & Equipment Manufacturers Association; and the Society of American Florists.

Mr. President, that is an impressive list of supporters.

And I believe that the main reason that we have such an impressive list is due to the leadership of the Chairman MIKE ENZI.

He and his staff did something that the Senate has not been able to do for

over a decade report small business health legislation out of the Senate HELP Committee.

For months, Chairman ENZI spearheaded meetings with the major stakeholders of this legislation the insurance companies, the small business groups, and the insurance commissioners. These meetings produced the bill that we are considering today.

Again, my colleagues may ask themselves, is this bill really needed? Will it truly make a difference?

Just last week a 42-year-old woman from Provo, Utah called my office. Both she and her 9-year-old daughter are diabetics. And she had heard from the American Diabetes Association that S. 1955 would hurt their health coverage.

But as my staff explained the bill's important role in allowing small businesses to provide insurance for their employees, including diabetics, she became very emotional. She recalled how, several years ago, she had her own small business. And buying health care for her employees was forcing her toward bankruptcy. So my constituent had to take away their health insurance. This was extremely difficult for her because she herself had a chronic illness and fully understood the implications. She ended up with an individual health insurance policy. And she found that for the same insurance coverage that she had had in her group insurance policy, she had to pay nearly twice as much.

This happened for two reasons. First, as an individual, she was not eligible for the tax benefit that supports the cost of insurance paid through employers. And, second—because she had diabetes, a chronic illness, her insurance rating caused her to pay significantly more than someone without that disease. There was no risk pool for her to join.

Passage of S. 1955 could have prevented these problems.

I urge my colleagues to think about the health care needs of small business employees in their states before voting on this legislation. This legislation will improve their health care options. Today, they rarely have options when it comes to health insurance and when they do, it is extremely expensive.

Let me conclude by sharing the sentiments of Chris Kyler, the CEO of the Utah Association of Realtors.

> Small business owners in Utah are facing a growing crisis with health care availability and affordability. Our profession represents 17% of Utah's gross state product and yet we're arguably the most uninsured working segment in our state simply because we're small business people. As productive contributors to the economy, as a younger, healthier populous, we're supportive of S. 1955 because it will provide us with the opportunity to purchase affordable health insurance.

I believe that Mr. Kyler's sentiments sum up why the Senate needs to pass this legislation as soon as possible. I urge my colleagues to support this legislation so that employees of small business will have access to affordable health care.

I yield the floor.

Mr. ENZI. Mr. President, I yield the remainder of the time to the Senator from Maine.

The PRESIDING OFFICER (Mr. BURR). The Senator from Maine.

Ms. SNOWE. Mr. President, how much time will that be?

The PRESIDING OFFICER. The majority has 9 minutes remaining.

Ms. SNOWE. Mr. President, I thank Chairman ENZI for yielding the time as well as for his leadership in bringing this legislation to the floor, legislation that is so critical and vital to the future well-being of small businesses, I know in my State and across America.

As chair of the Small Business Committee, I know firsthand that this crisis is real. It is an undue burden on entrepreneurs throughout this country, and it certainly didn't develop overnight. Now we have a solution at hand, if we are all willing to forge the consensus necessary to make it happen.

This issue is all the more critical when you consider the fact that today nearly 46 million Americans are uninsured. That is an increase of over 4 million people since 2001. According to the Employee Benefit Research Institute, of the working uninsured, who make up 83 percent of our Nation's uninsured population, 60.6 percent either work for small business with fewer than 100 employees or are self-employed.

There should be no doubt or question that the time has long since come to pass this legislation that will at once assist our small businesses in accessing affordable health insurance for their employees and their families while assuring more of those employees can actually have health insurance.

For this past decade, health insurance premiums have exploded at double-digit percentage levels and far outpaced inflation and wage gains, and Congress has failed to act. Study after study has confirmed beyond a doubt that fewer and fewer small businesses are able to offer health insurance to their employees. Little has been done to alleviate the problem. Quite simply, it has been an abrogation of responsibility.

As chair of the Senate Committee on Small Business and Entrepreneurship, I have held hearings on this question. Small business owners in Maine and across America have consistently and repeatedly begged Congress for relief. They need competition in the market. They need to be able to offer this to their own employees and their families.

That is why I originally introduced the Small Business Health Fairness Act which would have allowed the creation of association health plans to offer uniform health plans across the country, allowing small businesses to leverage their purchasing power on a national basis. This week, for the first time, thanks to the leadership of Chairman ENZI in bringing this legislation to the floor from his committee, the full Senate will be trying to resolve many of the issues, many of the differences of positions and perspectives everybody has on this question.

I thank the majority leader for making this legislation the key component of Health Week in the Senate.

I also thank my friends on both sides of the political aisle, Senator BYRD, who has cosponsored my initiative originally, Senator TALENT, who initiated this effort when he was chair of the Small Business Committee in the House, and the same is true for my predecessor, Senator BOND, when he was chair of the Small Business Committee, for helping to move this issue to the pivotal point where we are today.

I also thank Senator KERRY as ranking member of the Small Business Committee because we also modified my original bill, worked on another consensus bill that would have been a modification based on regional association health plans. I thank him for his effort. Again, that was another attempt to bridge these efforts across the aisle.

But I most especially recognize Senator ENZI's work and his commitment in moving this bill, holding the hearings, trying to reconcile the differences.

This week is not about engaging in heated partisan debate to create issues for the upcoming election. What this should be all about is providing solutions to small businesses and America's uninsured for the much needed relief they certainly deserve.

We are trying to do everything we can to resolve some of the issues. I know there are some concerns, as there were with my initial legislation and as there is with Chairman ENZI's bill now before the Senate. A couple of those issues are, of course, preemption of mandated benefits. I hope to be able to address that question with an amendment so, hopefully, we can reconcile some of the differences across party lines, across philosophical perspectives, so we can get the job done.

There are some concerns about the changes in community ratings. I know that is a particular issue for my State as well. I understand the chairman will address that issue in his managers' amendment.

What we are all here about today is what can we do to address the underlying concern that small businesses have across America. This is a summary of their foremost concern—increasing health insurance costs for themselves and for their employees and their families to the point, as I think we all recognize, small businesses are unable to offer this crucial benefit at a time when they need to be competitive with larger companies because they cannot afford, they simply cannot afford to provide health insurance.

If they can afford it, it is catastrophic coverage, it is a $5,000 or $10,000 or $15,000 deductible at best that

they are able to offer. That is why I introduced the initial association health plans, to give fairness to the market, especially to the small group markets such as the State of Maine. The State of Maine is a small group market and, guess what, there is no competition. No competition means higher prices. Higher prices means virtually no health insurance.

That is why I offered the association health plan. That is why Chairman ENZI is doing what he is doing here today, to try to bridge the differences so we can move and advance this process forward because it is good for all of America.

Small business is the engine that is driving the economy. Two-thirds of the job growth occurring in America today is emanating from small businesses. So it is important to ensure their well-being.

By offering the mechanisms that are proposed in Chairman ENZI's legislation, the small business health insurance plan will help with uniformity as well. Because 50 States have 50 sets of administrative rules, regulations, and mandates, it is virtually impossible to have a uniform standard nationwide. This will allow small businesses to be basically on par with Fortune 500 companies and unions. After all, no one is ever complaining about Fortune 500 companies and unions' plans. In fact, they are the most generous in America. So if they are good for Fortune 500 companies, if they are good for unions, why can't they be good for small businesses? That is what it is all about.

Now people say these associations will not design good plans. If you want to attract members to the plan, if you want people to join your plan, obviously you are going to ensure that you design these plans which will be the most attractive to the greatest number of people who join up in these associations. After all, it is in the interests of small businesses to have attractive plans for their employees because they have to compete with large employers to get good employees, to get skilled employees. If they don't have this crucial and vital benefit, they do not attract the kind of employees they need to make their business successful. That is what it is all about.

I hope we can reconcile our differences through the amendment process, with what I hope to offer as amendments and what others will offer, that can lead us to our goal of addressing the fundamental question for small businesses in America that ultimately will help mitigate the problem of the uninsured that is ever growing in America as well.

As we engage in this debate this week, in the end I hope we can come to a conclusion with a reasonable compromise that will become law. That is what it is all about. I know people have differences of opinion. But I don't think there ought to be a difference of opinion in the final analysis when we address all the issues—the ones that Chairman ENZI addressed to bridge the gap, the ones that my amendment will do, and others might do—which will ultimately get us to the point of beginning to resolve this crisis.

The fact remains that we are seeing fewer and fewer small employers that are providing health insurance for their employees.

If you look at this chart, only 47 percent of the smallest businesses in America—those with three to nine workers—offer health insurance. It is on a declining trend—down to 52 percent, and down to 58 percent in 2002—in sharp contrast to the 98 percent of larger businesses with 200 or more workers that are offering health insurance as a benefit.

For small businesses, things are trending in the wrong direction. Then you look at the small group marketplaces in States such as Maine, which is what this essentially is all about. As we learned from the Government Accountability Office study that Senator TALENT and I requested, Blue Cross-Blue Shield is actually consolidating their market share in a number of States across the country. In fact, 44 percent are in group markets.

I hope we can begin to reconcile these differences and do what I think this Congress can do for the first time that we have had the opportunity to do. Let us not deny small businesses and their employees this one chance to do it. Time has long since passed for action.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before she leaves the floor, I want to express my thanks to the distinguished Senator from Maine for working so closely with me on health care issues. I expect that before long Senator SNOWE and I will be offering our bipartisan amendment to lift the restriction on Medicare that bars Medicare from bargaining to hold down health care costs. Senator SNOWE and I have worked on this for over 3 years. We recently got 54 votes in the Senate to win passage of this bipartisan effort. I thank her for all the good work she is doing in the health care field and look forward to when she offers our bipartisan amendment before too long and to prosecuting this cause on behalf of senior citizens and taxpayers alike.

Mr. President and colleagues, no other health policy in America is more objectionable to the people of this country than preventing Medicare from bargaining to hold down health care costs.

This restriction that bars Medicare from bargaining to hold down health costs simply defies common sense. The restriction that bars Medicare from bargaining to hold down health costs is contrary to what goes on in the private sector of this country every single day. It certainly is contrary to the needs of this program and the taxpayers of this country when we see the Federal budget deficit exploding every time we turn around.

It seems to me that to have Medicare actually barred from bargaining to hold down prescription costs simply defies the sensible approaches that we have always taken in holding down health costs. That approach is to use your bargaining power and the capacity to argue on behalf of large numbers of people. That is using marketplace forces to really make a difference.

The way Medicare is buying prescription drugs under this program is like somebody going to Costco and buying toilet paper one roll at a time. Nobody would ever go shopping that way. Certainly when steel companies, auto companies, any major manufacturing concerns first sit down with a vendor, they ask: What kind of deal will you give me on the basis of the large volume of this product that I am going to be purchasing? Not Medicare. Medicare won't do what everyone else does all across this country every single day.

It is especially important that Medicare use this bargaining power, given what the American Association of Retired Persons has found recently in a report they released to us on the cost of prescription drugs. The AARP released a report in February of 2006 that found brand name medications most commonly used by older people rose almost twice the rate of inflation in other areas of health care.

So here is a chance to actually save money for senior citizens and taxpayers. We can especially expect to see savings when you have single-source drugs for which there is absolutely no competition. There are concrete cases where the Federal Government says we are not going to allow price controls, we are not going to allow the establishment of a one-size-fits-all formulary, but we are going to say that the Government is going to be able to bargain, and that approach will make a real difference.

I know some colleagues think any effort by the Government to allow bargaining to hold down the cost of medicine will lead to price controls. The amendment which Senator SNOWE and I expect to file before long is very clear. It does not permit price setting or the creation of a formulary. All it says is the Federal Government, and in effect the seniors of this country, would be able to go into the market and use their clout just like any other big purchaser could to hold down the cost of medicine using marketplace forces.

As colleagues consider this particular approach I hope—I know the distinguished President of the Senate has a great interest in pharmaceuticals and prescription drugs—that colleagues will look at what Senator SNOWE and I advocate. In that amendment, on page 3, lines 2 through 8 make it clear that we are opposed to price controls. We have continually tried to address this. We are not in favor of price controls. We are not in favor of establishing a one-size-fits-all formulary or instituting a uniform price structure of any kind. All we are saying is that the Federal Government ought to have a

chance to do some hard-nosed bargaining the way everybody else does to hold down the cost of prescription drugs.

Secretary Tommy Thompson, former Secretary of Health and Human Services, said that the one power he wanted as he left office and was denied by the Congress was the opportunity to negotiate when necessary to hold down the cost of prescription drugs.

This amendment would ensure that the prescription drug benefit is sustainable without interfering with marketplace forces and would simply say that the Federal Government could leverage the marketplace just as any other big buyer of a product does.

To date, millions of seniors have enrolled in this program and, of course, they are realizing some savings on their prescription drugs. We are glad to see that, but it has come about primarily through the infusion of taxpayer money.

What I and Senator SNOWE would like to do is bring about some savings—not just by pouring more and more taxpayer money into this program but by using marketplace forces to protect the interests of seniors and our taxpayers.

Prohibiting Medicare from negotiating for drug prices was an overreach. I know of no other industry in the United States that has power like this. We don't see any other industry that does business with the Federal Government in which discussions and negotiations with the Federal Government is specifically barred. Everybody else has to sit down across the table from the Government representing the interests of our taxpayers and get into the nuts and bolts of negotiating the best deal for a particular group of Americans. We need to end this special treatment, this favoritism, this unwarranted preference that only the prescription drug industry has and give our Government the bargaining power that is needed so that seniors and taxpayers can be protected through marketplace forces.

Some who are opposed to what Senator SNOWE and I want to do have said that we are already seeing some negotiations. Of course, that is true. Having voted for this program and wanting to see it work—I have welts on my back to show for that—I am pleased that we are seeing some discussion among health plans and others. But I think we will see a whole lot more opportunity to contain costs and contain them through marketplace forces if we untie the hands of the Secretary, as the previous Secretary of Health and Human Services, Tommy Thompson, sought to do. I believe we ought to take every possible step to save every possible nickel to protect seniors and taxpayers, and lifting this absurd restriction on Medicare bargaining power will do just that.

I cannot for the life of me conceive of a rational reason Medicare should not have the same power to negotiate just the way other smart shoppers do across this country. Every smart shopper in the private sector—every single one—wants the kind of opportunity that I and Senator SNOWE are advocating.

I don't know of any private entity, whether it is a timber company in my home State or a big auto company or anybody else who doesn't sit down across the bargaining table and ask, what are we going to do to work something out that reflects the fact that I am going to be buying a lot of something? Why shouldn't Medicare, if it believes it is warranted, have that authority in effect as a standby?

Senator SNOWE and I have been crystal clear in saying that there is a difference between negotiating and bargaining and price controls and uniform formularies. We would say to our colleagues: Look at our proposal just as we did in the one that received 54 votes recently. We spell it out. We lay it out on page 3 of our amendment, lines 2 through 8. We stipulate no price controls, no uniform formulary, no particular kind of one-size-fits-all price structure in any way.

I would like to, along with Senator SNOWE, offer a market-based, comprehensive cost containment to help hold down the cost of prescription drugs in our country.

I am glad we are discussing Medicare this week. I think it is high time. I tell colleagues that no other health policy in America is more objectionable than the one that prevents Medicare from bargaining to hold down health care costs. It is time to inject some common sense into the Medicare drug benefit. Giving Medicare bargaining power to millions of senior citizens through Medicare is economics 101. If it is important to the seniors of this country, it is important to taxpayers.

We expect to bring a bipartisan proposal to the floor of the Senate this week. We all know we could sure use some bipartisanship around here at this critical time. I hope colleagues will, as they did a few weeks ago, show strong bipartisan support for our proposal. If we are serious about reining in health costs, and the American people say it is at the top of their agenda, you have to lift this restriction that bars Medicare from bargaining. We expect to be filing the bipartisan Snowe-Wyden amendment before long.

We hope, as we did on the last occasion when we voted on this, we will have a strong majority in the Senate in support of a commonsense, practical way to protect senior citizens who are buying prescription drugs and are taxpayers at the same time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, I thank my colleague from Oregon for his incredible leadership on something that makes so much sense, negotiating group prices under Medicare.

Why in the world wouldn't we want to get the best price? Taxpayers want us to get the best price. Seniors want us to get the best price. The disabled want us to get the best price. Why in the world wouldn't we want to do everything possible to have a Medicare prescription drug benefit that offers the very best prices so we can offer as much coverage as possible? One of the things we know, the gap in coverage is partly because we are paying so much for the whole plan. We could give people more coverage and spread it out differently if we were, in fact, negotiating group prices.

I thank my colleague who has come to the Senate floor on so many occasions. He always makes so much sense. I know the people in Oregon are proud of what he has done.

To add to the discussion on Medicare, I am pleased we have Health Week. Even though I will speak at some later time in terms of the concerns I have about the underlying bill, we all chose to vote to proceed to debate on health care because there is nothing more important to the people we represent, whether it is the manufacturers I represent who are having to compete in a global economy and figure how to do that while paying so much of the cost of health care or whether it is small businesses, self-employed people who cannot find coverage at affordable prices, whether it is our seniors or whether it is women and children who need care.

We have a serious issue when we spend twice as much on health care in this country than any other country and still have 46 million people with no insurance, 80 percent of them working.

This is an important debate. Part of that debate, I believe because of the timing, needs to be to address what is happening with Medicare prescription drug coverage. Unfortunately, we are 6 days away from a Medicare prescription drug deadline. Right now, 6 days from now, folks are going to be penalized if they have not signed up for a Medicare prescription drug plan, even though they are having to wade through a lot of information and misinformation in order to be able to figure out what to do, if anything.

I am sure my colleagues have received as many calls as I have received, thousands of calls and letters from people all across Michigan about the trouble they are having related to this Medicare prescription drug program—calls from pharmacists trying to help people figure what to do, spending hours on the phone, being put on hold, unfortunately, receiving inaccurate information too much of the time. We know there are serious issues that have come about because the Government has not gotten its act together, as we should, to be able to present them to people in a way they can understand and make sure it works for seniors and disabled.

We know choosing a plan is extremely challenging and confusing. We have an obligation on our end to do something about that, not wait 6 days and penalize people because they have not signed up for a plan that they may not be able to figure out.

This is not because people are not bright. In Michigan alone there are at least 79 different plans to choose from. Each plan has a different premium, a different copay, covers different medicines. Under the current law, as I indicated before, anyone who does not go through these 79 plans, or whatever number they have in their State, by next Monday will find themselves paying a lifetime penalty, more for prescription drugs than they would if they signed up before then.

A decision about something that is so fundamental to a person's health as their medicine should not be rushed. We should not be scaring seniors into picking a plan that may not work for them because of a penalty they will receive after next Monday. Unfortunately, that is exactly what is happening.

Unfortunately, I continue to believe the ''D'' in Medicare Part D stands for disaster. That does not mean some people are not getting helped. We want people to be helped. We want people who have not otherwise had help to be able to receive it. That is a very important point in this process because the administration has been talking about the 29.7 million seniors who are now covered, seniors and disabled who now have drug coverage under Part D.

But what they are not saying, of the 29 million, 20 million already had coverage. They were covered under Medicaid, they were covered under private insurance, under a Medicare HMO. We are talking about less than 30 percent of those who have not had any help with their medicine, less than 30 percent, have actually signed up so far.

Is it because they do not want help? Of course not. It is because they are having challenges getting through the bureaucracy and trying to figure out what works for them and what does not work for them?

I will share a story of a woman who called me yesterday. This exemplifies the thousands of calls and stories I receive in Michigan. A member of my staff spoke with Shirley Campbell from Midland, MI, yesterday, not far from my hometown. Shirley told my staff about the experience she and her sister had enrolling in Part D. First, they had a terrible time getting through to the so-called ''help'' line.

By the way, the Government Accountability Office says almost 60 percent of the time folks trying to get through to the 1–800 Medicare number are getting incomplete or inaccurate information. That is stunning. We have to get our act together before we penalize people for not signing up for a program.

She kept trying. Shirley kept trying. Once she got through, in response to her question, she was told, ''I can't answer that question because the site is down.'' She did not give up. She called back the next week and she called back the following week. Each time she had the same experience. She could not get an answer to her question because ''the site is down.'' This is the administration's idea of a ''help'' line? It is not much help.

Because Shirley could not get the information she needed from the administration, she called several plans and asked them all to send her their information. Imagine how big that mailbox was. Then she and her sister sat down and spent more than 10 hours sifting through all the information they had received. They narrowed it down to six plans and began a thorough analysis.

What did they find? From the six plans, all of the plans would cost Shirley more than she is currently paying for the medications necessary for her rheumatoid arthritis. Six plans she narrowed it down to, and all of them would cost her more than what she is currently paying. Shirley currently does not have any coverage. Yet she would end up paying more under any of the six plans she studied.

Think of that. We are trying to help people who do not have coverage, and less than 30 percent of the folks who have signed up have been people who did not have help before. Maybe it is because they were like Shirley, when they tried to find someone to help them, they found out they would be paying even more under this privatized scheme that has been set up than they are currently paying.

She also told my staff that most of the plans would have cost her twice as much as she is now paying. But she ended up choosing a plan that would cost her more than what she is currently paying, even though she currently does not have any coverage. She says she signed up because she was worried about the looming May 15 enrollment deadline and the prospect of paying a penalty for the rest of her life.

What sense does this make? Folks are seeing the clock count, 6 days away, until the May 15 deadline and penalty. And Shirley is so worried about what that means down the road, the cost she would be paying and a lifetime penalty, she signs up for a plan that costs her more than she is currently paying. I don't believe Shirley or any senior should be rushed into a premature decision because of an arbitrarily determined deadline. That is all this is. There is nothing magical about May 15, nothing at all.

Shirley worked in middle management all her life. She had the ability to spend hours and hours wading through the plan, the brochures, the paperwork. In the end, she had to make a decision that leaves her worse off than she is today.

Shirley wrapped up her experience of choosing a Part D plan by saying, ''I never in a million years would have done anything like this to my staff.''

She then asked my health legislative assistant to deliver the message to me that the Medicare Part D Program needs to be fixed. Amen. I could not agree more with Shirley.

This is Health Week. This is the time to fix it. The first thing we need to do to fix it is to give folks more time.

I am proud to be joining Senator BILL NELSON on legislation to extend the deadline to the end of the year. If given the opportunity, and I hope we will have the opportunity, we intend to offer that as an amendment, as we proceed with Health Week. People should not be penalized because the Government cannot get its act together. People should not be penalized when almost 60 percent of the time when they call a hotline they cannot get the information they need, it is inaccurate or incomplete. That is not their fault.

The whole point of this was to make sure we were helping people who were choosing between food and medicine, people who were choosing between medicine and paying the rent, the electric bill or gas prices right now. If that is not happening, why are we moving full steam ahead with some arbitrary deadline? Six days from now, folks are going to be penalized because the Government has been slow to get its act together, and they will be permanently penalized by paying more.

Less than 30 percent of the people who do not currently get help paying for their medicines have actually signed up. That should say something. It should either say, it is not a good deal, and they found out they would be paying more, and they said forget it or it says to us that maybe we need to go back to the drawing board and make sure the right information, in the right way, is given out to people so they can make the best decision for themselves.

I am also extremely concerned that in my home State of Michigan only 22 percent of the 256,000 seniors eligible for low-income help, only 22 percent of those whom we said we wanted to help the most by waiving the premium and the copay, only 22 percent have signed up to get that extra help.

Unfortunately, our low-income seniors are caught twice because they have to pick a plan. They have to, similar to Shirley, wade through all kinds of plans. Then they have to sign up separately to be able to get low-income help.

I am pleased the administration has said they will allow low-income seniors to be able to sign up after May 15. I appreciate that. That is a good start. Unfortunately, the penalty is not waived. Our lowest income seniors, even though they may be able to sign up in June, July, and August—and that is a good thing and I appreciate the administration doing that—I urge them to waive that penalty. It makes no sense if you allow people to sign up for extra help and then take it away through a penalty for signing up late.

The final issue is our poorest seniors, our lowest income seniors in Michigan and individuals making less than $14,700 a year, our lowest income seniors or the disabled, in too many instances are actually paying more under this plan than they were before. Why? Because they were on Medicaid before for the low-income health care. In Michigan, that meant paying a $1

copay for a prescription, and that has doubled, tripled or gone higher. This also makes no sense.

On top of that, those who were in Medicaid, our lowest income seniors, many in nursing homes, were automatically enrolled sometime in the last few months, into a plan, regardless of whether it covered the medicines. We have said to the lowest income seniors, many of them in nursing homes, you are signed up for a plan, and you have to go figure out whether it even helps you and how you are going to get out of it if it doesn't help you. And, by the way, you are going to pay more.

We can do better than this. I believe No. 1 is to stop the 6-day count. No. 1, we have to give folks more time to wade through all of this, to figure out what is going on, and we have to give some more time to the Government to get its act together. The administration is doing a disservice to people by the way this has been handled. Giving more time will allow that to happen.

I am also very hopeful we are going to come back and come together and give people the one choice they really want. People do not want 70 plans. They are not saying: Oh, please, give me a whole bunch of insurance papers to wade through. Give me increased premiums. Give me all kinds of deadlines to deal with. What they said was: I need help with my medicine.

We are blessed in this country to have more medicine available as a part of the way we allow ourselves to live healthier lives, longer lives, to be able to treat cancers, to be able to treat other chronic illnesses. Medicines are available now. But they are not available if they are not affordable. We can do better.

Mr. President, I am hopeful at some point we are going to come back to this floor and give people the choice they want: A real Medicare benefit through Medicare, with a reasonable copay and premium, where you sign up and you can go to your local pharmacy, and Medicare negotiates good prices. That is what we ought to be doing.

In the meantime, let's stop the countdown to May 15.

Thank you, Mr. President.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

## HEALTH INSURANCE MARKETPLACE MODERNIZATION AND AFFORDABILITY ACT OF 2006—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the time until 2:30 shall be equally divided.

The Senator from North Carolina.

Mr. BURR. Mr. President, I am going to be here numerous times this week. This legislation is too important to have it shortcut. There is not enough time in the debate to say it all at one time.

Last night, this body had the opportunity to vote on proceeding to changes to the liability crisis that exists in health care today, but the minority denied us the ability to move forward. They denied the ability of the American people to hear an honest debate, to consider thoughtful amendments, and then to judge up or down on the content of the legislation.

They had two opportunities: liability that was reform for all medical professionals; and, then, liability that was only changed for those who are OB/GYNs—that next generation of medical professionals who are going to deliver our grandchildren and our great-grandchildren, that profession that is going to regenerate the population of this country and, in fact, is suffering today because of the high rate of liability costs for the premiums they have to have.

Now we are here. We are in debate—30 hours of debate—to see if we can proceed on a bill to bring small business group health insurance reforms into law, to enable small businesses in America to be able to price insurance for their employees in the same way large corporations are able to produce products for their employees.

Today, small businesses' choice is between nothing and nothing. It is not something and something. It is nothing and nothing. And what will we do? We will debate, for 30 hours, whether we should proceed. Some don't believe this is important enough or, if it is important enough, that there ought to be all sorts of changes to it that are unrelated to these millions of Americans for whom their employer cannot afford to provide health care. Why? Because they are not big. The marketplace discriminates because they are small.

Let me give you some statistics about North Carolina. In North Carolina, 98 percent of firms with employees are small businesses. Ninety-eight percent of my employers are shut out of the ability to negotiate a reasonable cost of health care for their employees. Because of that, their employees have a choice between nothing and nothing.

We will have 30 hours of debate to see if we are going to proceed in this body to provide something versus nothing—not something and something. How can anybody object to providing a choice of something for those who do not have an option today?

Additionally, in North Carolina, we have 1.3 million uninsured individuals. And 898,000—almost 900,000—North Carolinians are uninsured individuals in families or on their own with one full-time worker. Those are all individuals who potentially could be covered under an individual or a family plan.

Of the 1.3 million who are uninsured in North Carolina, 900,000 could be affected with this one piece of legislation in the Senate. But for the next 30 hours, we will debate whether we proceed or never get to the process of an up-or-down vote; in other words, it is a choice as to whether we keep them with nothing and nothing and the uninsured numbers stay at 1.3 million or, in fact, we are going to provide something for North Carolina—900,000 people who today have nothing provided for them.

Later today, I am going to come to this floor, and I am going to read for my colleagues real letters, handwritten letters—handwritten letters—from people who live in North Carolina, whose choice is nothing and nothing. These are individuals who have the same health needs, individuals who would like to have health insurance but whose employers cannot afford it today, who want the opportunity in employer-based health care, but because of the way the system is designed today, it is not achievable because it is not affordable for them.

We are here today and tomorrow, and we ought to be here as long as it takes to make sure Americans at all levels have choices between something and something. These 30 hours will determine, in fact, whether this historic institution will provide that for the American people or we will walk away; whereby, once again, the American people will be denied because some in this body do not believe there is a responsibility to move to a point where there is an up-or-down vote. Truly, people can look and say: You have my future in your hands. My health security is in the hands of the Senate, the Members of the Senate, and whether they are going to, in fact, respond to that.

Well, I think people in North Carolina desperately want choice. I think they desperately want this bill. They want their employers to have the opportunity to be able to look at health insurance and to find it affordable. Why? Because that is their security. That is their ability to have coverage.

My hope today is that the outcome of this legislation will not be a quick death such as last night with medical liability reform. We all agree health care is too expensive. We disagree on what the solutions are. But to end up with nothing, to deny the ability to move forward, to deny the ability for the American people's voice to be heard through the amendment process on this floor is disgraceful.

My hope is after these 30 hours we will proceed, we will have a robust debate on the amendments, and, at the end of the day, the American people will have an opportunity for an up-or-down vote in the Senate.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, today we are here in the middle of what is being called Health Week in the Senate. But rather than debating important lifesaving, life-enhancing

legislation that has bipartisan support and could actually deliver hope and promise to millions of Americans, the Republican leadership in the Senate has, instead, decided to continue their political posturing, business-as-usual approach to governing.

It is no wonder the American people have become disillusioned with the leadership in Washington. Instead of debating and passing stem cell legislation that will end suffering and extend lives, we are again focusing on a partisan proposal to limit patient options, even when they are harmed, for example, through medical malpractice.

Instead of passing stem cell legislation that will provide new treatments and cures for debilitating diseases, such as Alzheimer's, juvenile diabetes, spinal cord injuries or cancer, we are debating a bill that would actually eliminate—eliminate—the health coverage that many States currently provide to cover some of these very diseases, that will cherry-pick, pitting the healthy versus older workers or those who have some chronic disease or illness. And where there is no insurance regulation, prices go up, insurance companies pick the healthy, and they discriminate against older workers and those who are less healthy.

And they can deny coverage that States have thought important to have to meet the challenges of their individual States, sometimes very uniquely so.

So instead of wasting an entire week debating legislation that I believe ultimately has no chance of passing, we owe it to the American people—to the millions of Americans and their families suffering from life-altering disabilities and diseases—to demonstrate our Nation's full commitment to finding a cure and doing all we can to help their hopes and dreams come true.

It has been almost 1 year since the House of Representatives passed the Stem Cell Enhancement Act, and yet the Senate still has not passed this vital legislation. I rise to urge the majority leader to do the same and bring this important legislation to a vote in the Senate.

I was fortunate to have had the opportunity to vote in favor of the bill as a Member of the House, where we had broad bipartisan support for the proposal. I believe that same bipartisan support exists in the Senate, which makes it even more difficult to understand why we cannot come together and do something meaningful for those who are suffering.

My support of stem cell research is partially a reflection of my home State's commitment to innovation and discovery. In 2004, New Jersey became the second State in the Nation to enact a law that specifically permits embryonic stem cell research. We know that embryonic stem cells have the unique ability to develop into virtually every cell and tissue in the body. And we know that numerous frozen embryos in fertility clinics remain unused by couples at the completion of their fertility treatments. Why shouldn't they be allowed to donate those embryos to Federal research to save lives? We allow people to donate organs to save lives. Why couldn't a couple, if they so chose, donate their frozen embryos instead of simply discarding them?

The great State of New Jersey offers more scientists, engineers, and technicians per capita than any other State, and I am proud to represent the innovation and research taking place in New Jersey. Our State is not only known as the Garden State but also as America's ''Medicine Chest.'' But for our State and our country to continue to compete globally with health care breakthroughs, it is going to take more than private and State support. It is going to take the support of our Nation. It is going to take leadership that looks beyond politics.

But, to me, similar to countless Americans and New Jerseyans, this issue is about more than our ability to compete as a nation. The promise of stem cell research is painfully personal. It means hope and promise—hope that people such as my mother who suffer from advanced Alzheimer's disease might one day be cured from the loneliness and confusion caused by this horrible disease and the promise that future generations of families will not have to see their loved ones enter into a world of dementia that robs them of the best years of their lives.

We hold the key to unlock that door. It is shameful that we have let partisan politics stand in the way of medical progress. We owe it to our parents, to our children, and our grandchildren to unlock that door.

Diabetes, Alzheimer's, cancer, Parkinson's—none of these diseases boast a party affiliation. And we cannot let ours keep us from doing what is right.

Today we have an opportunity to do what is right. But it is clear to me that the majority will again let that opportunity pass them by. I will continue to fight, along with many of my colleagues, to see that this bipartisan bill is debated on the Senate floor and becomes law. We can no longer afford to delay this bill when it holds the key to curing some of the most devastating and debilitating diseases of our day. As the bill waits in the wings of the Capitol, children and adults alike wait for the cure they have been praying for.

This is Health Week. What could better demonstrate our commitment to the health of this country than full Federal support for embryonic stem cell research? This bill has the potential to make a profound and positive impact on the health of millions of Americans. All we need is the leadership to bring the bill to the floor for a vote for the humanity of our Nation and for the mothers, fathers, brothers, sisters, sons, and daughters across this country who are suffering or watching a loved one suffer.

This bill means so much more than ending restrictions placed on stem cell research. This bill means hope and promise to countless Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, like many of my colleagues, I rise today in support of S. 1955, the Health Insurance Marketplace Modernization Act. As a member of the Health, Education, Labor, and Pensions Committee, I am proud to have worked on this legislation and to lend my support as a cosponsor.

First and foremost, I thank Chairman ENZI and Senator BEN NELSON, who have worked so hard on this legislation. The chairman and Senator NELSON did what many thought was impossible: they got the health insurers, State insurance commissioners, and the small business community to sit down together and work to find a compromise for small businesses. After over 10 years of deadlock, the Senate is finally considering a solution that will provide real relief to small businesses. This is truly a milestone. It has been said before, I am sure many times, that the House has passed this eight times, and we have yet to find a solution. Now is the time.

Like many rural States, the Kansas economy is built on thousands of small businesses. Whether it is the farm implement store or the local pharmacy, the beauty salon or the downtown coffee shop, these small businesses and their employees are the backbone of our communities. They are what we are all about. But one nagging problem for virtually every small business owner is the high cost of providing health insurance. Most small businesses can't even afford to offer health insurance to their employees, forcing many to go without health coverage.

In Kansas, only about 41 percent—not even 50 percent, not even half—of our small businesses offer any health insurance coverage. This is in stark contrast to the 97 percent of our larger businesses that offer health insurance to their employees. Without such health insurance coverage, employees are vulnerable to huge health care debts of their own, and it is harder for small employers to attract a good worker. I have literally heard from hundreds of Kansas small business owners and entrepreneurs, local Chamber of Commerce members over the years who say they are forced to choose between staying in business or providing the health care they deserve to their hard-working employees.

Take for example Kimberly Smith of Andover, KS. Kimberly has three children, including a 3-year-old with a mild heart condition. She is self-employed. She is a realtor. She is a good realtor. Like many, she does not have access to affordable health insurance. Because of this, Kimberly and her family have been forced to go without health insurance coverage, and now she must pay all of her medical costs out of her pocket.

Denise Breason from Lawrence, KS, is also facing the same crunch to find affordable health care. Even though Denise is a hard-working small business employee, she has been without health insurance for over a year and a half and had to stop taking all of her medications because she could no longer afford them without health insurance.

Denise Hulse and her husband went without health insurance for their family for years. They prayed their children would remain healthy so they would not have to make a visit to the doctor or the emergency room. In the end, her husband was forced to let his small business go and take a low-paying job, just because it came with health insurance. To quote Denise:

> It is sometimes very hard just making it in the small business community, and very few small business owners are rich enough to be able to afford the high costs of health insurance for their families.

Another small business owner in Kansas told me he is paying over $2,000 a month each month in premiums alone for health insurance for his family. This is more than his house payment, more than his utility bills and grocery expenses, all combined.

These stories go on and on, not limited to my home State of Kansas. I heard these stories when I had the privilege of serving in the House of Representatives. Eight times we approached this issue. Eight times we passed a bill. Now it is our turn in the Senate, and it is long overdue. I hear these stories from small business owners and employees across the country. Small businesses all share one main concern: finding affordable health care insurance.

This is why I am asking my colleagues today to support and pass the Health Insurance Marketplace Modernization Act. The real question is, Do we take it up? Do we vote for cloture? Or do we let the House pass the bill the ninth time while we sit in the Senate and do nothing for those who cannot afford health insurance? I cannot imagine us doing that at this particular time.

This legislation allows small businesses to pool together through an association and offer health insurance. Everything has to have an acronym in Washington. This one does, too. It is SBHP. I won't venture into what that acronym will be called, but it stands for small business health care plan. It is going to give small businesses an affordable choice for health care.

The legislation is built on the fact that small businesses, unlike large companies such as Microsoft or others, or unions, do not have the power to negotiate affordable prices for health care.

The concept of small business pooling together is not new. I supported legislation when I served in the House. In fact, the association health plan legislation has passed the House numerous times over the years without any action in the Senate. Now we finally have a solution that will provide meaningful relief to small businesses across Kansas and the country. We all know small businesses face many pressures in running the businesses. I believe we must enact commonsense policies to overcome these hurdles. We should allow the local farm implement dealer to pool together with other dealers in Kansas and across the Nation to purchase affordable care.

Kimberly Smith should no longer have to worry about finding affordable health insurance for her children. Denise Breason should not have to stop taking her medications just because she works for a small business and cannot afford her care. Denise Hulse and her husband should not have been forced to let go of their small business, their dream they loved, just to find affordable health coverage. Instead, we need to find these hard-working folks affordable options that allow them to continue to contribute to our small communities, rural and smalltown America. This is why I support the legislation.

As I stand before my colleagues today, I know there have been strong concerns expressed about this and previous association plan proposals. However, the small business health plans that are created under this bill have the necessary protections in place to address these concerns. I would like my colleagues who have concerns to please pay attention.

The small business health plans will be regulated by the States, not the Federal Government. The small business plans will have to play by the same set of rules as other small group health plans. They must purchase their insurance through the regular insurance market. They cannot self-insure. Finally, the SBHPs may offer coverage that varies from State benefit mandates, but they must also offer an alternative plan that provides comprehensive coverage. This gives the consumer a choice in choosing a health plan that best fits their needs, and that is the key.

I have heard concerns from organizations and individuals who fear this bill will take away their coverage for cancer screenings, mental health benefits, or any other mandates required by State law. However, I stress that this is simply not true. Small business, under this bill, will have access to a more comprehensive plan which will cover screenings, mental health services, or numerous other benefits. However, it is up to the small businesses to decide whether such a comprehensive plan is right for them.

The purpose of this language is to give small businesses the option of choosing comprehensive benefits but not requiring them to buy such a rich package or a package they cannot afford. Simply put, this legislation trusts small businesses to choose a health care plan that best fits their needs and puts these small businesses, not health insurers or the Government, in the driver's seat when choosing their health care coverage. If a small employer wants to choose a more affordable plan for himself, his family, and his employees, he should have that option. Under this legislation, he has that option. However, he should not be forced by law to buy benefits that may be beyond what he can afford or beyond what he and his employees really need.

I want to put the problem of mandating coverage in perspective. While small employers want to provide affordable health insurance for their employees, expensive and burdensome benefit mandates make doing so very difficult. Small firms and self-employed people have almost no leverage with insurance companies. In addition, they have to deal with an enormous array of State-level health insurance regulations. I don't think you read them; I think you weigh them. All of the benefit mandates, all of these regulations add to the cost and the complexity of the coverage.

In contrast, however, big businesses generally don't have to deal with burdensome regulations. Federal law lets large companies, such as Microsoft and GM, and unions bypass expensive State benefit mandates to provide affordable comprehensive coverage for their workers. I ask my colleagues, why shouldn't small businesses be able to enjoy these same opportunities?

Today, there are more than 1,800 State mandates, making it nearly impossible for associations to offer uniform and affordable benefit packages on a regional or national basis. Taken together, these benefit mandates create a confusing web, an unfunded mandate that prices many Americans out of the health insurance market. The Congressional Budget Office and the Government Accountability Office and others have found that State-imposed benefit mandates raise the cost of health insurance anywhere from 5 to 22 percent. In addition, CBO estimates that every 1-percent increase in insurance costs results in 200,000 to 300,000 more uninsured Americans. In reality, benefit mandates represent an unfunded mandate on employers because insurance companies simply pass the cost of each mandate along. When the cost goes up, the coverage goes down. You have more uninsured.

The legislation we are debating today simply provides an opportunity for a small business health plan to relax these burdensome mandates to offer affordable health insurance to small businesses on a regional or national basis, just like the big businesses and unions currently do. We should not be forcing small businesses to choose between staying in business or offering health insurance to their employees. Boy, that is a Hobson's choice. Instead, we need to give them more affordable health insurance choices and be willing to trust them to choose the option that makes the most sense for themselves, their families, their employees, and the future of their businesses.

I know this bill is not perfect. Seldom do we or the other body pass a bill that is perfect. I have long said that we usually achieve the best possible bill, but sometimes must settle for the best bill possible.

I appreciate the concerns that have been expressed with this legislation. However, I express to my colleagues that I think this bill is the best opportunity we have for easing the burden on our small businesses and allowing them to finally offer affordable health care insurance to their employees. I am proud to support this legislation. I urge my colleagues to do the same and vote for cloture. Eight times in the House, zero in the Senate. That should not be a moment of pride for this body. Let us vote for cloture and let us support this bill.

I yield back my time.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I rise to associate myself with the remarks of the Senator from Kansas, and especially with the efforts of the Senator from Wyoming who brought this bill to the floor of the Senate. This is a very significant piece of legislation in our efforts to try to make sure more Americans have the opportunity to get fair, affordable, and good health care insurance. It is a piece of legislation about people. It is directed at people who work in what is termed ''small business.'' That is the person who works as a cook in a local family restaurant or a person who works as a mechanic in a garage or a person who runs a mom-and-pop real estate agency.

Literally, there are tens of thousands, millions of these small entrepreneurial centers throughout this country. Most of these folks don't make a great deal of money. They work very hard. They are taking care of their families. One of their biggest concerns is whether they can get health insurance so if somebody should get sick who works with them or should somebody in their family get sick, they will be able to have adequate care. But too many of them are not able to afford health insurance. Approximately 22 million people who are in these small businesses, these small retail businesses, small manufacturing businesses, small entrepreneurial shops, don't have insurance. Another 5 million people, who are sole proprietors and work by themselves, do not have a number of employees working with them, also don't have insurance. That is 27 million people who fall into this category. So Senator ENZI has brought forward a bill to try to address that problem. It is going to try to make it possible for these people who work so hard and who would like to have insurance policies that are affordable to get them. By allowing them to band together in trade groups, so realtors can come together, as well as automobile dealers, garage owners, restaurant associations, and hotel associations can come together and form a large enough group so that they can create enough of a mass of interest and buying power so that they can go out and purchase insurance. That is something they cannot do today as individuals. This bill allows them to do that.

It is hard to understand how anybody could oppose this concept. But people do oppose it, and I think most of the opposition comes from folks who either misunderstand the bill or who are using the bill as a way to energize their constituencies with information that is at the margin of believable, to be kind. The biggest opposition today to this bill, other than insurance companies who might see this as a competitor, comes from these groups that represent various different diseases and have compelling stories to tell about their diseases. They have gone to the State legislatures and they have gotten them to put in place what is known as mandates so any policy sold in that State has to cover that disease.

As was pointed out by the Senator from Kansas, every time that happens that increases the cost of the insurance in that State. For every 1 percent increase in the cost of insurance—and some of these specific mandates are expensive enough so they by themselves represent a 1-percent increase in insurance premiums. But there are 200,000 to 300,000 people who cannot afford insurance because the insurance bills go up and 200,000 or 300,000 people fall off the rolls.

What this bill tries to do is address the issue of the person who has fallen off the rolls, the person who hasn't been able to get the insurance, by giving them an option that they can buy, which they feel is adequate to their needs—it may not have a specific mandate in it because maybe they don't need those mandates to be covered, but at least it gives them the basic coverage they need in order to get through their health insurance risks.

The flip side of this coin, which isn't talked about much but which is fairly obvious, is that these people have no insurance at all. When these mandate groups argue, if you pass this bill, you are going to undermine the capacity of people to get insurance for this disease group, that is a totally misleading presentation because the people this is focused on don't have insurance to begin with. You cannot take something away from somebody who doesn't have it. If a person doesn't have an insurance policy, he doesn't have the mandates that the insurance policy requires.

If a cook working in a restaurant or a garage attendant working at a gas station or a realtor working in a small mom-and-pop real estate agency doesn't have any health insurance, you cannot take away from them mandated coverage for health insurance because they don't have it to begin with.

What this bill tries to do is allow that individual to participate in a group where they will have health insurance as an option. And if they have that option of health insurance, without mandates, they also have to have—that group, that restaurant, that real estate agency, that garage the option to purchase a fully mandated policy. In other words, it is a policy that is, for lack of better terms, a higher option policy, where you have everything covered. It has to track the five States in this country which have the most mandates on their insured. So the bill is balanced in that area of mandates.

A second opposition to this bill has been the fact that it moves from community rating to a banding system. What does that mean? It essentially means that on a community rating you basically force everybody to be rated the same, no matter their health risk or age group or occupation. With a rating system, you adjust marginally for what health experience it may be or what age it is. Adjustments can be made, but they are limited by the State. If you have a community-rated system, you inevitably have a much higher cost going in for a lot of those people who are banding together in groups, who maybe don't have as much risk as others. But if you have a rating system, some people are going to be lower in insurance costs and some people will be higher. They are going to be within a relatively narrow band.

So this bill allows these policies to be offered with a rating system, with a band. In New Hampshire—and this has been referred to on the floor by the Senator from Massachusetts—they had a very bad experience because, regrettably, New Hampshire did it the wrong way. We had a community rating system and then we went to a band rating system because we recognized that was better policy. I congratulate the State for that, but they didn't go to it correctly. They went sort of cold turkey. The practical effect was that one day people got one type of bill, and the next day they got a different type of bill. For some people it went up, for some people it went down, and it was a rather startling event for them. We looked at that experience in committee and said we don't want to emulate what happened in New Hampshire. We want to make this a much more responsible approach. We put into place a glidepath, 5-year phasing, so there will be plenty of time to adjust and to be able to handle this.

That type of opposition to this bill, clearly, in my opinion, has been addressed. It has been addressed specifically because of the New Hampshire experience. So it is a misrepresentation to say that continues to be a major issue with this bill. As a practical matter, there are about 85 million people in this country who work in small businesses. That is a huge number. They deserve the opportunity to have this type of insurance made available to them. They should have the same opportunity as big businesses—the IBMs,

the Microsofts, the major manufacturers—in our country, if for no other reason than they happen to be the engine of economic activity in this country. Most of the new jobs are created by small businesses, the moms and pops who are willing to build that restaurant, take on that exciting opportunity, start small and grow. When they do that, they ought to have the opportunity to also have an insurance option available. But many of them don't because it is not affordable, because of the way the States work the system, and because of that these small groups, as individuals, have no buying power. So this bill has addressed that need.

It is not the answer. This isn't a magic wand, but it is another opportunity put on, let's say, the cafeteria line of insurance that gives a small businessperson the chance to go down that cafeteria line and say: Yes, this plan works for the five people who work for me, and I am going to buy into the plan because I can afford it. Today, most people who walk down that cafeteria line, if they are small businesspeople, don't choose anything because they cannot afford the price of anything, or many of them are in that capacity, that 22 million. This will take a fairly significant number of those folks and give them the opportunity to purchase health insurance.

So it will take people from a noninsurance status to an insured status, from a situation where if they get sick, they don't know how they are going to pay for it, to a situation where if they get sick, they will have coverage. It is very important financially to most people and, obviously, it is important psychologically to everybody. So it is a good bill, something we should support.

I do think much of the opposition to it is misguided because it doesn't recognize that the basic goal is to take people who don't have insurance today and get them insurance. Therefore, the arguments around mandates are irrelevant to that group of people and the argument of community rating as I think we will address.

I congratulate the Senator from Wyoming for bringing this bill forward. I look forward to working with him on this bill.

I want to speak on another matter briefly because there is a lot going on that is very good in this country relative to the economy, and it is not being highlighted.

Today, there was an editorial in the New York Times that said we should not extend the tax cuts put into place in 2003. They say those tax cuts should not be extended in the areas of capital gains and dividends. That argument is good in 1930s economics. It is the old left theory of tax policy, which is that you increase revenues by constantly increasing taxes on people. It has been proven wrong this year, last year, and the year before. It was proven wrong by John Kennedy when he put in place the first tax cut. It was proven wrong by Ronald Reagan when he put in place the tax cut of 1980. And it has been proven wrong again.

In fact, in the first 6 months of this year, tax revenues jumped 11 percent, $134 billion, and a large percentage of that is the increase in tax revenues from capital gains and the fact that we have reduced the rate on capital gains which causes people to free up assets. Over the last 3 years, revenues have jumped dramatically—in fact, last year by 14 percent, and the year before by 7 percent, and next year they are projected to jump again. Why is that? It is because we are seeing an economic boom which has created 5.3 million new jobs since those tax cuts were put into place. There have been more jobs added in the United States in that period than Europe and Japan combined have created. And those jobs have led to economic activity and, in turn, have led to revenues to the Federal Government.

Revenues to the Federal Government are dramatically increasing because the economy is growing, and the economy is growing because the burden on those people who go out and are willing to take risks through capital investment, dividend activity, through income tax activity—those people are taking risks and creating economic activity and, as a result, creating jobs which, in turn, create taxpayers, which, in turn, increases the Federal revenues.

The numbers don't lie. They are huge, significant, and they confirm, once again, that John Kennedy was right, Ronald Reagan was right, and George Bush was right. By making tax rates fair, especially on capital formation, you energize economic activity and, in turn, you create massive increases in Federal revenues. Regrettably, I must say the New York Times is wrong.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I am so happy to come to the floor today because the Senate is finally debating how we can help small businesses across our country afford health care for their employees. Just as Senator GREGG has mentioned how important it is to provide benefits to groups who want to invest, and to individuals and companies who want to invest and grow the economy, so too it is critically important that we provide small businesses the ability to invest in themselves. That is what I want to talk about today.

Small businesses are critical to this country. They are critical to rural States such as mine in Arkansas, but they are the engine of our economy in this great Nation. They are the No. 1 employers. That is why it is so important that we get this right, that we provide them with a tool that will allow them to reinvest in themselves and their employees and their communities, so that we can keep that engine going.

I applaud my colleague from Wyoming, Senator ENZI, for all he has done in bringing about this debate. He has worked hard and genuinely on this issue, and I appreciate very much what he has put into this. He has helped us make sure this is not a debate about whether this is a critical issue.

This reminds me of something I was taught by my father who said: If it is worth doing, it is worth doing right. It is worth doing correctly. That is what we are here to talk about today.

I believe very strongly that our small businesses are so important to us—our self-employed individuals in this country have the greatest spirit in the world—and it is so important that we should not offer them a second-rate opportunity. We should offer them the same opportunity we have as Federal employees and Members of Congress: The opportunity to build a pool that will offer them greater access, greater choice at a lower cost, by pooling all of themselves together across this great country, while maintaining the quality, which is what we do for ourselves. We maintain the quality of the product of the health insurance we receive or have access to as Federal employees and Members of Congress, and we should do no less for the small businesses and the self-employed individuals in this great country.

So I hope, as we continue this debate, we will remember those hard-working American families who are depending on us not just to do something, but to do what is right and fair, and offering what we see as fair tax policy and offering what we see as fair access to the same quality product of health care and health insurance that we as Members of Congress get.

The small business health care crisis is undoubtedly one of the issues I hear the most about when I return home to Arkansas. In fact, in every community in our Nation, as well as millions of working families across this country, we are seeing the difficulty of having access to quality health care and health insurance and the ability to pay for that.

There are approximately 46 million Americans currently without health insurance, including 456,000 Arkansans whom I am responsible for in terms of producing a product that is worthy of those individuals. Small businesses are the No. 1 source of our jobs in Arkansas. Yet only 26 percent of the businesses with fewer than 50 employees offer health insurance coverage. Workers at these businesses, which again are the engine of our economy, are most likely to be uninsured. In fact, 20 percent of working-age adults are uninsured in Arkansas. This number is alarming, and addressing this problem should be a national priority, and we should approach it as if we are going to do the best job that we are capable of doing. That is why we are here today, to talk about that.

Mr. President, 224 major organizations are opposed to the proposal that

Senator ENZI has brought before us. Two hundred-and-twenty-four is a huge number: everywhere from diabetes to mental illness to hospital federations. These individuals understand how important the years have been in allowing State insurance commissioners to be able to set mandates in order to cover what is important to individuals in their States, and what is important to small businesses and everyone in those States. Those States have the right and the ability to figure out what is important to them, and the majority of them have agreed on many of these major issues.

Those who lack health insurance do not get access to timely and appropriate health care. We know that, and we see it. We see it in the cost of Medicare when people don't get health care for 20 or 25 years when they are in the working marketplace as a small business owner or employee, and then they become more costly to us when they hit Medicare age because they haven't received the screenings, the timely visits to the doctor, and they haven't been getting the kind of health care they truly need. They have less access to these important screenings. They don't have access to the state-of-the-art technology that exists or prescription drugs, which is another piece of what can help keep down the cost of health care.

Working families need help with this problem. The Institute of Medicine has reported that 18,000 people die each year because they are uninsured. The fact is, being insured does matter. It makes a big difference. It makes a difference in our health care costs. It makes a difference in whether you are going to survive—longevity, the ability to care for your family. It makes a big difference. We have reached a juncture where we are going to debate how we deal with those who are uninsured, whether we are going to give them substandard coverage or whether we are going to give them the coverage that we have.

Again, I commend my colleagues, Senator ENZI from Wyoming and Senator NELSON from Nebraska, for their leadership. I appreciate their hard work on this issue. But I do disagree, because I believe that the devil is in the details on this issue, and I am deeply concerned about the very harsh and unintended consequences that will occur if S. 1955 were to become law.

Senator DURBIN and myself have been working together for several years to come up with what we believe is a better health care plan for America's small businesses. What we have done is looked to a 40-year-old tested delivery system, and it is the one that we ourselves use. It is a Federal plan that takes the best of what Government can do and combines it with the best of what private industry can do. The private marketplace and the competition that it can create allows the Government to pool all of its Federal employees and use that pool as a negotiating tool to bring us greater choice at a lower cost.

About 3 years ago, I suppose it was, my staff and I were discussing the way we could help small businesses, and I thought about the way my Senate office operates. It operates much like a small business in my home State and here. As I looked at my employees, I saw that I had two employees, one with 26 years with the Federal Government, another with 30 years with the Federal Government. I had two women who had delivered babies and were on maternity leave. I had some, such as myself, with small children and a husband that is on my plan, and then I had a host of young, healthy staffers who were single. But I had a whole array of different individuals who needed a tailor-made insurance plan for their needs. While there are similarities in our Senate office and small businesses, there are also some obvious differences. One of the most glaring contrasts is access to affordable and quality health care. I saw what my office went through and realized that is what small businesses are going through. I knew we could do better. I knew we could take the plan of what we have and apply it to small businesses.

Last year, more than 8 million people were banded together in the Federal employees purchasing pool, and that gave us choices among 10 national health insurance plans and a variety of local insurance plans, and a total of 278 private insurance plans from the private marketplace. Not government-run—not government-run health care at all—but health care from the private industry, health insurance from the private industry that was created by competition of the multiple Federal employees across the country. It offered us greater access, greater choices at a lower cost.

So I am here to ask this question: Why don't we try to give small businesses access to that same type of private health insurance option that Members of Congress and Federal employees enjoy today? Rather than reinvent the wheel, why don't we create a program for small businesses that is based on our Federal Employees Health Benefit Plan, through the FEHBP, by pooling them, the small businesses, together in one nationwide pool. That is exactly what Senator DURBIN and I have proposed in our Small Employers Health Benefit Program. By pooling small businesses across America into one risk and purchasing pool similar to the FEHBP, our program will allow employers to reap the benefit of group purchasing power and streamline administrative costs as well as access to more plan choices. The SEHBP, as we have introduced, lowers costs for small businesses in two key ways: It pools them into one national pool across the country, therefore spreading the risk between the healthy and the sick, the young, the old, those who live and work in the remotest parts of this great land and those who work in the most urban areas. Second, our plan significantly lowers administrative costs for small businesses.

Two economists have estimated that SEHBP would save small businesses between 27 and 37 percent annually, even if they don't take advantage of the tax cut that we offset costs with by insuring lower income workers. We provide a tax cut to small businesses, and for the life of me, I can't figure out why those on the other side of the aisle, for the first time I have ever noticed, will fight a tax cut for small businesses. Providing small business a tax cut to be able to engage in what is such an important tool in getting themselves and their employees insured makes good sense. What a great investment.

Senator GREGG was talking about balancing all of that and the economy. What a great way to balance what corporate America gets and their ability to deduct health insurance costs that they have and small business getting a tax cut for investing in their employees and health benefits for them. Under our bill, employers will receive an annual tax credit for contributions made on behalf of their workers who make $25,000 per year or less. And if the employer contributes 60 percent or more to the health insurance premium of an employee making $25,000 or less, the employer will receive a 25-percent tax credit. And the tax credits increase with the number of people covered and the proportion of premium the employer chooses to cover. Also, the employer receives a bonus tax credit for signing up in the first year of the program, because we know from the example of the Federal employees that the more employees who are in the pool, the greater advantage to everyone concerned. Small businesses will save thousands of dollars—even more—under our plan.

Segmenting the market into different association pools, as S. 1955 does under Senator ENZI's bill, will not achieve these savings that would be created by instituting one large pool with all of those small businesses and self-employed individuals. Each association will be administering to a separate group with a different administrative structure and different costs, obviously. More funds would be going to administrative costs as opposed to serving the people with a quality health plan. Our SEHBP would have one administrative structure and could pool approximately 53 million workers together, therefore balancing the risk of sick and healthy, young and old, rural and urban, for affordable rates for everybody. Why wouldn't we want to make our pool as big as it possibly could be, as we do with the Federal workers?

I believe our plan takes a real moderate and balanced approach that combines the best of what Government can do with the best of what the private sector can do, and preserving important coverage for preventive health

care treatment such as diabetes supplies, mammograms, prostate screening, maternity and well-baby care, immunization, things that States themselves have decided are important enough to mandate coverage for and ensure that the people of their State are going to get the safe and important coverage of illnesses that are critical to them in their State.

Like the FEHB Plan, our program does not promote Government-run health care, but it harnesses the power of market competition to bring down health insurance costs using a proven Government negotiator in the Office of Personnel Management, OPM, which is the negotiator for our plan. We, once a year, as Federal employees, can choose among 270-plus plans. We are able to actually benefit from that proven Government negotiator and the harnessing of that power.

Our legislation, S. 2510, has been endorsed by many organizations—the National Association of Women Business Owners, Small Business Majority, the American Medical Society, the American Diabetes Association, the National Mental Health Association, the Cancer Society, and many more that have realized how important it is to use a proven example, a proven structure that maintains quality but helps by pooling and bringing down those costs.

The Mental Health Liaison Group, representing over 35 national mental health organizations, wrote to us and said about our bill:

> S. 2510 does not sacrifice quality of coverage for affordability or allow the offering of second class health insurance to small businesses. Within the FEHBP program, small business owners, employees and their family members would be covered by all the consumer protections in their home states—including hard-won state mental health parity laws and mandated benefit laws.

The American Academy of Pediatrics, writing to us on behalf of over 60,000 primary care pediatricians and pediatric specialists, wrote:

> Through the benefits of pooling small businesses and providing tax cuts to small employers, small pediatric practices will be assisted in the health insurance market without sacrificing health care services for children.

The American Diabetes Association wrote to us and said:

> While other proposals seeking to provide health benefits for small businesses . . . have exempted or eliminated coverage for important diabetes care protections, [our bill,] S. 2510, will allow individuals with diabetes to receive the important health care coverage they require to remain healthy and productive members of the workforce.

This is not just about quality of life, although many of us believe that is very important. We as Members of Congress enjoy a quality of life because of the very healthy health insurance program we are offered. We want our small businesses that are vital to our economy to enjoy that same opportunity. But it is also about economics. It is about making sure we keep our workforce, particularly our small businesses and their workforce, healthy and thriving and productive and in the workplace. It is about making sure America's working individuals and working families get the health care they need before they reach 65. When they hit 65 in the Medicare Program, then they are going to be more costly to Government because they are not going to have gotten the health care they needed and deserved in their working years.

I believe our plan is better in so many ways. I am proud we are having this debate, and I hope so many people will realize we can do better. We can do better and make sure we truly elevate small businesses and self-employed people to the same level we hold ourselves, in providing them the access to the same quality type of health care.

Our SEHBP bill offers tax cuts for small employers. Senator ENZI's bill does not. SEHBP relies on a proven program. It is based on the successful Federal Employees Health Benefit Program which has efficiently and effectively provided extensive benefit choices at affordable prices to Members of Congress and Federal employees for decades. For decades, we have had a proven program out there that proves you can harness the competitive nature of the marketplace, and with the oversight of Government and the State mandates, you can actually provide that quality of health insurance at a lower cost. By pooling small businesses together and allowing OPM to negotiate with private health insurance companies on their behalf, they, too, could have access to this wide variety.

On the other hand, Senator ENZI and Senator NELSON's bill establishes a new set of responsibilities at the U.S. Department of Labor, to administer an untried and an untested program. We don't reinvent the wheel. What we do is use what already exists. To invent a new section of the Department of Labor to administer Senator ENZI's bill is going to take time and money. We are not going to know how it needs to be administered through the Department of Labor. They have never done it before. Even the Department of Labor employees currently enjoy benefits from the health insurance program that is negotiated by the Office of Personnel Management. So it is hard to believe they are going to want to go to another system.

SEHBP offers individual self-employed workers the same access to health insurance that is offered to group businesses. SEHBP defines small businesses as groups of 1 to 100, so an individual self-employed person will be treated exactly as a business with 2 or more people. Any business with 1 to 100 employees is eligible to participate in what we are trying to do.

Under Senator ENZI's bill, the self-employed people are not pooled with the small businesses, unless they are mandated by State law. And there are not that many State laws that actually mandate that. But the self-employed people in 36 States, including Arkansas, will not have access to the same negotiated rates of businesses with 2 or more people. They will be pulled out of that pool and rated on their own. That means, if they are younger women of childbearing years or perhaps they are older workers at 50 or 55 and are diabetic, they will be rated completely separate from the pool, which means they will be segregated and treated differently. They don't get to enjoy the benefit of a larger risk pool which could bring down their costs and offer them greater choice.

Our bill also ensures access to health care specialists. Many States have passed laws requiring insurers to cover certain health care providers, including dentists or psychologists or chiropractors. All three of these and many more are required by our State of Arkansas law. I know the people of my State enjoy the assurance they have of knowing that their State regulator, their State insurance commissioner, is looking out for their needs. They can do that better on a State level. That is why we have always left those types of regulatory issues up to our State—because they know and can work.

Can you imagine being a small business, or better yet an employee of a small business, having to call some big, huge, Federal bureaucratic office to request or to complain or to have your concerns heard about what is not covered under your insurance plan? No, they call the State insurance commissioner today, and that is the way it should be. The State insurance commissioner can then respond to the concerns of their constituency and has done so very well over many years.

The coverage for diabetes supplies, mammography, and other important screenings are mandated by State law which would be preempted by what Senator ENZI is trying to do. Many States have passed laws requiring health insurance companies to cover these benefits because insurers simply were not doing it. It did not happen because the insurance commissioners just decided on a whim to do it; it is because the insurers were not covering it. Why do we have to go back and relearn that lesson?

For 40 years, the Federal Government has used the effectiveness of the pool of the 8 million Federal employees and been able to enjoy the protections that are there, guided by State insurance commissioners.

Our bill also prevents unfair rating on gender and health status. Under our bill, health insurers will be prohibited from ratings based on health status—whether you happen to be diabetic, whether you happen to have eating disorders—your gender, or the type of industry in which the employees are working. Under Senator ENZI's rules, that will be all preempted, even for the 15 States that don't allow ratings on these factors.

Our bill also frees employers to focus on running their businesses. They don't

have to go and negotiate these plans through their association or with their association. They are going to get sent a booklet just as we do, once a year, to review all that is available to them, and choices, and then figure out what is best for them. My employees—each of them picks something different. I pick coverage for a family with children. Some of them pick a PPO or an HMO. Some of them pick all different kinds of State plans and others that are offered to them in that process.

Mr. CARPER. Will the Senator yield?

Mrs. LINCOLN. Absolutely.

Mr. CARPER. Mr. President, how much time is left on our side during this period of debate?

The PRESIDING OFFICER. There is 5 minutes remaining.

Mr. CARPER. How much longer does the Senator expect to speak?

Mrs. LINCOLN. How about if I just go ahead and yield to the Senator from Delaware because as a former Governor, he has some incredible stories to tell, and I think they really add to this debate. I will simply say to my colleagues that I hope they follow this debate very closely and certainly appreciate how important this is to the working families of all of our States.

Mr. CARPER. I thank my colleague for yielding. I ask if she would stay on the floor.

I commend Senator LINCOLN for actually coming up with this idea. It is an idea for which she and Senator DURBIN share credit. When you think of some of our options, the options basically are do nothing, maintain the status quo, continue to make the cost of insurance very steep and rising for small businesses or to adopt the proposal of our colleagues, Senator ENZI and Senator NELSON, whom I believe are two of the most thoughtful Members of the Senate. They have worked hard to try to make a not very good idea—the original association health plan—a better idea. But between doing nothing and the modified HP legislation from Senators ENZI and NELSON is a third way. The third way has already been outlined here by Senator LINCOLN.

I wish to ask my colleagues to think about it. I don't care whether it is a Democratic idea or Republican idea. It is actually an opportunity to take the best from what the Government, the public sector, can bring and to take maybe the best the private sector can bring.

One of the common values that are shared by the Enzi-Nelson legislation and the Lincoln-Durbin legislation is the notion that we have a lot of smaller employers, they have a lot of employees, and together is there some way we could pool their purchasing power? Maybe we could increase the number of health insurance options available to them and maybe we could bring down the cost of those options. They propose to do it in one particular way which, as Senator LINCOLN pointed out, has a number of problems, one of which affects us negatively in Delaware.

We have had a very high rate of cancer mortality. Finally, we have brought it down over the last 10 years or so, in part by having mandatory cancer screening—mammography, for cervical cancer, prostate screening, for colorectal cancers—and that has helped to bring down our cancer mortality rate. From the top in the country, we have finally now dropped to the top five. We are moving in the right direction. I will talk about that tomorrow, and I will even bring some charts to rival the chart of my colleague, I hope.

But I suggest to my colleagues, think about this. We have all these disparate Federal agencies across the country. Collectively, we have a couple of million employees, family members, and retirees, and all we do through the Federal health benefit plan is we pool our collective purchasing power. It doesn't matter if you work for the VA or Homeland Security or some other Federal agency—EPA—basically we could come together and use our collective might to negotiate better rates and, frankly, better coverage than would otherwise be the case if we were just negotiating for ourselves. We do it all through the Office of Personnel Management.

What Senator LINCOLN is suggesting is it works great for us, provides reasonably good coverage for Federal employees, including us as U.S. Senators. We have to pay our portion. It is not that we get it for free. We have to pay our share. But it works pretty darn well. She has come up with a way where we take that Government idea and transpose it and transfer it to the private sector. She would have the Office of Personnel Management effectively provide the service or play the role in the private sector that it currently plays in the public sector, to allow a lot of employees, whether you work for the local hardware store or restaurant or small manufacturer or technology company, to say: We would like our employees to be able to pull together from Arkansas, from Delaware, even from Minnesota, in order to get a chance to buy better insurance products, have more variety, and bring down our costs to our small business employees.

It has worked. It is proven. It is time tested, and I believe it is worth trying. The worst thing that I think could happen, coming out of this week, is for us to do nothing.

It is a big problem. It is a big problem for small employers, and it is a big problem for large employers. It is a big problem for America.

I think what would be the worst thing that could happen, and what would basically ensure that we do nothing is for our Republican friends to basically allow no amendments to the Enzi-Nelson legislation. I think that would be awful. That would be a huge mistake. It would pretty much basically ensure we end up not getting this bill done or some variation and not even having a chance for debate and vote on the Lincoln-Durbin legislation. We can do better than that.

Frankly, the Senate deserves a lot better than that.

I say to my colleague from Arkansas, who has been good enough to relinquish her time, I thank her on behalf of all us for pointing out a different course, a third way in this regard. I thank her.

Mrs. LINCOLN. Mr. President, I thank my colleague from Delaware.

The PRESIDING OFFICER. Minority time has expired.

Mrs. LINCOLN. Thank you, Mr. President.

I ask unanimous consent to continue until other Members arrive.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. LINCOLN. Thank you, Mr. President.

I will be glad to yield the floor when others are ready to speak.

I would like to add that the experience of many of our colleagues, whether they are former insurance commissioners, former Governors and others, brings to this table the understanding what the American people want, what our working families want. I think the debate is that small businesses definitely want more affordable health care. They also want to make sure that what they are providing for themselves and their families and their employees is quality service, quality coverage. That is what they deserve. That is what they want.

Even for those who feel so young and invincible, we also know that they may be one car accident or one diagnosis away from needing more comprehensive health insurance for the rest of their lives.

That is why we want to make sure—as I said in the beginning—that whatever we do is right, that we don't move forward on something that is going to be less productive and in the long run, unfortunately, put more people at risk.

My goal is to help small businesses while not jeopardizing the quality of health care for the 68 million Americans in State-regulated group plans that are already out there. We don't want to do harm there.

The fact is if we move forward on what Senator ENZI wants to do, which is preempting those State regulations and State mandates, we could do tremendous harm for those who are currently insured and the 16.5 million Americans with individual health insurance coverage who would probably lose some quality of coverage which they have.

If it is good enough for Federal employees, and if it good enough for Members of Congress, I think it should be good enough for millions of small business employees who are the economic backbone of communities throughout this Nation.

I applaud my colleagues for coming to the floor for this debate, and I hope we will have a serious debate so we can

move forward and actually do what is right for the American people.

Mr. CARPER. Mr. President, will the Senator yield once again?

Mrs. LINCOLN. Yes, absolutely.

Mr. CARPER. Mr. President, we do not often think of the Federal Government in the way we are trying to harness market forces and competition and put them to work. We try to hold down Federal outlays. That is what we do with respect to the Federal. It is literally what we do with respect to the Federal Employee Health Benefit Plan. What we are trying to do, with respect to what the Senator has outlined, is harness market forces and competition and put them to work for small businesses as well.

Mr. ENZI. Mr. President, reclaiming our time, I didn't realize they would be allowed to use part of it.

It would be helpful if the other side would actually share the details of their amendment with us so that we can take a look at it. The details of our bill have been through the committee, out here, and had hearings. We don't know what is going to be in there. The last time I looked at it, there was, I think, $9 billion of cost in it each year, and the huge bureaucracy that would be built up. I make that request to the other side—that we sure would like to take a look at their bill. It is hard to do until we have a copy.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I thank the Chair.

CAPE WIND FACILITY IN NANTUCKET SOUND

Mr. President, I am here to discuss the provision in the Coast Guard and Maritime Transportation Act of 2006 and the provision which allows the State of Massachusetts to have a say in the siting of a 24-square-mile, 130-wind turbine energy facility.

I have a chart I want to use and describe.

First, let me say why the Senator from Alaska is involved in this issue. What I am trying to say is that this is a tremendous precedent.

We have a series of areas of various States where there is a gap in State jurisdiction and where Federal waters are adjacent to and sometimes almost surrounding State waters. That is particularly true in my State. With the Cook Inlet on either side of Kalgin Island, there are gaps of Federal waters surrounded by the mainland of Alaska going down the inlet.

The Minerals Management Service tells us there are roughly 2.5 million acres of Federal waters going down that inlet that could be used for projects such as I am going to discuss today.

A similar situation exists with Chandeleur Island, LA; the Channel Islands in California; the Farallon Islands in California; the Hawaiian Islands in many instances; and in Puerto Rico.

What I am here to talk about is the precedent that would be established by locating this facility in Nantucket Sound, less than 2 miles beyond the State of Massachusetts' jurisdiction.

If we look at this chart, you can see very clearly the area with the darkest color on the chart, which is the proposed site of this power facility. It is 9 miles from one part of Massachusetts, 13.8 miles from the other side, and 6 miles from the other direction.

When you look at the situation, we realize the State has jurisdiction over at least 3 miles in that area.

This is very close to the area of Massachusetts where people have a right to be concerned over this project. Before the Federal Government claimed ownership of this area, there was a judicial dispute over which government had jurisdiction over it. I am informed that the State of Massachusetts had established a marine park in this area. As a matter of fact, it was listed as part of a proposed marine sanctuary, even in the Federal listings. It is now the proposed site for the largest and most expansive offshore wind energy project ever undertaken in the world.

This facility would include turbines that stand 417 feet tall.

This is a chart that describes it. Those windmills would be 417 feet tall, taller than the Statue of Liberty. The one little point at the bottom shows a 30-foot sailboat. You can see the size of it. People sail their boats that size on Nantucket Bay, and the Great Point Lighthouse is supposed to keep sailors and mariners warned about the area. It is only 73 feet tall.

When you look this area, it is 24 miles across, more than half the size of Boston Harbor itself. It is going to be the site of this enormous facility.

As I said, it is larger than any similar kind of wind energy project in the world.

It is a very small area of Federal jurisdiction, completely surrounded by the mainland and islands of Massachusetts.

Some in the media have insinuated that by including this provision in the Coast Guard and Maritime Transportation Act, I am doing it as an old friend to Senator TED KENNEDY. He is an old friend. It is true that Senator KENNEDY and the Governor of Massachusetts support the provision in the Coast Guard bill, but this is my amendment. They have agreed with me. I didn't seek their agreement. It is not an issue based on friendship or on past favors or future favors. It is strictly a provision based upon my long-held belief that States should have the final say on projects which will directly impact their lands, resources, and constituents.

Some in the press have claimed this provision is embedded in ''obscure legislation to be passed in the dead of the night.'' We hear this all the time. But the Coast Guard authorization bill is hardly obscure legislation, and there is nothing secretive about this bill.

The version of this bill that passed the House of Representatives included a provision related to offshore wind farms. It was in the House-passed bill to start with. The House and the Senate, in a bicameral, bipartisan group of Members of a conference committee, discussed and negotiated language to provide the State of Massachusetts a greater voice in the siting of this windmill farm in Nantucket Sound.

This bicameral, bipartisan group also negotiated language requiring the Coast Guard to assess the potential navigational impacts of the proposed offshore powerplant.

This is the normal legislative process for passing legislation of this type through the Congress.

Again, let me point out this chart. I don't live in this area, but I have studied it very well. This is the path the ferries take coming out of these areas and going through this sound, and it is the path which the commercial traffic, steamships, and cargo ships use going into that port.

As a consequence of this location, this line demonstrates the State's jurisdiction and how close it is to the State's jurisdiction. As a matter of fact, the area that is has been lined shows the previous plan which would have gone partially into the State's jurisdiction. The project was amended, so it does not touch the State waters or State jurisdiction areas at all.

It is this area of solid brown on this chart.

By the way, this is the very shallow portion of this area. There is no question about it. Nantucket Island is out here. But there are equally shallow portions outside of the sound that could have been used. But, of course, it is deeper going in there, and that access to this interior part of this sound I think is strictly a financial decision.

At the heart of the debate on the issue is States' rights. The fact is this project will be located entirely in the sound—in this small doughnut hole of the Federal water surrounded by islands and mainland of the State of Massachusetts.

The debate over this project is similar to the fights those of us in Alaska have been engaged in for decades. Our State lands are surrounded by Federal lands, and we often don't have any decision regarding the development of our resources or projects which will be located in our State.

This is one of those situations where Congress ought to listen to the Governor. They ought to listen to the senior Senator, in my opinion.

Those in Massachusetts have raised legitimate concerns about the impact of this wind farm and what its impact will be on maritime navigation, aviation, and radar installations critical to our homeland security.

This proposed site is an area already known for its treacherous flight conditions, and this facility could make those conditions much worse. According to the National Air Traffic Controllers Association, this facility will be located in the flight path of thousands

of small planes. Both the Barnstable and Nantucket Airport Commissions are opposed to the construction of this facility, as are the major ferry lines that operate in Nantucket Sound.

As the chart I have described shows, ferry routes pass within a mile of the proposed location for this project on two sides. The 24-square-mile footprint for this facility is nearly half the size of Boston Harbor, a 471-foot wind farm.

Again, those windmills are larger than this building. Those windmills are larger than the Capitol.

You have to get the specter of this size being built in the center of this sound. It is a 24-square-mile footprint for this facility. As I have said, it is half the size of Boston Harbor and has shipping and ferry channels bordering on three sides.

There is not a single local fishing group from Massachusetts that supports this project, I am informed. It would effectively close a 24-mile-square-mile footprint of many kinds of fishing that has taken place in this sound for generations. Horseshoe Shoal, where the facility will be built, is one of the most productive fishing grounds in the area. That means this area produces offspring. This is where the fish spawn.

The impact of the shoal will be significant. The piling for each one of these windmills—there are 130 of them—are 16 feet in diameter and will be bored down into the shoal to a depth of about 80 feet. This productive area will be littered with 130 drilled holes. Each piling will occupy 2 acres of productive fishing ground. Navigating in and around 130 turbines will make fishing and fishing reproduction in this area nearly impossible.

In addition, these turbines will make Coast Guard search and rescue missions much more difficult in this area, already known for severe weather and sea conditions in parts of the year.

Those in Massachusetts raise another important point. Developing a wind farm of this size and scale offshore has never been done before, let alone in an environment as extreme as the waters of the North Atlantic.

To put this challenge in perspective, it helps to compare the Massachusetts project to the wind farm currently operating in Palm Springs, CA. I know a little bit about this. I have gone into that town several times by air. That facility stands 150 feet at the tallest point. The blades are half the length of a football field, but they are one-third of this size. Even on dry land and a relatively calm desert climate, the Palm Springs wind farm has been plagued by serious maintenance complications. Many of the turbines require constant maintenance and repair.

Put that in the Massachusetts Sound. They require maintenance and repair constantly. This Massachusetts project would require maintenance and repair to take place in icy waters of Nantucket Sound. The size of the windmills for this facility would dwarf the existing land-based wind projects. The windmills in Nantucket Sound would stand nearly three times as tall as those in Palm Springs, with wind blades over a football field in length. Just the blade is a football field in length.

Now, given the legitimate issues raised by the people of Massachusetts and their representative, I believe it is only fair to allow the State to have an equal voice in the debate over the siting of this project. Nantucket Sound, as I have said, is not the only place where a project of this kind can be built. In Europe, deepwater wind energy technologies are currently being developed as far out as 15 miles in 138 feet of water. Placing wind energy facilities further from their shore reduces their impact on maritime navigation.

If this 24-square-mile wind farm is built further away from shore, there would be a number of benefits. It would be removed from boating, fishing, ferrying, shipping channels, reducing the risk of collision and reducing the potential impact on the navigation which we have asked the Coast Guard to look into.

I do support America's use of alternative energy sources, including wind farms and wind power. I have supported wind projects in the past during my time as chairman of the Senate Committee on Appropriations. Our committee appropriated over $105 million for wind projects in fiscal year 2002 to fiscal year 2006. There was even one in my State around Kotzebue.

It is the right of a State to determine if this type of project is consistent with its efforts to protect its resources. I believe Congress should defer to the judgment of the Massachusetts congressional delegation, the Governor of Massachusetts, and the people of Massachusetts on this matter. States should have a say in the activities taking place in the waters adjacent to their shores. This location, in particular, deserves special consideration due to the geographic peculiarities of the region.

California blocked oil platforms, Oregon and Washington blocked them before they were even built.

We now have a dispute before the Congress over a potential development of gas resources 170 miles off the State of Florida. This is 3 miles. This is within a sound that is one of the—I have only been there two or three times, but it is a place if you ever go to it you would not forget. It is not a place that deserves to have this impact. The residents of Massachusetts will have to live with the impact of this project. They must have a greater role in determining the fate of this treasured area.

This bill, H.R. 889, as agreed to by the conference committee, rightly awards the State of Massachusetts this greater authority in the decisions regarding this project. So I am here today to urge the House and the Senate to listen to the people of Massachusetts and particularly to listen to their senior Senator.

I am pleased to yield whatever time I have remaining. I think I have only another 10 minutes or so. I yield to the Senator from Massachusetts.

I think we have 30 minutes on this side and 30 minutes on that side, is that correct?

The PRESIDING OFFICER. There is 14 minutes remaining on the majority side.

Mr. STEVENS. Is there time on the Democratic side for the Senator from Massachusetts?

Mr. KENNEDY. We are rotating back and forth. I am happy to work that out.

Mr. STEVENS. We will work that out.

Mr. KENNEDY. We will stay on the subject matter.

Mr. ENZI. We had some latitude here to allow 20 minutes on this and we were 5 minutes late from that one.

Mr. STEVENS. I talked too long.

Mr. ENZI. And Senator THUNE does not have the time for his speech.

Mr. THUNE. Mr. President, I cannot yield, but if the Senator from Massachusetts requests time and wants to use the Democratic time for that, we have 14 minutes on the majority side I would like to use to talk about the small business health plan. But if the Senator from Massachusetts wants to use Democratic time, that is fine.

Mr. KENNEDY. I ask to be yielded 8 minutes on the Democratic time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank my friend and colleague, the Senator from Alaska.

I hope to have an opportunity to get into this in greater detail than I will for the few minutes I have this afternoon.

There are certain points I want to make. That is, the waters around the area described by the Senator from Alaska, the Nantucket-Martha's Vineyard-Cape Cod area, has been designated a state ocean sanctuary and it is an unreplaceable asset to the people of Massachusetts. Up to 1986, it was generally recognized to be under the jurisdiction of the Commonwealth. In the 1970s, Massachusetts was concerned about potential development threats and made the entire area a protected state ocean sanctuary—where no structures could be built on the seabed and where no offshore electricity generation facilities could be constructed.

The legislation was passed easily through the State House. And the specific part of Nantucket Sound that is no longer protected by the state laws, because of a Supreme Court decision, is under consideration for national marine sanctuary status.

My second point, Mr. President, is that I am for wind energy. We all know we need it to meet our future needs, and we've seen the successes that onshore wind energy farms can be. We ought to have offshore wind energy, but we need to get it right.

The problem in Massachusetts is that we have a developer who's basically staked a claim to 24 square miles of Nantucket Sound back when there were no rules on offshore wind development, and then got the project written into the new law so the new rules won't apply to this project.

And the practical effect is that there will be no competition for the developer and that his application is being reviewed and processed before the Department of the Interior can even complete a national policy.

In the Energy bill, section 388 says:

> . . . the Secretary shall issue a lease, easement or right-of-way under paragraph (1) on a competitive basis unless the Secretary after public notice of a proposed lease, easement or right-of-way that there is no competitive interest.

The next provision says:

> Nothing in the amendment made by subsection (a) requires the resubmittal of any document that was previously submitted or the reauthorization of any action that was previously authorized with respect to a project for which, before the date of enactment of this Act—
>
> (1) an offshore test facility has been constructed;

Well, where in the country was there a project that had an offshore test facility?—only in Nantucket Sound. So this was a real special interest provision.

Because of this ''savings provision,'' the developers are pushing Interior to complete this review before the rules of the game are even established and before the ocean is zoned.

So while Interior is setting a uniform program—and deciding which sites should be used—this project is on the fast track. The developer and the developer alone picked the site.

And this is a serious problem. Look at what the EPA said about this project's draft environmental impact statement. They called it ''inadequate.'' That's from the EPA, the agency charged with protecting the environment.

And the EPA wasn't alone. Look at what the US Geological Survey said about Cape Wind's draft environmental impact statement:

> . . . the DEIS is at best incomplete, and too often inaccurate and misleading.

Inadequate—Incomplete—and too often inaccurate and/or misleading. Does this sound like project that should be on the fast track?

But because they've been written into the law, the interests of our state have been basically submerged to a special interest developer.

They complain about the provision in this bill that Senator STEVENS negotiated with the House. He's right. He's trying to at least bring this back up for review under the sunlight and ensure that the interests of the state for safety and for environmental protection aren't run roughshod over.

The project's developer is the one that got the special interest legislation. This Coast Guard provision is designed to check that and preserve the public interest.

The provision Senator STEVENS crafted tries to remedy an injustice the developer created, and at least let the people of our State be heard.

We wish this provision wasn't necessary, and it wouldn't be if the developer was content with following the rules that apply to everyone else.

That would have been satisfactory, but no, we are denied that equal treatment. We are prohibited from that. That is not right.

Our State went out and created the Cape and Islands Ocean Sanctuary as a protected area. Then the Supreme Court cut a hole in those protections, and now the interests of the State to preserve the fisheries and environment of the whole region is being undermined. It is being handed off to private interests. It's not right. We deserve to have at least a little fairness in this.

I will not take the time to list the various national marine sanctuaries, including the Channel Islands, all the Florida Keys, and other national treasures, like Stellwagen Bank outside of Boston, which I am so happy we have protected into the future.

The law says you can't build energy facilities in those sanctuaries and we shouldn't—and Nantucket Sound is just as important as those.

For 400 years the Sound was considered Massachusetts waters, and it was a protected by the people of our state.

In preparation for the 1986 Supreme Court decision that would specify that this narrow area would be carved out as Federal land, we took special care to get on the national marine sanctuary site evaluation list. We didn't want to take any chances then, and we're still on the list. At a minimum, no industrial project should be built there until we can resolve that status.

And now we have a developer who wants complete control over 24 miles in the middle of the Sound, even though no government agency has zoned it for energy development yet.

We know that the U.S. Commission on Ocean Policy called for a comprehensive siting policy, and that Interior is now working on it. We endorse that approach completely, but this developer is undermining that.

And the American people should know just what this developer is getting for this no-bid, no-compete contract. There will be at least $28 million a year in federal tax benefits available to the developer that's $280 million over 10 years.

And in Massachusetts, the developer will be eligible for between $37 million and $82 million a year in price subsidies under the renewable energy credit program. That's $370 million to $820 million in price subsidies over 10 years.

Then there's the fact that the company will be able to write off the $800 million cost of this project off in just 5 years.

This is a boondoggle, and it's an outrage the developer's getting a no-bid contract to a public resource. We've seen what no-bid contracts can do, Mr. President.

Who pays when we talk about subsidies? It comes out of the taxpayers' pockets when we talk about subsidies.

It is a great deal for this developer. It is a great deal for his investors. It is a great deal for the venture capitalists. They will get so much money they will not be able to count it. But it shouldn't be done without the voice, without the consideration, and without the interest of the State, let alone the many groups that oppose this project and fear that it will undermine the safety, environment, and economic interests of the region for years to come.

I thank the Senator from Alaska for his hard work on this bill and this provision.

Let me ask the Senator—and I know the time is up—I understand if this proposal were for an LNG facility in Nantucket Sound, the Governor of Massachusetts would have the same authority under the Deepwater Port Act that we're seeking here for this project. Am I correct?

Mr. STEVENS. That is right.

Mr. KENNEDY. We need LNG and we need more energy sources, but if they had decided here to do an LNG on this site, the Governor would have a voice in that, am I correct?

Mr. STEVENS. I believe the Senator is correct.

Mr. KENNEDY. So this idea about having a voice on this makes a good deal of sense.

I thank the Senator from Alaska.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from South Dakota.

Mr. THUNE. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Ten minutes remains.

Mr. THUNE. Mr. President, I ask unanimous consent, if necessary, that I have a couple of additional minutes beyond that. I believe the other side was granted a little bit of extra time when they were addressing this issue as well.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The Senator will have an additional 2 minutes.

Mr. THUNE. Mr. President, last week the Robert Wood Johnson Foundation sponsored ''Cover the Uninsured'' week, a call for this country to wake up and address a huge and growing problem in our Nation. In 2004, approximately 19.1 percent of nonelderly Americans did not have health insurance. That number is growing.

Why do we have this problem in one of the wealthiest nations in the world? It is because nearly one-half of the 45 million uninsured individuals in the United States are either employees of small firms or family members of small business employees.

The primary reason cited by small businesses themselves for not offering health benefits is simply the high cost of health insurance. We can do something about that beginning today. We

also have this problem because Congress has repeatedly failed to do its job in the past. We can also do something about that, beginning today.

Today the Senate voted on a motion to proceed to S. 1955, which is a bipartisan bill addressing the issue of the working uninsured. This legislation allows the creation of small business health plans to help lower the cost of health care for small business owners and their employees.

Our colleagues on the other side have also offered some legislation today to address this issue. Senators DURBIN and LINCOLN have talked about their particular proposal, which is a Government approach. In fact, they say it saves money, but it shifts the costs over to the taxpayers, to the tune of $73 billion over a 10-year period. Why would we ask for taxpayers to foot the bill before we have allowed the small businesses of this country to take advantage of a market-based approach and to use the market forces that exist out there in a way that would drive health care costs down for them and their employees? It is very simply a difference of philosophy.

Our philosophy—the approach contemplated under S. 1955—deals with a market-based solution to this issue. The proposal, S. 2510, by our colleagues on the other side is a Federal Government solution to this issue, at a great cost, I might add, to the taxpayers of $73 billion over a 10-year period.

S. 1955, the Enzi bill, which, as I said earlier, we were able to move to proceed to today, would lower the cost of care for employers and employees. In addition, the Congressional Budget Office estimates S. 1955 would reduce net Federal spending for Medicaid by about $790 million over the next 10 years. It would also save the States of this country about $600 million in the cost of Medicaid over a 10-year period. That is in addition, as I said, to the savings that would be achieved for small businesses.

The Congressional Budget Office has analyzed this particular piece of legislation and concluded it would save somewhere between 2 and 3 percent for small firms in this country on the cost of their health insurance. What is significant about this, as well, in contrast to the proposal by our colleagues on the other side, which would cost an additional $73 billion over the course of the next 10 years, is the Congressional Budget Office said that the Enzi bill, S. 1955, would increase tax revenues coming into the Government by $3.3 billion over 10 years because lower spending on health insurance would increase the share of employee compensation paid in taxable wages and salaries versus tax-excluded health benefits. In other words, lower spending on health insurance would translate into higher wages and salaries and actually would also generate more revenue for the Federal Government rather than less, which is what would happen under the proposal by the Democrats, which would cost the taxpayers $73 billion, according to the Congressional Budget Office, over a 10-year period.

So I believe it is important we move forward and we vote to send S. 1955 out of the Senate to conference with the House. As a Member of the House of Representatives, I voted for the creation of small business health plans numerous times. In fact, that particular proposal has been voted on no fewer than eight times in the House of Representatives.

Every time I voted when I was a Member of the House, and every time it has been passed by the House of Representatives, it has come to the Senate and has been unable to be voted on because it has been filibustered, obstructed by the other side. I would say, that is in spite of the fact that if it were allowed an up-or-down vote in the Senate, I believe there would be a decisive bipartisan majority in favor of this legislation.

Unfortunately, due to obstructionism, the Senate, until today, has never voted on legislation creating small business health plans. As a Congressman and now Senator, I have listened to many accusations about the harm that S. 1955 or similar legislation would do if it were enacted.

What harm would be caused by decreasing the cost of health care for small employers by 12 percent and increasing the coverage of the working uninsured by 8 percent? Lower cost and more coverage for those who are currently uninsured: That is not harm. That is exactly what we ought to be accomplishing here by enacting legislation that would make health care coverage more affordable and more available to more Americans.

South Dakota has an estimated 72,949 small businesses as of 2004, which is an increase of 2.4 percent from the previous year in 2003. South Dakota also had an estimated 90,000 uninsured individuals or 12 percent of our population in the year 2004. Fifty-two percent of South Dakotans had employer-based health insurance, 8 percent below the national average.

Small businesses are the backbone of South Dakota's, as well as our Nation's, economy. It is time these businesses were placed on a level playing field and allowed to pool together to purchase health insurance, like large employers and unions.

I have heard from many provider groups in my State of South Dakota concerned about coverage for their specific services. S. 1955 allows small business health plans to offer a basic benefit plan that would be exempt from State mandates as long as the small business health plan also offers an enhanced benefits option that includes at least those covered benefits and providers that are covered by a State employee health benefit plan in one of the five most populated States in this country.

According to the Council for Affordable Health Insurance, all of these States—all of these States—require coverage for alcoholism, breast reconstruction, diabetes self-management, diabetic supplies, emergency services, mammograms, mastectomy stays, maternity stays, general mental health, chiropractors, optometrists, podiatrists, psychologists, and social workers.

Small business owners want to give their employees the best health coverage possible under their budgets to recruit and retrain their workforce. Facts suggest self-insured large company health plans, currently exempt from State mandates, generally cover services important to their employees.

This legislation would create new options for small businesses and the potential for a choice in health plans for their employees. Today, only 10 percent of firms with 50 or fewer employees offer their workforce a choice of more than one health plan. Lowering the administrative costs of health insurance plans will give small firms new and better coverage choices for their workers.

Additionally, the GAO found that the added cost of mandates to a typical plan is between 5 and 22 percent. CBO estimates that every 1-percent increase in insurance costs results in 200,000 to 300,000 more uninsured Americans. When the cost of health insurance goes up, coverage and access go down.

The concept behind S. 1955 is very simple: to provide health insurance to small businesses that is both affordable and accessible. Small businesses not only in my State of South Dakota but across the Nation have been fighting for the creation of small business health plans for over 10 years. It is high time that the obstruction end in the Senate, that the Senate step aside and allow an up-and-down vote on this very important legislation.

As I said before, it is legislation that, if you look at just the Congressional Budget Office findings, would cover nearly a million more people, would allow three out of every four small business employees to pay lower premiums than they currently pay under current law, and would see small firms' premium costs decline by 2 to 3 percent. The average decrease per firm would likely be greater, since the CBO estimate is a total that factors in the costs of other benefits added by firms in response to the reduction in premiums.

It would also allow annual spending on employer-sponsored health insurance to be reduced by about $2 billion in a 5-year period. As I said earlier, it would increase Federal tax revenues by $3.3 billion over 10 years because lower spending on health insurance would increase the share of employee compensation paid in taxable wages and salaries versus tax-excluded health benefits—more coverage; lower costs; more revenue to the Federal Treasury, not less. The alternative offered by our colleagues on the other side, as I said earlier, comes at a high cost to the taxpayers: $73 billion over a 5-year period.

We can do better. We can allow the market forces of this country to be used. We can take a market-based approach to this issue and do something that has been done a long time ago, something that has, as I said, been voted on repeatedly in the House of Representatives, never to have been voted on here in the Senate, because it has been blocked.

It is high time for the small businesses of this country, for their employees, for families who lack coverage today, to have another tool at their disposal, a tool that takes into account and takes full advantage of market forces, by allowing small businesses to group together to leverage their size, to drive down the rates they pay for health insurance and, thereby, cover more of their employees.

That, again, is in stark contrast to the model and the proposal that is being offered by our colleagues on the other side, which consists of a government-based solution, that comes at a very high cost to the taxpayers, that calls for more bureaucracy and red-tape, and does nothing in the end to bring down the cost of health care for small businesses in this country.

It is long overdue. I hope, as we have the chance to debate this now in the Senate, once that debate is concluded, we will be able to proceed to a vote because the one thing that has always been missed here in the Senate, despite action on eight different occasions in the House, is an actual up-and-down vote in the Senate that would allow the Senate to speak on the issue of whether we want to do something meaningful to reduce the cost of health care for small businesses in this country, to provide more coverage for those who are currently uninsured, and also to do something that would reduce the cost to the Government, the cost of Medicaid, as well as the other costs that are associated, as I said earlier, by increasing the amount that would come into the Treasury.

For those reasons, Mr. President, I ask my colleagues to support this legislation.

I yield back the remainder of my time.

The PRESIDING OFFICER. The time until 4:30 is controlled by the minority.

The Senator from Iowa.

Mr. HARKIN. Mr. President, here we are on day 2 of Health Week, and there are still no plans to bring up H.R. 810, the stem cell research bill.

This bill was passed by the House of Representatives 351 days ago—almost a year ago now—with still no action here in the Senate. Yet the majority of Senators are for it. I do not understand how in the world we can have a Health Week in the Senate and not vote on the American public's No. 1 health research priority: lifting the President's restriction on embryonic stem cell research.

That seems to be what we are doing. We are wasting our time on bills that everyone knows are not going to pass. We are passing up a golden opportunity to promote one of the most promising areas of research in our lifetimes.

Most people by now have heard of the enormous potential of embryonic stem cells. These cells have the remarkable ability to turn into every other type of cell in the human body—brain cells that could replace those lost in Parkinson's disease, islet cells to replace those lost in type 1 diabetes, and on and on. Adult stem cells don't have that power, only embryonic stem cells. That is why the world's best scientists think embryonic stem cell research has so much promise to save lives and ease human suffering. It is also why they are so frustrated by the President's arbitrary restrictions on stem cell research.

Under the President's guidelines, Federal funding can be used for research only on those stem cell lines that were created before August 9, 2001, at 9 p.m. Where did that date come from? Out of thin air? If the stem cell lines were created at 8:30 p.m., they are fine, they are moral, they are OK. If they were created at 9:30 p.m., all of a sudden they missed the cutoff. It is totally arbitrary.

Shortly after the President announced his policy, he said 78 stem cell lines were eligible under his guidelines. It turns out that only 22 are. In fact, it is even worse. Only a handful of those are even healthy enough and readily available. More importantly, all of the 22 lines that are available have been contaminated by mouse cells. They have been grown in a mouse feeder cell environment. It is unlikely they will ever be used for any kind of human intervention, which is supposed to be the whole point of the research anyway.

Dozens more stem cell lines have been created since August 9, 2001. They are healthier. Many have never been contaminated with mouse cells. But thanks to President Bush, they are off limits to our best scientists.

Yet opponents of H.R. 810 sometimes argue that embryonic stem cell research has no potential. Last week, Senator BROWNBACK presented a list of diseases that are being treated with adult stem cells and asked why that hasn't happened yet with embryonic stem cells. Let me address that directly. Scientists have been doing research on adult stem cells for over 30 years. There are no arbitrary restrictions on research with adult stem cells. Scientists and private companies don't have to be skittish about doing this research. They don't have to worry that all of a sudden the Federal Government is going to ban it or limit it.

Let's compare that situation with human embryonic stem cells. Scientists didn't even know how to derive them until 1998. The first Federal grant for these stem cells wasn't awarded until 2002. Even now, only a tiny fraction of the total Federal budget for stem cell research is used for embryonic stem cells. The vast majority goes for adult stem cell research, and every scientist who enters this field is taking a risk that Congress will pass a law to shut down the lab. They also risk that they won't get any 1 of the 22 lines contaminated by mouse feeder cells which they will then not be able to use for human therapy. So it is no wonder that more diseases are being treated today with adult stem cells. Adult stem cell research had a 30-year head start. Meanwhile, scientists have been studying embryonic stem cells for just 5 years with one arm tied behind their back.

The fact is, it doesn't matter what I think about the potential of embryonic stem cell research. It doesn't matter what Senator BROWNBACK thinks either. What matters is what the scientists think. And I defy anyone to find a single reputable biomedical scientist whose doesn't believe we should pursue embryonic stem cell research.

I have a letter from Dr. J. Michael Bishop who won the Nobel Prize in medicine in 1989. He writes:

> The vast majority of the biomedical research community believes that human embryonic stem cells are likely to be the source of key discoveries related to many debilitating diseases. . . . In fact, some of the strongest advocates for human embryonic stem cell research are those scientists who have devoted their careers to the study of adult stem cells.

A letter from Dr. Alfred G. Gilman, who won the Nobel Prize for medicine in 1994:

> It has become obvious, however, that the number of stem cell lines actually available under current policy is too small and is controlled by a limited monopoly, which has made it significantly more difficult and expensive for research to be conducted. These limits have hindered the important search for new understanding and treatment of devastating diseases.

I have similar letters from Dr. Ferid Murad, who won the Nobel Prize for medicine in 1998; Dr. Arthur Kornberg, who won the Nobel Prize in medicine in 1959; and dozens more of our Nation's top researchers—all of whom believe in the potential of embryonic stem cell research. I ask my friend from Kansas, in response to his speech of late last week: Are there any Nobel Prize winners in medicine who oppose embryonic stem cell research? Name one.

In fact, I challenge him further: Are there any reputable biomedical researchers at all who think we should be studying adult stem cells only and not embryonic stem cells? Name one.

I don't think he will find one. Every scientist I have spoken to says stem cell research should not be an either/or endeavor. We should not be talking about stem cell research or embryonic stem cell research. We should study both. We should open all doors in the pursuit of therapies that can save lives and ease human suffering. The breakthroughs are coming, but they take time. To clamp down on embryonic stem cell research before it even has a chance to start shows a total lack of understanding about how science

works. More importantly, it denies hope to millions of Americans who suffer from Parkinson's, ALS, juvenile diabetes, spinal cord injuries, and dozens of other terrible diseases and conditions.

We are rapidly approaching the 1-year anniversary of the vote in the House on H.R. 810. It has been 351 days since the House passed it on a strong bipartisan vote. If the Senate were allowed to vote on H.R. 810, we would win here, too. We have the votes. We would pass this bill and send it on to the President. Regrettably, however, the Republican leadership has not let that happen. So here we are, we are going through this farce—it is farcical—comedy, gimmickry of a so-called Health Week without taking up the American public's No. 1 health research priority.

It is Tuesday. Health Week lasts for 3 more days. We could pass H.R. 810 in a matter of hours. I urge the majority leader, take up the bill. Let the Senate have a quantified amount of time to debate it. We will pass it, and we will give millions of Americans who are suffering from diseases the hope they deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, before he leaves the floor, I say to my colleague from Iowa, Senator HARKIN, how much I appreciate his leadership in the area of health care. His analysis of where we stand on the stem cell issue is so appropriate, and he is so right. Here we have a whole area of scientific research that is waiting to take off. We have States, such as mine and others, that are taking the lead instead of following the lead of the Federal Government.

I say to my friend, does he ever remember a time in history when this country was plagued by disease that the Federal Government didn't step to the plate, whether there was a Republican President or a Democratic President? Isn't it shocking that as we face these epidemics of Alzheimer's and Parkinson's and cancer and heart disease and all the others my friend mentioned, isn't it amazing—I am sure it is to him as well as to me—that we have a lack of leadership in Washington?

Mr. HARKIN. I say to the Senator from California, it is not just amazing, it is shameful. It is shameful what is happening now with the lack of support for biomedical research, especially embryonic stem cell research. As I said, every Nobel Prize winner in medicine, all the reputable scientists say we should be on it and we should be on it strongly. Yet the President, through this arbitrary cutoff, is denying this for scientists, denying it to people who are suffering. I say to my friend from California, God bless California. They took the lead out there. Her State has taken the lead. They are forging ahead. Other States are following their lead. If only we could get the Federal Government to follow their lead.

Mrs. BOXER. As my friend pointed out in his statement, we have the votes for stem cell research, even with the President's opposition. If we asked for a show of hands in any roomful of people: Have you been touched by cancer, have you not personally or someone you know been touched by heart disease, by stroke, by Alzheimer's, Parkinson's, paralysis, all these things, we know how many hands would go up.

Mr. HARKIN. Juvenile diabetes.

Mrs. BOXER. That is clearly one. And I have met with juvenile diabetics. I have met with the children, the parents and the families. They are counting on us. Here we are in Health Week, as my friend points out. We have the votes. Yet what do they bring up? A bill that is actually going to take away health care from people, the Enzi bill.

Mr. HARKIN. Exactly. I appreciate my colleague from California. She is right on target. I know my friend from California, the distinguished Senator, has been in the forefront of fighting for the things that will help people have better lives, especially in health care, and to ease the pain and suffering of people, especially juvenile diabetics.

As the Senator knows, the families tell us that perhaps one of the first therapies that could come from embryonic stem cell research would be for these kids suffering from juvenile diabetes. What a great day that would be.

I thank the Senator for her comments and strong leadership in all the areas of health care, and I thank California, through her, for the leadership they have shown.

Mrs. BOXER. I am very proud of my State.

In my State the gentleman who took the lead in putting the stem cell research initiative on the ballot has a child with juvenile diabetes. Watching that child suffer and struggle motivated him. He ignited this wonderful movement in our State. Shockingly, here we are in Health Week and this thing is nowhere to be seen. It is another example of why we need change around this place. I thank my friend.

This Health Week Republican style is really fascinating when you look at the bills that have come before us. The first two bills would have hurt patients who were injured by malpractice, patients who might have been made infertile or harmed in many ways. Those two bills took away the rights of patients.

The PRESIDING OFFICER. The minority's time has expired.

Mrs. BOXER. I ask unanimous consent to speak another 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. BOXER. I ask unanimous consent to suggest a quorum call.

Mr. ENZI. Mr. President, under the unanimous consent agreement, we are alternating every 30 minutes.

The PRESIDING OFFICER. Under the precedents of the Senate, the Senator must control at least 10 minutes in order to suggest the absence of a quorum.

Mrs. BOXER. I ask unanimous consent that at 5 o'clock I be given the floor for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. Mr. President, reserving the right to object, the Senator's side controls the time at that time. So if they want to give the Senator the 10 minutes, there would be no objection to that. It would come out of the Democratic time.

Mrs. BOXER. I thank the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

Mr. ENZI. Mr. President, first, I apologize for the confusion over the unanimous consent that we had. It was designed early this morning to make sure each side had an opportunity to have an equal amount of say on the 30 hours that we are working on in order to actually get to amendments on this bill. Now that we have had cloture and everybody has agreed, or almost everybody, that we needed to proceed on the bill, we are talking about an issue that is huge to small businesses out there and wanting to find some kind of solution. We even suggested that perhaps they would like to reduce the number of hours of debate about the right to proceed so that we could actually get to offering amendments. But we have a 30-hour time requirement. That could be reduced by unanimous consent, or even eliminated by unanimous consent. But it has not been, so we will try to keep on a half-hour rotating basis so that as many people as possible can have something to say on the bill.

I am going to take a few minutes at this point to talk about this issue. We have been talking about health care. One advantage of having this 30 hours is to have some additional health care debate. I need to talk a little bit about prescription drugs Part D. That is not part of the motion to proceed, but it has been talked about a number of times on the Senate floor today. There are some confusing things out there for seniors that I would like to clear up.

I have been taking the last two recesses to travel across Wyoming and hold meetings with senior citizens to explain the prescription drug plan to get them signed up so they can get the benefit. There is some confusion out there. When we were designing the plan, we were worried that there would not be any plan interested in our small population in Wyoming. We have less than 500,000 people in our State. Our biggest city has 52,000 people. So we have a little bit of trouble finding a big enough pool for anything and to encourage interest. So I asked that there be kind of a Federal backup plan on it, and that was put in the bill.

But when the time came around for companies to offer plans in Wyoming, obviously, they were even excited about 500,000 people because we had 41

plans respond. That is competition. That competition brought the prices down by 25 percent before the people even applied for the benefit. A huge decrease in cost; that is cost by competition. The downside is that 41 plans create confusion. If you have ever tried to buy insurance and talk to a number of different insurance salesmen, every package is designed slightly different to make it a little bit more confusing so that their plan looks better, but it is also harder for you to make comparisons.

There is an easy way to make comparisons. Medicare saw that coming and set up a computer analyzation so that all you have to know is what your prescriptions are and what the doses are. You can put them in over the Internet or you can talk to somebody live by an 800 number or there are a lot of volunteers across America who are helping to get this information out. It lets Medicare do the math. They will present you with three or four plans that meet your prescription, your doses, and your criteria for where you want to buy it. You can look at these line by line. All the lines match up and you can compare them and find the best one for you. It has been a tremendous help.

My mother asked me to help her on her decision. There are kids across the United States—kids like me—who need to be helping their moms on these kinds of decisions. I was happy to do it because it gave me an opportunity to try out the telephone method, the Internet method, and I talked to a number of volunteers and the local pharmacist. We owe the local pharmacist a great deal of thanks for the way this is working and the difficulties that they have had doing a new program. We have not had a big change in the program in decades. When we first had Medicare, there were problems. They got worked out. When we started this one, there were problems, and I think they have mostly been worked out.

Occasionally, at these hearings, somebody was having a problem. A hour and a half was the longest it took us to straighten out any problem for anybody. I ran this process and came up with these four best at the least cost for my mom.

One of the things that people raise in those sections is they say: I don't need any drugs so I should not have to do this. I should not have to pay a penalty later.

The way insurance works is that you buy into the plan usually before you get sick. You pay a premium and when you get sick, then you have the coverage for the things that can happen to you in the future.

Medicare prescription Part D is completely different because you can already have a huge medical problem and a lot of prescriptions and you can sign up for this now and have a maximum guaranteed cost. I know of people who are actually saving thousands of dollars because they signed up. If you don't have anything the matter with you and you don't want to buy into a big plan, you run the evaluation and you can find a small plan you can buy into.

One in Wyoming is $1.87 a month. What if the $1.87 a month doesn't cover me if I have something really bad happen to me? Well, every November 15 to December 31 you can change your mind. You can change your company, and they cannot stop you. Tell me where else insurance works like that. Every November 15 to December 31, you can change your mind and sign up for a plan that has new kinds of benefits for you that match new illnesses that you might have.

This is working for the people who have paid attention. It is easy to have Medicare do the math. So everybody out there who hasn't signed up needs to talk to the volunteers, probably at their senior citizen center or call the 1–800 number or get on the Medicare Internet site and have that plan figured out for you. It takes a few minutes and you can be set so that you, first of all, won't have any penalties, but, secondly, you will have some tremendous benefits as you need the medication. It has made a huge difference.

Some people have talked about negotiating the price. When I was doing these hearings, I had some difficulty with people who showed up and said: You know, there are some medications I really want to have, that I am supposed to have, and I cannot get them. Well, when I checked, those were the veterans, and the veterans' prices are negotiated, and when they negotiate prices, they pick a similar drug and get the best price by kind of fixing the price on it and driving the price down through this bidding war. But it eliminates medications. Yes, there are medications you can take. It may not be the medication your doctor thinks is absolutely the best. But that is what happens with negotiated prices.

So what we relied on in the Medicare prescription Part D was competition, and competition has happened. Prices came down 25 percent, and then people who signed up for the program who are using medications found out that they are also saving another 25 percent as the least amount, or 37 percent as the average amount, and some people are getting 83 percent—I say some people. I know some people who are getting several thousand times more than what they are paying in because they are into the catastrophic care. I wasn't even listing the catastrophic care.

The important thing is that we need to tell people and help people to sign up by May 15. It is a tremendous benefit. We have had more people sign up than we had anticipated signing up. That means, again, a bigger market; that means lower costs. So it works for all of us when people sign up. Remember, there are plans out there. If they have them for $1.87 a month in Wyoming, I bet they have that at $1.87 or less every place in the country. Look at those if you are not using any medication.

So that is what competition does. That is the purpose of the bill that we are talking about and that we have actually had the motion to proceed on, not the ones that fall under other committees' jurisdictions, such as Medicare or stem cells or some of the other things that have been talked about here. Those are things that actually—this falls under the jurisdiction of the Health, Education, Labor and Pensions Committee. We took the bill through committee that has never been through the Senate before. The House passed a bill that is considerably more liberal and difficult than the one that we passed. They passed it eight times over there in a very bipartisan way. If we have the same Democratic Senators over here vote for it that had Democrats in the House vote for it, we will pass this bill easily. Even if there is a filibuster, we will pass it because it is a concept that small businesses have been asking for. This is the first opportunity we have had to provide it for them.

We did it by being very conservative in the approach and going to a situation where we could work across State borders, so that associations could build a big enough pool that they could effectively work with their insurance companies to get these multiple competition bids. We are certain that it will work. One of the reasons we are certain that it will work is because it has been tried within States. But those who have tried it within States have found that it works very well, and they know it would work even better if they could go across State borders. So even those who are doing it are asking to do it on a wider scale than what they have been. For a lot of the States that have less population, yes, they want to be able to do it at all. They don't have big enough pools within their States to do it, so they want to be able to go across the State borders.

I want to discuss a little bit why we need to pass S. 1955 and allow for the creation of these small business health plans. First of all, the concept of allowing small businesses to join together to find better prices for health insurance is not new, as I mentioned. Many organizations have offered nationwide health plans to members in the past. But States continued to add mandated benefits and other regulations to their insurance markets during the 1980s and 1990s, and the administrative hassles and costs associated with the mandates and regulations became too much of a burden for existing plans that could no longer offer an affordable benefit on a national basis. So they discontinued the plans.

The Associated Builders and Contractors organization, known as ABC, is an unfortunate example of this problem. Their insurance carrier refused to continue doing business with the ABC insurance trust in the late 1990s because

the panoply of 50 different State regulations and excessive benefit mandates made it impractical and unattractive for the insurance company to continue the program. ABC was unable to find another carrier to pick up their business.

This chart kind of shows how health care costs have gone. I don't think there is any argument on either side of the aisle that this is what has happened. There has been a rapid escalation, and compared to what it used to be, there has been a rapid escalation for a long time, oddly enough. We are up to a national average cost per employee of about $8,000 a year. That doesn't include the part the individuals are paying, which brings it up to about $11,000 a year. That is the amount we have been talking about on both sides of the aisle today.

What is truly unfortunate is that workers at ABC's member companies were benefiting from this program, and the companies were saving money on their health care expenses. The health plan sponsored by ABC for nearly 45 years had total administrative expenses of about 13 cents for every dollar in premium. These costs included all marketing administration, insurance company risk, claim payment expenses, and State premium taxes. Compare this to the small business employers who purchase coverage directly from an insurance company. The total expenses for most small businesses today can approach 35 cents for every dollar of premium. So saving nearly 25 cents on a dollar is real money, especially in today's health insurance prices.

The other benefit to ABC's member companies and employees is that any profit generated by their health plan stays in the plan. This also helped keep costs down. So the idea isn't new, and it has worked before.

But Congress needs to act before small business organizations can resurrect their defunct programs and before other organizations can start new ones. Congress considered fixing this problem during debate over the Health Insurance Portability and Accountability Act in 1996—it is better known as HIPAA—but the small business affordability provisions in the House bill were dropped during the conference between the House and the Senate in the final bill. As a result, HIPAA only addressed access to health insurance and not affordability. So now everyone has access to health insurance policies, but the policies themselves are unaffordable to many. When I became chairman of the Committee on Health, Education, Labor, and Pensions last year, I announced that I would bring a health insurance affordability bill before the committee so we could finish the job we started 10 years ago—in other words, to make it possible for all Americans to have access to a health insurance policy that is affordable.

Many were skeptical then, and some may still be skeptical now, but the time for more of the same is over. America's working families want change, and they are tired of excuses from Congress.

Small businesses and working families are demanding relief from high health insurance costs. And it is no wonder. This year, employers are paying twice what they were paying in the year 2000 for health insurance. That is correct. What businesses paid for health insurance has doubled over the past 6 years. That is a pace we can't keep up.

This cost squeeze hurts small businesses the most. The highest rates of uninsured workers can be found in businesses with 25 or fewer workers. Only 60 percent of the Nation's businesses are offering health insurance these days, down from nearly 75 percent just 5 years ago.

Small businesses and working families are stuck on the escalator of rising health insurance costs, with no end in sight. And in a tight labor market, small business owners don't want to jump off this fast-moving escalator because dropping health insurance puts them at a major disadvantage in competing for the best workers. We need to give them a safe place to get off this escalator of rising costs, somewhere where it is more affordable for themselves and working families, and the small business health plan will give them that option.

Mr. President, I yield the floor to the Senator from North Carolina.

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

Mr. BURR. Mr. President, the chairman has brought a carefully crafted piece of legislation to the Senate floor, one that took a tremendous amount of skill to negotiate and one that has incredible support—more support when the bill passed out of committee than it does today. Why? Because people now fear it might become law. People fear this might pass, and they never believed it would. What does it do? It brings additional competition to the marketplace, but more importantly, it brings health care coverage to Americans who have no coverage today.

Why are we here today, on Tuesday afternoon at almost 5 o'clock? Because the Senate is in a 30-hour debate about whether we are going to be willing or able to proceed. We are not even on the bill yet; we are in a procedural mode which requires us to have a vote to proceed to consider whether we are going to have a debate on this bill, S. 1955, a bill that changes the choices of the uninsured population in America.

The choices they have today are nothing and nothing. Under any scenario, you would have unanimous support to change that. But there are actually people who are against that up here, but not across the country. As a matter of fact, in this poll done by Public Opinion Strategies in March of this year, over 80 percent of the people polled overwhelmingly support small business health plans; in other words, they support this legislation—the effort to bring new choices of products that are affordable to small businesses, to employers, and, more importantly, to the employees they hire.

In North Carolina, we have 671,000 small businesses. Ninety-eight percent of firms with employees are small businesses in North Carolina. Don't let anybody come to the floor and tell you that this bill does not have an effect except on a select group of people. It may be a select group of people, but it is 98 percent of the employers of North Carolina. Women-owned small businesses have increased 24 percent in North Carolina since 1997, Hispanic-owned small businesses have increased 24 percent since the same date, Black-owned small businesses have increased 31 percent since 1997, and Asian-owned small businesses have increased 74 percent since 1997. These are companies which benefit from this legislation. These are companies which today can't afford the premium costs of health insurance; therefore, their employee base goes without. They are in that category of uninsured that so many people come and talk about on this floor, but they talk about uninsured without the solution as to how to cover them.

This is a population which in some cases today is on Medicaid. They work full-time. Their income level qualifies them for Medicaid. And what would be the incentive for them to get off of Medicaid? It would be if their employer has the option to offer them health care the way the majority of America is now provided health care: through their employer. But we are here in 30 hours of debate trying to decide whether we are going to allow Members to come to the floor and debate a bill and offer amendments which will allow us to switch from nothing and nothing to nothing and something, which will allow us to inject something, some ray of hope into the millions of Americans who don't have coverage today.

Let me read a few letters. I think it is always helpful to hear from people whom this affects, the human face behind the issues that sometimes we lose on this floor simply because we don't want to talk about names or pictures.

This is a woman from Sunbury, NC. She wrote me in mid-April of this year. I am just going to read some pieces. She says:

> Support SBHP legislation, S. 1955. I feel that this is very important because I haven't had health insurance in many years, because my employer doesn't have access to affordable insurance to offer us.

Some suggest on this Senate floor that is not the case, that everybody has the opportunity to have health insurance. ''I haven't had health insurance in many years.'' Why? ''Because my employer can't afford what is available.''

Another letter received in April of this year from a young lady in Elizabeth City, NC:

> Please support Senate bill 1955, the Health Insurance Marketplace Modernization and

Affordability Act. My employer cannot afford health insurance for their employees. My husband works for Ford. They are closing his plant soon. We will have no insurance unless my employer offers it. I have premature twins. They were born 3 months early. It costs me $2,000 a month to feed them. That does not include any doctor's appointments we have to go to. I feel that this is a great bill.

What is America looking for? They are looking for hope. They are looking for us to produce a product out of this institution that actually fulfills their needs. I don't know how it can be any clearer.

It is not offered to me today, because my employer can't afford the options that are in our marketplace.

What do we do? We create new options that are affordable. That is, in fact, what the chairman is trying to do with this bill.

Here is a third letter, also from Elizabeth City but a different business. It says:

Small businesses need help with insurance—

In big bold letters—

I am now paying $986 per month for my wife and myself. This is for only 60 percent coverage and a $2,500 deductible. I know people with group insurance who are paying $600 a month for 80 percent coverage and a $250 deductible. Many of those have dental insurance as well. My policy provides none. Please vote for this bill. Allow small businesses to have coverage equal to employers of other companies.

That is all we are doing. We are using the scale of what people who have a tremendous amount of employees can do, and that is they can go to insurance carriers and they can negotiate for products based upon the volume of their employees. But how does a small business owner do that when he has five or six or seven employees? Well, it is real simple. We allow them to band together. We allow them to band together into a common association, and we allow that association to then market their entire association based upon the volume.

Another letter that I received on April 6 says:

As a small business owner, it is important to enable some economy of scale in allowing franchises to obtain more affordable health care coverage.

The last one I am going to read is quite unique.

As a professional photographer, I have seen firsthand the difficulty that my fellow professional photographers face when attempting to purchase health insurance on their own. S. 1955 would allow photographers and other independent business owners to band together across State lines and purchase health insurance. Having this as an option and choice will improve our access to quality health care and help control costs through competition.

These letters are from people on the front lines. They are from employees whose employers can't offer coverage today because it is not affordable. They are from individuals who own businesses and would like to offer coverage to their employees. They are even from photographers, people whose lives are in their hands every day in a camera, but they cannot afford the individual costs of health insurance in today's marketplace.

In North Carolina, we have 1.3 million uninsured North Carolinians. Of that 1.3 million, almost 900,000 uninsured individuals are in families or are on their own where one person at least works full-time. With the passage of this bill, 900,000 of the 1.3 million uninsured in North Carolina could potentially be offered health insurance. We can narrow it down from 1.3 million to 400,000 individuals who are uninsured in North Carolina with the passage of one simple bill, or at least they would have the option to be able to purchase it for once. Ninety-one percent of workers in large firms of 1,000 employees or more have health insurance, yet 66 percent of workers in small businesses defined as 10 employees or fewer have health insurance. Well, if you remember the North Carolina numbers, I said 98 percent of firms with employees were small businesses. Think of the millions of Americans who are going to be touched by the passage of this one piece of legislation that provides them choice. Where today their choice is between nothing and nothing, tomorrow their choice is between nothing and something.

Why are we here? We are here for 30 hours of debate—not debate on the bill, not debate about the amendments, debate about whether we are going to move forward. We do that at a time when—I just went back and did a quick calculation on the back of my calendar—we have 76 legislative days left between now and adjournment. That is assuming we have productive days on Fridays and Mondays, and as the chairman knows, Fridays and Mondays are not always productive in the Halls of Congress. People are either slow to get here or quick to leave. If you take out Fridays and Mondays, we are down to 45 days. But we are going to spend 30 hours trying to decide whether we are going to move forward to debate this bill, and we will spend another 30 hours after we file cloture on the bill to get to a point where we can have an up-or-down vote, if, in fact, we get that far.

Last night, we voted on two medical liability bills—medical liability that covers the entire medical professional world—and last night, we were denied the ability to proceed and to debate the legislation, much less amend it. The second bill is legislation in which—and I think the American people would be shocked at this—we were denied the ability to move forward to debate or amend legislation that limited the liability to OB/GYNs in America, a specialty we are losing specialists out of every day, where every year people aren't continuing to practice. But we will spend 30 hours debating whether we proceed to debate not necessarily the merits of the bill—and my hope is that the chairman will be successful, and I will be beside him arguing every step of the way, because without this, these Americans don't have hope of a choice of anything other than nothing and nothing.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ISAKSON). Under the previous order, the Senator from California is recognized.

Mrs. BOXER. Mr. President, my understanding is that Senator DORGAN had time at 5 o'clock set aside, so if he wishes to take it now, then I will wait until his conclusion.

I ask unanimous consent that at the conclusion of Senator DORGAN's remarks I be permitted to speak at that time. Since it is controlled by the Democrats, I can make that request by myself.

The PRESIDING OFFICER. The Senator from North Dakota will be recognized, and at such time as he completes his statement, the Senator from California will be recognized.

Mr. ENZI. That is assuming it comes within the 30-minute parameters?

The PRESIDING OFFICER. The Senator is correct.

Mr. DORGAN. Mr. President, I have listened to some of the debate today. It has been very interesting. The last speaker spoke about choice and choices. I want to talk about choices in health care a bit. This is Health Week, we are told. It is an opportunity, for a change, at long last to talk about some health care issues on the floor of the Senate.

The intent, I believe, of the chairman who brings this bill to the floor is that we should speak only about and address only the issues dealing with small business health plans. However, he knows and I know there are many other health issues that have been long delayed by this Chamber and that need to be debated. I intend to offer a number of amendments. They are in order under the rules of the Senate. They are amendments that deal explicitly with health care issues.

The issue before the Senate is not unimportant. The question of rising health care costs is very significant to everybody—individuals, businesses, governments. Everyone who is a consumer has to deal with increased costs of health care and we should, indeed, address the issue of health care costs for business associations and for small businesses. There is no question about that. I wish to be a part of the group that works on that in a bipartisan way, in a way that expands opportunity, not narrows opportunity; in a way that expands coverage, not narrows coverage; in a way that covers everyone, not just a few. I do not agree that we should make health care unaffordable for the older and sicker and then make profit out of insuring people who are younger and healthier. That is not the right way to do this.

But having said all of that, let me describe some other things that have been long delayed on the floor of the Senate that need to be addressed. Let me talk about the first one. It is the

issue of reimportation of prescription drugs. A bipartisan piece of legislation has been long ago introduced and discussed here on the floor of the Senate, and we have not had the opportunity to vote on it.

The reimportation of prescription drugs, why is that important? Because the American people are charged the highest prices in the world for prescription drugs; it is not even close—the highest prices in the world. Consumers in every other country are paying lower prices. Try to buy Lipitor and if you buy it in the United States you pay a higher price than in any country in the world—France, Germany, England, you name it. You pay the highest prices in the United States. Why should U.S. consumers be charged the highest prices?

With consent, I want to show a couple of things on the floor of the Senate. Let me show, if I might, two bottles of Lipitor. I ask consent to show these on the floor of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. As you can see, they look identical: identical labels, identical pills in the same bottle made by the same company—shipped to two different places. One is shipped to Canada and one is shipped to the United States. The difference? One is half the price of the other. Guess which. It is the Canadian consumer who gets the benefit of paying half the price for the identical prescription drug.

Let me also show a couple of containers of Prevacid. This is a drug that is widely used for ulcers. Once again, as you can see, it is essentially the same bottle, same pill, made by the same company, made in an FDA-approved plant and shipped to two different locations, one to Canada and one to the United States. The difference? This one costs twice as much. Who buys this one? The U.S. consumer; twice as much for the same pill.

An old fellow sitting on a hay bale in North Dakota at a farm meeting said, my wife has been fighting breast cancer for 3 years. She took Tamoxifen for breast cancer. Every 3 months we drove to Canada to get Tamoxifen because it was the only way we could afford it, and we paid about 80 percent less than it would have cost us to buy that prescription drug to treat her breast cancer. We paid 80 percent less by driving to Canada to get it.

The fact is, they allow a small amount of drugs to come across the border for personal use. But other than that, a U.S. consumer cannot access an FDA-approved prescription drug nor can a U.S. pharmacist access that same FDA-approved prescription drug. That is unbelievable. We have a bipartisan group of Members of the Senate who say consumers ought to be able to purchase FDA prescription drugs by reimporting them from other countries. That would put downward pressure on prescription drug prices in this country. A bipartisan group of Senators wants to do that, but we are prevented from doing it by current law. We want to change the law.

Yet we are prevented from changing the law because the majority leader won't bring this legislation to the floor of the Senate. This is something we can offer as an amendment to the bill on the floor. It is well within the rules of the Senate, it deals with health care, and I am serving notice now that this is an amendment we will offer and vote on during the conduct of this discussion, providing we are allowed to offer amendments. I am hearing rumors that perhaps the majority leader will decide to fill the tree legislatively and allow no amendments. If that is the case, it will be a long week, but my hope is he will not do that. If amendments are allowed, I will offer this amendment and will get a vote.

Let me go back to about midnight on the night of March 11, 2004. That is a little over 2 years ago—midnight. The reason I remember it was midnight, I was sitting right back here and I reached an agreement with the majority leader, Senator FRIST. Here is what Senator FRIST announced that evening after our negotiations, and after which I agreed to release the name of Dr. Mark McClellan to be promoted from the head of FDA to the Centers for Medicare and Medicaid Services. As a result of that, Senator FRIST came to the floor and put this in the RECORD.

> I announce for the information of my colleagues that, with consultation with the chairman of the Senate Committee on Health, Education, Labor, Pensions, Senator DORGAN, Senator STABENOW, Senator MCCAIN, Senator COCHRAN, and other interested Senators, the Senate will begin a process for developing proposals that would allow for the safe reimportation of FDA-approved prescription drugs.

Two years later, nothing: No vote on the floor of the Senate, nothing. My colleague, Senator VITTER, sent a letter around a year ago. It says:

> . . . in the context of the Lester Crawford FDA nomination, I obtained an agreement with Majority Leader FRIST regarding drug importation legislation. . . .The Senate will probably hold some floor vote on a reimportation amendment soon, probably on the Agriculture Appropriations bill. Should that vote demonstrate that reimportation has 60-vote support on the floor, then Leader FRIST will be open to and work in good faith toward a floor debate and vote on a reimportation bill. . . .

What happened as a result of that? Nothing. No action, no votes, nothing.

This bill on the floor of the Senate is amendable. This bipartisan amendment deals with health care. It has been long delayed—and no more. I intend to offer this amendment this week.

Finally, at long last, perhaps the American consumers will no longer be charged the highest prices in the world for prescription drugs because they will be able to access FDA-approved drugs by reimporting them from virtually any other country in which the consumers are paying a lesser price for the identical prescription drug. That is unfair to the American people. The only reason we have not changed it yet is there are, regrettably, a few people in this Chamber who have blocked that opportunity, I assume on behalf of the pharmaceutical industry. But that blocking is about done. This week this bill is open for amendment. I intend to come and offer this as an amendment.

That is one.

Let me talk for a moment about another issue, once again long promised here to the Senate. We are told we are going to have an opportunity to do this—again and again and again—and we are not. We don't get the opportunity. It is called stem cell research. It is controversial; there is no question about that. I understand the controversy. But is it important? Yes, it is. We have all these people who talk about life. This is about life. This is about life-giving medical research, to find ways to unlock the mysteries and to cure some of the worst diseases known to people: Alzheimer's, diabetes, cancer, heart disease, Parkinson's. There is an unbelievable opportunity for medical research to unlock the cures for some of these diseases. But we need to proceed with stem cell research.

We have been long promised the opportunity to have a vote on stem cell research on the floor of the Senate, and guess what. No such vote. On May 24, almost 1 year ago, the House of Representatives passed a bill on stem cell research. We are still waiting to have a vote on that here on the floor of the Senate—once again, a bill with bipartisan support.

Let me describe, if I might, the importance of this in the eyes of a young woman. I met with this young girl about 2 weeks ago. It is not the first time I met her. She is a young lady, Camille Johnson, 13 years old, diagnosed with type 1 diabetes at age 4. She is the one in the middle, playing the clarinet. She has had some very serious health problems, some very serious problems in her young life. She would like very much to live her life without diabetes. She would like diabetes to be cured for her and millions of others.

In 2002, scientists at Stanford University used special chemicals to what is called transform undifferentiated embryonic stem cells of mice into cell masses that resemble islets found in the mouse pancreas. When this tissue is transplanted into the diabetic mice, it produces insulin in response to high glucose levels in animals. Wouldn't it be wonderful if, through this stem cell research, we cure diabetes; if we could tell this young woman your life is not going to be a life of diabetes. We can cure that disease.

I have been involved in political campaigns recently and have been told by opponents that my proposal and my position on stem cell research is one that

murders embryos. Nothing could be further from the truth, nothing at all. Do you know there are 1 million people living among us, walking, breathing, talking—1 million people who were conceived through in vitro fertilization? One million people. When that in vitro fertilization takes place, the uniting of a sperm and an egg in a petri dish, more than a single embryo is created. A number of embryos are created in that process. Some are implanted into the uterus of a woman and some become a human being. Some are cryogenically frozen and stored in the event they should be used again if this did not result in a pregnancy.

There are some 400,000 of those embryos frozen at in vitro clinics right now, 400,000 of them, and 8,000 to 11,000 are discarded, thrown away, every year. They become hospital waste.

Should some perhaps be used for stem cell research with the hope of saving lives? The answer clearly is yes. This is not about murdering an embryo. If in fact this is the murder of an embryo, then the discarding of the embryos at the in vitro fertilization clinic, 8,000 to 11,000 a year, is also murder.

We had one person testify at the Commerce Committee a couple of years ago who said those 1 million people who are here as a result of in vitro fertilization should not be here; it was wrong to create these people. Tell that to the parents who had those children; the childless parents who, through in vitro fertilization, discovered the miracle of having a child.

The question of stem cell research is not about murdering an embryo, it is about an opportunity to cure some of the dreaded diseases.

The other issue—and the reason I am talking about this is this is a big issue that we are not allowed to vote on in the Senate. This, too, should be an amendment on this bill. This, too, during Health Week is a very important issue dealing with health.

The other side of this research is something called somatic cell nuclear transfer. Simply it is this: Let us assume a patient takes a skin cell from their own earlobe and that skin cell from their earlobe is then put in an evacuated egg and stimulated to become a blastocyst of a couple of hundred cells.

That blastocyst now has predictor cells. They use the predictor cells for heart muscle, to inject back into the heart muscle to grow a stronger heart, to repair a heart attack.

Some would say you have destroyed or murdered an embryo. There is no fertilized egg. There is only the skin cell from the person who had the heart attack whose cell is now being used, through somatic cell nuclear transfer, to save that person's life. This is about lifesaving. Yet we have so many here who said: Let's not worry about these diseases. Let's shut off this research because we think it is about murdering embryos.

That is not what this is about. It is about this young girl and whether we decide we want this young girl to live her life as a diabetic, a life filled with hope at this point that Congress will finally do the right thing.

The House of Representatives did it. The Senate needs to vote on it. Perhaps this week is as good a week as any. We have been promised. A year ago we were promised, just like drug reimportation. This Chamber is full of promises, but we never quite get to vote on important issues.

I am not suggesting that when I talk about stem cell research that there are not ethical considerations, without serious concerns and serious issues to which we should be attentive. We should. I don't dismiss all the other concerns. But I do say this: If you have lost a child, if you have lost a loved one, and you have watched someone die from Parkinson's or cancer or heart disease, if you have been through that and then say to yourself: But I want to shut down promising research that could potentially cure diseases, then you have not been through it the way a number of people in this Chamber have been through it. I think it is so important for us to do the right thing and to continue this breathtaking research that can save lives.

There are so many other issues. There are just a couple of minutes remaining. Then I will yield the time to my colleague from California.

We passed recently in the Senate a piece of legislation that provides prescription drug benefits to senior citizens. But we did nothing to put downward pressure on drug prices. There is a special provision in the bill which my colleagues, Senators WYDEN and SNOWE, were talking about earlier today, that actually prevents the Federal Government from negotiating for lower prices with the pharmaceutical industry. That is unbelievably ignorant. A provision like that is unbelievably ignorant, and it ought to be repealed.

All we need is a vote on that on the Senate floor. That, too, is a health issue. There is no excuse for this Congress to say: By the way, the Federal Government cannot negotiate for a lower price. We already do it in the VA. We end up with far lower prices as a result of the negotiations.

In this case, with this bill, there is a provision that says: Don't you dare negotiate. It would be against the law for you to try to get lower prices and reduce Government spending. That, too, is a health issue. That, too, will be in order this week.

I hope very much that we will have a vote on that. Yes, the underlying bill is important. We ought to find a bipartisan way to fix it. No, it doesn't work the way it is. It will restrict choice, in my judgement, increase prices for some, and make others completely uninsurable. We ought to fix it in a bipartisan way.

But on the other three issues—reimportation of prescription drugs, stem cell research, repeal the law that prevents negotiation of lower prices with the pharmaceutical industry to save taxpayers money—shouldn't we do all three of those? We ought to do all three of those this afternoon, right now. We have been blocked for far too long.

If there is, in fact, an amendable vehicle—and I hope it will be; we will know that tomorrow morning—then I have just described three amendments that I believe should be offered, and when offered I believe will be approved in the coming days. If not, if this is a charade, and tomorrow we discover there is a legislative approach called ''filling the tree,'' which is simply setting up a little blocking device to say we are not going to allow anybody to offer anything, then I think the Senate will have sent a very strong message that this isn't Health Week. This is a week in which you want to trot out a little proposal of your own and avoid votes on serious issues that we should be taking in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I appreciate Senator DORGAN's remarks. I have been on the floor of the Senate a lot today waiting to get the time, and I have been fortunate to hear many colleagues. I thank him for very succinctly pointing out that in a real health care week you wouldn't close your eyes to hope—hope that we are going to find cures for the terrible diseases that plague our families—Parkinson's, Alzheimer's, diabetes, spinal cord injuries, stroke, heart attack, you just name them. The fact is, we know stem cell research is promising. We know a lot of States have gotten out ahead of the Federal Government because this President and this Congress have restricted the number of stem cell lines we can fund research on. And many of those stem cell lines are, frankly, no good at all because they have been impacted by mice cells. And they lack the diversity needed for robust research.

I have talked to leaders in this field. I am not a scientist. I was educated in economics. But I have spoken to leading scientists, among whom is a gentleman named Dr. Peterson who worked at USFC in San Francisco. He is one of the leading pioneers in stem cell research who left to go to England because this President and this Congress put up a big stop sign in front of stem cell research. It is tragic.

Our families need the hope of a cure. How many of us have met with these youngsters who have juvenile diabetes, and we have seen how difficult their lives are and how they suffer, even with the strides that have been made in this area. They are still in great danger.

Health Week is here. We have a vehicle, as Senator DORGAN calls it, the Enzi bill, which tries to deal with the health insurance problems that small businesses face. I am going to talk about a better alternative to the Enzi

bill that will really do something. But we also have a chance to raise these issues during the debate on the Enzi bill.

We have bipartisan support for drug importation from countries such as Canada, where drugs are sold at half the price of what drug companies charge in the U.S. We have bipartisan support for stem cell research, fixing the Medicare prescription drug issue so we could actually say to Medicare: You have the ability and the right just as the VA has to negotiate with the pharmaceutical companies for lower prices. But I have to say Health Care Week Republican style is really Insurance Company Week.

If you look at the bills that have been brought before us, they all help the insurance companies. They don't help average Americans. They do not help us.

The first two bills said we are going to restrict the right of patients—whether they are very wealthy, whether they are middle income, whether they are poor—we are going to stop them from recovering damages if they are harmed by medical malpractice.

I was very pleased that the Senate chose not to limit debate on those two bills which would have taken away the rights of patients while giving a gift to the insurance companies. And hopefully we can change the Enzi bill.

I don't like bills that take away benefits from my people in California. I don't like bills that take away benefits from all Americans. That is why the Enzi bill is a bad bill. It does just that. I will go through with you the list of benefits that are taken away.

Mr. President, the Republicans bring us Health Care Week. They bring us the Enzi bill. What they do not tell us and you don't find out until you look is that all the States' protections that have been put into place will be wiped out upon passage of the Enzi bill.

Those are harsh words. What do I mean? What benefits will be taken away from my people in California? According to the report put together by Families U.S.A, ''The Enzi Bill, Bad Medicine for America,'' those benefits include AIDS vaccines, alcoholism treatment, blood lead screening. You know that is important because if you don't screen kids for lead in their blood they could have learning disabilities—bone density screening. We know about osteoporosis. In California we guarantee that your insurance will pay for that; no guarantee in the Enzi bill whatsoever. As a matter of fact, the Enzi bill overrides all of this—cervical cancer screening, clinical trials, colorectal screening, contraceptives, diabetic supplies and education.

We just talked about how it is so important for diabetics to have their meds—drug abuse treatment, emergency services, home health care, hospice care, infertility treatment, mammography screening, maternity care, mental health parity.

In my State, if you have a mental health problem and you need help, your insurance coverage will cover your treatment, just the same as if you had a physical problem. We know it works. The list goes on—metabolic disorders, minimal mastectomy, off-label drug use. In California, we have a law that says you can't kick a woman out of a hospital the same day she has a mastectomy. What, you may say? This happens? It does—off-label drug use, orthotics, prosthetics, prostate cancer screening. We know that prostate cancer is a scourge—reconstructive surgery, second medical surgery opinion.

If somebody tells you you need serious surgery, you can get a second opinion in California. That is covered—special footwear, telemedicine, well child care, so that we prevent diseases. That is my State.

Every single State in the Union gets overridden, whether it is Alabama, Colorado, Georgia, Idaho.

I know my friend from Georgia would be interested because he is sitting in the Chair. These are the things that your State offers. It protects your consumers. It is as long a list as California, I am proud to say—alcoholism treatment, ambulatory surgery, bone density screening, bone marrow transplants are covered in the State of Georgia. Cervical cancer screening, contraceptives, dental anesthesia, diabetic supplies, drug abuse treatment, emergency services, heart transplants are covered in Georgia. Infertility treatment, mammography screening, mental health parity, minimal mastectomy stay, morbid obesity care—which is very important now with the obesity epidemic—off-label drug use, ovarian cancer screening, telemedicine, and well child care. Georgia has a very inclusive and wonderful list of guaranteed protections for people.

In the State of Georgia there are 2.347 million people affected by this who would not have those guarantees under the Enzi plan. The Enzi plan essentially says to insurance companies: You can choose. You have to offer one plan. What do they call that plan? One premium plan. You have to offer one premium plan based on a state plan of their choosing, but there is no guarantee at all that what is in that premium plan is what is in the Georgia plan or the California plan or the North Dakota plan.

The fact is, all of the work that has been done in our States—and I find it somewhat amusing given this is a Republican debate, that the Republican bill preempts the States. What is wrong with this picture? I thought our Republican friends loved decision-making at the State level. No, not here in the Senate. They would prefer the insurance companies decide it rather than the States.

This is why I call my colleagues' attention to a study done on the impact on all the States, with letters compiled from attorneys general from many of the States and Governors.

From Oregon, they register their opposition, first their benefits are not guaranteed any longer. In addition, they are very worried about what happens to premiums. The Enzi bill disadvantages older people. As far as the research I have done, it disadvantages women. It certainly disadvantages people who come in with a preexisting condition such as high blood pressure. That includes a lot of Americans.

The bottom line is, the Enzi bill, the star rollout production of the Republican Health Care Week, will make null and void all protections that our States have given their citizens and replace them with some kind of riverboat gamble where insurers will choose some plan, from some State, and apply it to my State. I don't want a so-called premium plan from another State.

Here is a good example. In Connecticut, there is a terrible epidemic of Lyme disease. A tick bites your body and it can make a person very ill. We have some of that in California, but we do not have as much per capita as Connecticut. In Connecticut, the State legislature and the Governor say insurers have to cover Lyme disease because it is an epidemic in the State. In other States, it may not be necessary. However, we will wipe that Connecticut requirement off the books, and we will say, through the Enzi bill, insurance companies are going to decide.

Something is wrong. This is not Health Care Week, this is ''insurance company week.'' That is not good for consumers.

My own State has built a comprehensive State health insurance system that encourages affordable and equitable coverage for all, while ensuring consumers are protected and guaranteed benefits. The Enzi bill takes away a State's power to regulate health insurance. It is a gift to the insurers, as I said. It preempts benefits, as I said. It also is going to lead to way higher premiums for all in America who are covered by health insurance.

Insurance companies, not the States, will now decide what benefits the consumers. That is why we have letter after letter after letter from Governors, from attorneys general, warning us not to pass the Enzi bill.

There appears to be no limits on the cost shares an insurer can charge nor are there requirements that plans treat consumers equitably or offer comprehensive coverage.

As I said, if you are a little older—maybe you have high blood pressure, maybe you have some other health problems—you are in trouble. You are not going to have an affordable plan and you will lose the benefits you have. You may be priced out of the market. It will be catastrophic.

We have serious problems with the Enzi bill. Here is the great news. There is a wonderful alternative out there, the Durbin-Lincoln bill, of which I am a cosponsor. I thank my friends for working so hard on this.

As I go around my State, people nod in agreement with the Durbin-Lincoln bill's premise. Senators have very good

health insurance. We pay half of the premium and the Government matches the other half. There is a Federal Employee Health Benefits Program. There are basic benefits required and private companies come in and offer various plans. People such as me and my employees can choose from a broad array of plans. It works beautifully.

I ask unanimous consent, at 5:45, the Senator from Oregon, Senator MURRAY, be recognized for 15 minutes, until 6 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Senators DURBIN and LINCOLN take this Federal plan and open it up to small businesses with 100 employees down to a single self-employed person.

This plan will work because there will be a huge pool set up. Everyone can buy into it from any business in this country with less than 100 employees. It would be a very diverse pool of people. They will be insured. The pricing is going to be very fair and reasonable. The plan will be administered in the same way our Federal benefits are administered.

I heard Senator THUNE say: That is a government plan. No, it isn't. It is a plan that is administered by the Federal Employees Health Benefit Plan, but it is coverage provided by private insurers. Because the administrative costs are kept so low, this is going to be very affordable and will solve the problem.

And guess what. This alternative, the Durbin-Lincoln alternative, does not take away the protections States have given all who live in those States. If you are in California, you still get the benefits. By law, you are protected. If you live in Washington State, you will get those benefits. The alternative that the Democrats are behind will cost less. It will protect benefits. It will work beautifully.

I say to my colleagues, if it is good enough for you, it ought to be good enough for small businesses and their employees. This bill is a wonderful and practical alternative.

In my concluding 6 or 7 minutes, I will say that this so-called Health Care Week is a major disappointment, unless we find out tomorrow we can amend the Enzi bill. If we can amend Enzi and pass stem cell research and prescription drug reimportation, if we can make sure there is hope for patients with Alzheimer's, diabetes, heart condition, stroke, cancer because we move ahead with science, then Health Care Week will have mattered. If we can offer the Durbin-Lincoln substitute, it will not preempt the protections of State law as the Enzi bill does. The Enzi bill has more opposition than any bill I remember. AARP is against it. The Cancer Foundation is against it. There are 224 organizations against it.

I ask unanimous consent to have printed in the RECORD those organizations opposed to the Enzi bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

National Partnership for Women & Families, 9 to 5, Association for Working Women, Action Alliance of Senior Citizens of Greater Philadelphia, Alabama Psychological Association, Alliance for Advancing Nonprofit Health Care, Alliance for Justice, Alliance for the Status of Missouri Women, American Academy of Child & Adolescent Psychiatry, American Academy of HIV Medicine, American Academy of Pediatrics.

American Academy of Pediatrics—Nebraska Chapter, American Academy of Physician Assistants, American Association for Geriatric Psychiatry, American Association for Marriage and Family Therapy, American Association of People with Disabilities, American Association on Mental Retardation, American Chiropractic Association, American College of Nurse-Midwives, American Counseling Association, American Diabetes Association.

American Federation of State, County and Municipal Employees, American Federation of Teachers, American Foundation for the Blind, American Nurses Association, American Occupational Therapy Association, American Optometric Association, American Pediatric Society, American Podiatric Medical Association, American Psychiatric Association, American Psychological Association.

American Speech-Language-Hearing Association, Arizona Action Network, Arizona Business and Professional Women, Arizona Psychological Association, Asociacion de Psicologia de Puerto Rico, Assistive Technology Law Center, Association of Medical School Pediatric Department Chairs, Association of University Centers on Disabilities, Association of Women's Health, Obstetric and Neonatal Nurses, B'nai B'rith International.

Bazelon Center for Mental Health Law, C3: Colorectal Cancer Coalition, California Coalition for PKU and Allied Disorders, California Black Health Network, California Psychological Association, Campaign for Better Health Care—Illinois, Capital District Physician's Health Plan, Inc., Catholics for a Free Choice, Center for Civil Justice, Center for Justice and Democracy.

Center for Women Policy Studies, Children's Alliance, Citizen Action/Illinois, Citizen Action of New York, Clinical Social Work Guild 49, OPEIU, Coalition on Human Needs, Colorado Center on Law and Policy, Colorado Children's Campaign, Colorado Progressive Action, Colorado Psychological Association.

Committee of Ten Thousand, Communications Workers of America, Connecticut Citizen Action Group, Consumers for Affordable Health Care, Delaware Alliance for Health Care, Delaware Psychological Association, Department for Professional Employees, AFL–CIO, Disability Rights Wisconsin, District of Columbia Psychological Association, Easter Seals.

Empire Justice Center, Epilepsy Foundation, Excellus Blue Cross Blue Shield, Families USA, Families with PKU, Family Planning Advocates of New York State, Florida Consumer Action Network, Georgia Rural Urban Summit, Guttmacher Institute, HIP Health Plan of New York.

Hawaii Psychological Association, Health and Disability Advocates, Hemophilia Federation of America, Idaho Psychological Association, Illinois Alliance for Retired Americans, Illinois Psychological Association, Indiana Psychological Association, Institute for Reproductive Health Access, International Association of Machinists & Aerospace Workers, International Brotherhood of Electrical Workers.

International Longshore & Warehouse Union, Iowa Citizen Action Network, Iowa Psychological Association, Kansas Psychological Association, Kentucky Task Force on Hunger, League of Women Voters, Maine Children's Alliance, Maine Dirigo Alliance, Maine People's Alliance, Maine Psychological Association.

Maine Women's Lobby, Massachusetts Psychological Association, Maternal and Child Health Access, Mental Health Association in Michigan, Mental Health Legal Advisors Committee (Commonwealth of Massachusetts), Michigan Association for Children with Emotional Disorders, Michigan Campaign for Quality Care, Michigan Citizen Action, Minnesota COACT, Minnesota Psychological Association.

Missouri Association of Social Welfare, Missouri Progressive Vote Coalition, Montana Psychological Association, Montana Senior Citizens Association, Inc., NAADAC—The Association for Addiction Professionals, NETWORK, a National Catholic Social Justice Lobby, National Alliance on Mental Illness, National Association for Children's Behavioral Health, National Association of Anorexia Nervosa and Associated Disorders, National Association of Social Workers.

National Association of Social Workers, Arizona Chapter, National Association of County Behavioral Health and Developmental Disability Directors, National Coalition for Cancer Survivorship, National Consumers League, National Council for Community Behavioral Health Care, National Council of Jewish Women, National Council on Independent Living, National Disability Rights Network, National Family Planning and Reproductive Health Association, National Health Care for the Homeless Council.

National Health Law Program, National Hemophilia Foundation, National Mental Health Association, National Multiple Sclerosis Society, National Organization for Women, National Rehabilitation Association, National Research Center for Women & Families, National Urea Cycle Disorders Foundation, National Women's Health Network, National Women's Law Center.

Nebraska Psychological Association, Nevada State Psychological Association, New Hampshire Citizens Alliance, New Jersey Citizen Action. New Jersey Psychological Association, New Mexico PACE, New Mexico Psychological Association, New York Civil Liberties Union Reproductive Rights Project, New York State Health Care Campaign, New York State Psychological Association.

North Carolina Justice Center's Health Access Coalition, North Carolina Psychological Association, North Dakota PKU Organization, North Dakota Progressive Coalition, North Dakota Psychological Association, Northwest Health Law Advocates, Northwest Women's Law Center, Ohio Psychological Association, Oklahoma Psychological Association, Oregon Action.

Oregon Advocacy Center, Oregon Psychological Association, Organic Acidemia Association, Patient Services, Inc., Pediatrix Medical Group, Pennsylvania Council of Churches, Pennsylvania Psychological Association, Philadelphia Citizens for Children and Youth, Philadelphia Coalition of Labor Union Women, Planned Parenthood Federation of America.

Planned Parenthood of New York City, Population Connection, Progressive Maryland, Public Citizen, RESULTS, Religious Coalition for Reproductive Choice, Reproductive Health Technologies Project, Rhode Island Ocean State Action, Rhode Island Psychological Association.

Sargent Shriver National Center on Poverty Law, Save Babies Through Screening Foundation, Senior Citizens' Law Office,

Small Business Majority, Society for Pediatric Research, South Dakota Psychological Association, Suicide Prevention Action Network USA, Summit Health Institute for Research and Education, Inc., Tennessee Citizen Action, Tennessee Psychological Association.

Texas Psychological Association, The Arc of the United States, The Black Children's Institute of Tennessee, The Disability Coalition of New Mexico, The Institute for Reproductive Health Access, The Senior Citizens' Law Office, The Virginia Academy of Clinical Psychologists, Triumph Treatment Services, US Action, US Action Education Fund.

U.S. PIRG (Public Interest Research Group), Union for Reform Judaism, United Association of Journeymen and Apprentices in the Plumbing and Pipe Fitting Industry, United Cerebral Palsy, United Food and Commercial Workers, United Senior Action of Indiana, United Steelworkers International Union, United Vision for Idaho, Univera Healthcare, Universal Health Care Action Network.

Utah Health Policy Project, Vermont Coalition for Disability Rights, Vermont Office of Health Care Ombudsman, Voices for America's Children, Voices for Virginia's Children, Washington Citizen Action, Washington State Coalition on Women's Substance Abuse Issues, Washington State Psychological Association, West Virginia Citizen Action Group, West Virginia Psychological Association.

Wisconsin Citizen Action, Wisconsin Psychological Association, Women of Reform Judaism, WorId Institute on Disability, Wyoming Psychological Association.

Mrs. BOXER. Mr. President, this bill is going to hurt American health care by cancelling out all the hard-won State protections and by raising premiums so high they will price consumers out of the market. That is why across the board there is opposition. I have not seen this many organizations come out against a bill.

By the way, this bill, when it was first presented, sounded reasonable. It was only when we looked at the small print that we realized how dangerous it is.

Instead of working on this misguided bill, we could have done the alternative, we could have done the stem cell, we could have fixed the Medicare prescription drugs, we could have allowed drug importation.

If we didn't want to do real health care reform, there are a lot of other things we could have done, such as raise the minimum wage. We could have finished the job on immigration reform, strengthening the enforcement at the border and stopping illegal immigration, but getting people on a path and out of the shadows.

What about Superfund sites? We have some of the most polluted sites in the country still awaiting cleanup. We have one in four people in America, including 10 million children, living within 4 miles of a Superfund site.

What about debating the war Iraq? That is on everyone's mind. There is still no exit strategy. There is still no plan. We see suffering on the ground there every single day.

We have issues with a potential nuclear Iran. We should debate that. In Afghanistan, the situation is deteriorating and we have all but forgotten about it. We have not followed the recommendations of the 9/11 Commission to this date. We have failed fiscal policies. We have debt as far as the eye can see. We ought to debate pay-as-you-go. If Members want to spend money, they should show how they going to pay for it instead of putting the burden on the backs of America's children.

There are many other things we could do, but since we are on Health Care Week, let's fix our health care system. Let's not pass a bill that will not help people with serious diseases or fix the problems with the Medicare prescription drug program.

We have so much work to do and this Enzi bill is masquerading as a bill that will help our citizens. When we read the fine print, we find out it is only going to make matters worse.

I am proud to yield the floor to my friend from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized for 15 minutes.

Mrs. MURRAY. Mr. President, I ask unanimous consent the next Democratic speakers in order be Senator DAYTON, Senator DURBIN, and Senator AKAKA.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, at this hour, families are struggling with health care. Seniors are facing a critical deadline for drug coverage. Businesses are grappling with the high cost of insurance. And patients are being denied the cutting-edge research that could save their lives. Those are critical issues. And what is the Senate doing? We are dealing with a distraction instead of real solutions to make health care affordable, more accessible, and more innovative.

I am on the Senate floor this evening to talk about what we should be doing to help families and businesses and communities meet their health care needs. I also want to talk this evening about why the Republican proposal, S. 1955, could do more harm than good.

This is a bill which takes a good idea—pooling the risk in health insurance—and distorts it with a plan that will raise the cost of health care, strip away patient protections, and hurt many of our small businesses. But do not take my word for it. Attorneys general from 41 States, including my own, have written to outline the serious problems with the Republican bill. I have heard from doctors with the Washington State Medical Association and from my own Governor about the damage this bill will inflict on patients and on our economy.

Simply put, this proposal is a distraction. Instead of dealing with real solutions to real problems, the Republican leadership is wasting time on one narrow proposal that is only going to make things worse. We can do better. The truth is that patients and seniors, doctors and nurses, and all of our communities deserve better.

If we were serious about reducing the cost of health care, helping to improve access, and driving innovation, we would be talking about the critical issues that the Republican leadership is trying to avoid. We should be focusing on everything from the Medicare drug program, to stem cell research, to community health care. Frankly, we do not have a day to waste.

On Monday, millions of seniors and disabled will be hit with a deadline that means higher premiums for their prescription drugs. That May 15 deadline is just 6 days away. I am hearing from seniors that they are very worried about this deadline. They are worried they are going to pick the wrong plan, and they do not think it is fair to be punished if they need more time so they can make an informed choice.

I have been traveling throughout my home State of Washington, meeting with seniors and holding roundtables with patients, with pharmacists, with advocates.

Three weeks ago, I was in Chehalis, at the Twin Cities Senior Center. I can tell you, seniors are worried. They are angry. They are frustrated. They are frightened about this May 15 deadline, and that deadline is just one of the problems this flawed drug program is presenting.

The week before that, I was in Silverdale, and I have held Medicare roundtables in Kent, Vancouver, Ballard, Shelton, Spokane, Anacortes, Bellevue, Aberdeen, Olympia, Lakewood, Seattle, and Everett. Everywhere, I have heard from seniors about just how bad the Medicare Part D Program is. I have heard their frustration about dealing with such a confusing system. I have heard their anger that this program does not meet their needs. And I have heard from many who just want to throw their hands up in the air and ignore the whole program.

If we were serious about improving health care, we would be fixing the problems they have outlined. Instead, we are going to let an unfair deadline hurt our seniors even further. In just 6 days—in just 6 days—they are going to have to pick a plan or face high penalties whenever they do enroll, and the penalties grow larger the longer they wait. To me, that is just not fair.

Right now, this Senate could be extending the deadline so our seniors are not pressured into making the wrong choice in such a complicated system. Right now, we could be lifting the penalty so that seniors are not punished if they need more time to make the right choice. Right now, we could be providing help to millions of vulnerable Americans who have been mistreated by this flawed Republican plan. But, instead, this Congress is leaving seniors to fend for themselves. The Secretary of Health and Human Services has said he opposes extending the deadline or lifting the penalties, and this

Republican Congress seems to agree with him by a shameful lack of action.

Seniors deserve better. The disabled deserve better. Our most vulnerable neighbors deserve better. If we really wanted to make health care more affordable and more accessible and more innovative, we would be on this floor fixing the Medicare drug program and helping seniors who are facing that unfair deadline.

Now, that is just one example of what a real focus on health care on this floor would include.

If we were serious about helping patients, we would be expanding lifesaving research. For patients who are living with diseases such as Parkinson's or multiple sclerosis or Alzheimer's or diabetes, stem cell research holds the potential to help us understand and to treat and someday perhaps cure those devastating diseases.

Nearly a year ago, the House of Representatives passed legislation to lift the restrictions that hold back this promising research. The House of Representatives has acted, but for an entire year the Senate has not. My colleagues, Senator SPECTER and Senator HARKIN, are well known for their leadership on this fight. They were promised a vote on stem cell research, and that vote has still not taken place. Every delay means missed opportunities for patients with devastating diseases.

If this Senate is serious about health care and saving lives, we should be voting on stem cell legislation today. That is why, last week, I joined with 39 other Senators in writing to the majority leader urging him to bring up H.R. 810, the Stem Cell Research Enhancement Act. But instead of real solutions, the Senate is focusing on a distraction. Patients with life-threatening diseases deserve a lot better.

If we were serious about improving health care, we would be investing in local efforts that boost access to health care.

Two weeks ago, through the Johnson & Johnson Community Health Care Awards, I had a chance to honor leaders from across the country who are doing innovative work to break down the barriers to care. If we were serious about improving health care, we would be building more Federal support for their work. Instead, we are moving in the opposite direction.

Perhaps the best example is the Bush administration's 5-year effort to kill the Healthy Communities Access Program, which is known as HCAP. This is a program which helps our local organizations coordinate care for the uninsured. I have seen it make a tremendous difference in my home State. Well, every year since taking office, this Bush administration has tried to kill that successful program. I have been out here on the floor leading the fight for our local communities every year, and most years we have won. But this past year, the White House and the Republican Congress ended the support for Healthy Communities and thus made health care less accessible for families from coast to coast.

If we were serious about improving health care, we would be investing in local programs that make a difference. But, instead, the Republican leadership is focused on distractions. We can do better than that.

So let me take a few minutes to turn to the specific problems with the bill that is before us, S. 1955, and explain why so many experts across this country are warning us that this bill will eliminate critical patient protections, it will lead to unfair premiums and insurance practices, and it will raise the cost of health care.

First of all, this bill will eliminate many of the important protections that keep patients healthy and lower the cost of health care.

In my home State of Washington, we have enacted a number of State patient protections that require health plans to cover services such as diabetic care, mental health services, breast and cervical cancer screening, emergency medical services, and dental procedures. But under this bill, small business health plans or association health plans would not be required to cover those important benefits. Allowing insurers to abandon mandated benefits, many of which are preventive and are diagnostic, will result in a sicker population and higher health costs for everyone.

When this legislation was debated in the HELP Committee, I offered a number of amendments to provide for coverage of several important women's health benefits. Unfortunately, every one of those amendments was defeated. So now, here we are, and we have a bill on this floor that will strip away the protections on which our patients across this country rely.

A new report by Families USA shows just how many families in my home State will be hurt by this bill. That report found that 1,861,000 residents of Washington State may lose protections if this bill is passed. And what could they lose? Emergency services, home health care, drug and alcohol treatment, contraceptives, diabetic supplies and education, hospice care, mammography screening, maternity services, mental health care—the list goes on. I am not going to tell nearly 2 million people in my home State whom I represent that we are going to take a gamble and risk losing those hard-won protections for a plan that will likely raise the cost of health care for many of our families and small businesses.

Secondly, this bill will encourage insurance companies to charge higher premiums for less healthy consumers. This bill will preempt strong laws and protections in our State that limit the ability of insurers to vary premiums based on health status, age, gender, or geography. I am very concerned this will result in adverse selection or what we call cherry-picking, leading to higher premiums for less healthy consumers. In fact, rates will likely become unaffordable for those who need it the most, potentially increasing the number of uninsured Americans.

Now, Mr. President, I would like to share some letters I have received from leaders in my home State who all speak against this flawed proposal. I ask unanimous consent that these two letters be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mrs. MURRAY. Mr. President, recently I received a letter from the Governor, Governor Christine Gregoire of my home State of Washington, in which she expressed many of her concerns regarding this legislation and its impact on the people who live in my home State.

This chart behind me contains the full text of the Governor's letter. As you can see, she has many serious concerns. I wish to highlight for the Senate some of the main points our Governor has raised with me.

Governor Gregoire alludes to the harmful aspects of this bill, and she says:

> [S. 1955] stands to harm our small group insurance market, which is a critical component of [Washington State's] current health care system. . . .
>
> Instead of promoting more affordable health care, this legislation would cause a serious increase in rates for consumers—possibly two or three times over what they now pay.

Governor Gregoire also warns in her letter to me that:

> [this] bill threatens consumer protections that the state of Washington strives to guarantee to [all of] our residents.

The Governor also warns that this bill:

> would foster a proliferation of health plans that do not cover preventive services that are absolutely vital to the health and well-being of Washington residents. . . .

Mr. President, I would also like to share a letter that I have received from the 9,000-member Washington State Medical Association that wrote to me in strong opposition to S. 1955.

Now, this chart shows the full letter, and I want to read just a portion of it:

> This legislation will have a severe impact on all the consumer health gains that have been made in Washington State over the past decade.
>
> S. 1955 will:
>
> Undermine Washington State's many gains in advancing health care quality;
>
> Pull people from existing insurance coverage rather than attract the uninsured;
>
> Lead to higher costs for consumers;
>
> Strike down Washington's Mental Health Parity law, which took eight years of work to be enacted;
>
> Eliminate other mandated benefits that help consumers such as mammography services; and,
>
> Leave Washington's citizens at risk for unpaid medical bills in the event of an AHP insolvency.

That is from the head of the Washington State Medical Association, which has 9,000 members in my home

State. I think their words should be heeded by the Members of this Senate.

Third, this proposal does nothing to address increasing health care costs.

In fact, it builds on the sorry record of this administration and this Congress in not addressing the rising costs that Americans face. Because of the flaws I mentioned, this bill does nothing to contain those costs. In fact, it could dramatically increase costs for many businesses and families in Washington State. It could well mean that people in the State of Washington who have affordable coverage today could end up worse off than they are right now.

I know my State has been a leader in working to expand access to affordable health insurance for working families and small businesses. Many of the reforms that worked to control costs in my State would be jeopardized if this legislation is enacted. Washington State has a proud tradition of strong consumer protections and integrated managed care that has improved health outcomes and controlled cost increases. We should not jeopardize what my State has fought hard for by dangerous Federal legislation.

I do support the concept of pooling. I believe we can implement policies that provide stability in health insurance premiums. In fact, I am currently working with a number of my colleagues on legislation to create Federal and State catastrophic cost pools to spread out the risks and address what is driving health care costs. We can help spread the risk in ways that will lower costs and still protect patients. The legislation before us could raise costs for consumers and small businesses. We can do better than that.

There are serious challenges facing our country when it comes to health care. This Senate needs to get serious. Instead of focusing on a distraction, we should be helping seniors with prescription drugs. We should be expanding lifesaving research, and we should be supporting community health care. Those are some of the things we should be working on to reduce the cost of health care and to improve access and to accelerate innovation. We can do all of those things, but we need the Republican leadership to get serious if we are going to provide serious solutions. We don't have a day to waste. I hope we can get to work on the real solutions that our American families deserve.

EXHIBIT 1

CHRISTINE O. GREGOIRE,
OFFICE OF THE GOVERNOR,
*Olympia, WA, April 27, 2006.*

Hon. PATTY MURRAY,
*U.S. Senate, Washington, DC.*

DEAR SENATOR MURRAY: I am writing with great concern about S. 1955, the Health Insurance Marketplace Modernization and Affordability Act, and its potential to further erode our ability to provide sound health coverage to citizens in Washington State. This bill stands to harm our small group insurance market, which is a critical component of our current health care system. Furthermore, the bill threatens consumer protections that the State of Washington strives to guarantee to our residents. For these reasons, I ask that you oppose the bill in its current form.

When it comes to providing health care, the federal government has been putting an ever-Increasing burden on the states. The Deficit Reduction Act, alone, paves the way to eliminate nearly $50 billion over the next five years for the Medicaid program. Fresh on the heals of signing the Deficit Reduction Act, the President unveiled his Fiscal Year 2007 budget proposal, which proposes eliminating $36 billion from the Medicare program over the next five years. Additionally, the implementation of the Medicare Part D prescription drug program has had enormous impacts on the states. Nearly every state in the Nation—Washington included—felt compelled to step in to ensure that our most needy citizens, our dual eligible population, continue to receive their medications due to fundamental flaws in the Medicare Modernization Act. Against this backdrop now comes S. 1955.

If passed, S. 1955 would establish a small group rating mechanism that would further erode the possibility of pursuing reasonable health care costs in the states. Instead of promoting more affordable health care, this legislation would cause a serious increase in rates for consumers—possibly two or three times over what they now pay. At its worst, the bill could result in the total collapse of our small group insurance market, something we must fight to prevent.

Additionally, I am concerned that S. 1955 would foster a proliferation of health plans that do not cover preventative services that are absolutely vital to the health and well-being of Washington residents, such as mammography, colonoscopies, diabetic care services, and newborn coverage. In 2005, the Washington State Legislature passed, and I signed, legislation providing mental health parity. If Congress passes S. 1955, the bill could also fully abrogate this effort to ensure mental health coverage in Washington State.

It is surprising to me that S. 1955 is moving forward, given that it is patterned, in part, on a flawed National Association of Insurance Commissioner's 1993 Model Rating Law, actually adopted by the state of New Hampshire in 2003. This proved to be an unfortunate experiment for the people of New Hampshire. Just this year, that state's Legislature repealed provisions of its 2003 law due to the astronomical jump in rates that occurred in only a two-year period after it was implemented. Given this history that he knows only too well, my colleague, Governor John Lynch of New Hampshire, recently registered his opposition to S. 1955 in a letter to his federal delegation, dated March 28, 2006. New Hampshire's experience is illustrative and a harbinger of what could come to all states, should Congress adopt S. 1955.

As Washington State's Attorney General from 1993–2005, I, along with the majority of my colleagues within the National Association of Attorneys General (NAAG), opposed several precursor bills to S. 1955. Introduced in each of the last several Congresses, these bills allow for the federal regulation of association health plans (AHPs), and have passed out of the U.S. House more than once. I appreciate that S. 1955, in its current form, does away with one fatal flaw of the earlier AHP bills—that being the wholesale obliteration of state regulation over national AHPs. But, as I have articulated, S. 1955 still goes too far in preempting other basic consumer protections. It is heartening to see that a majority of current members of NAAG, including Washington State Attorney General Rob McKenna, have now weighed in with their concerns and opposition to S. 1955.

As a nation, we need innovative solutions that provide high quality, sustainable and affordable health care access to our un- and under-insured populations. With the help of the Washington State Legislature, I have embarked on a five-point strategy to promote evidence-based medicine; better manage chronic diseases; increase prevention and wellness initiatives; require data transparency; and expand the reach of health information technology. These strategies invite strong partnerships between states and the federal government that I remain committed to pursuing with you. Unfortunately, proposals like S. 1955, are counterintuitive to the notion of forging such partnerships and I ask that you reject the bill.

Sincerely,

CHRISTINE O. GREGOIRE,
*Governor.*

---

WASHINGTON STATE
MEDICAL ASSOCIATION,
*April 25, 2006.*

Hon. PATTY MURRAY,
*U.S. Senate, Washington, DC.*

DEAR SENATOR MURRAY: On behalf of the 9,000 members of the Washington State Medical Association, WSMA, I am writing to ask that you vote no on S. 1955—Association Health Plans, AHPs, when the bill comes to a vote in the U.S. Senate.

The WSMA is very concerned about the negative effect of this legislation on our State's citizens, purchasers, providers and health plans.

This legislation will have a severe impact on all the consumer health gains that have been made in Washington State over the past decade.

S. 1955 will:

Undermine Washington State's many gains in advancing health care quality;

Pull people from existing insurance coverage rather than attract the uninsured;

Lead to higher costs for consumers;

Strike down Washington's Mental Health Parity law, which took eight years of work to be enacted;

Eliminate other mandated benefits that help consumers such as mammography services; and,

Leave Washington's citizens at risk for unpaid medical bills in the event of an AHP insolvency

The Washington State Medical Association works hard every day to insure that Washington's citizens have access to the finest medical care in the country. This legislation will test our ability to continue in this endeavor.

For more information, please do not hesitate to contact Len Eddinger in our Olympia office.

Very Truly yours,

PETER J. DUNBAR, MD,
*President.*

The PRESIDING OFFICER (Mr. SMITH). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to address some issues my colleagues have raised. I am appreciative of the debate and the chance to talk about health care. It is a critically important topic. It is one that we have to talk a lot more about, how we can provide as much health care as possible to everybody at the lowest price that we

can get it and get more people insured. That is at the root of what we are trying to get done with the proposal of Senator ENZI and others to get more health insurance, better coverage to more people across the United States. That is a worthy goal, something we need to do. We have far too many people uninsured. We need more people insured. That is central to us. It is central to the hospital and the provider community that we have people who are insured. Because of those who are not insured and then can't pay the price of their health care, that is spread across to other people, which is what we do today. That is what we need to do, but it would be better if we could get more people insured and have a direct system of payment.

Others have said that what we need to be talking about is different than this, rather than expanding health insurance coverage. I respect that. Some of my colleagues have raised the stem cell issue. I want to address the concerns my colleagues have raised on stem cells. I want to report to my colleagues what a tremendous positive story we have to tell about stem cells, an exciting story of people receiving treatments, living longer and healthier lives because of stem cell treatments. These are not the controversial ones. This does not involve the destruction of a young human in the embryonic stage. This involves the use of adult stem cells, which the Presiding Officer and others, everybody in this room has in their body, adult stem cells. It also involves cord blood stem cells. These are the stem cells that are in the umbilical cord between the mother and child, while the mother is carrying the child.

I want to show two charts to start off. I think it is best if we make this a personal debate. I challenge my colleagues who have challenged me about this topic to come forward with pictures of individuals who are being treated with embryonic stem cells. I would like to see the people who are being treated with embryonic stem cells. We have put nearly half a billion dollars of research money into embryonic stem cell research. We have known about embryonic stem cells for 20 years. I don't know of the people being treated by embryonic stem cells.

I can show people who are being treated with adult stem cells or cord blood. This is Erik Haines. He is 13 years old. He was diagnosed with Krabbes disease, the first patient to receive cord blood for this rare, inherited metabolic disease. The date of transplant was 1994. He is alive today. He would be dead without this having taken place.

Let me show you a picture of Keone Penn. I had him in to testify before a Commerce Committee hearing a couple years ago. He has sickle cell anemia. The date of transplant was December 11, 1998. He had been very sick. He wasn't expected to live. As a matter of fact, it says in a statement that he made: If it wasn't for cord blood, I would probably be dead by now. It is a good thing I found a match. It saved my life.

We have now many more people being treated for sickle cell, a whole host of diseases. As a matter of fact, I want to read off a few of these. These are human clinical trials, real people getting real treatments, living longer lives, if not being cured, by the use of adult stem cells and cord blood stem cells in 69 different disease areas.

My colleagues have heard this debate for a period of years. We have been debating stem cells for a number of years. We have been debating the controversial area of embryonic stem cells, which the Federal Government funds, which State governments fund, which private industry and the private sector is fully free to fund completely, every bit of the way that they want to do that. They can. They have been. And we have no human treatments from embryonic stem cells to date. We don't have any. They are funded globally. There is no prohibition against embryonic stem cell research in the United States.

My colleagues seek more than the nearly $500 billion that we have put into embryonic stem cell research, an area that has not produced any human treatments to date. I want to be clear that that is what we are talking about. When we started this debate, my colleagues pushing embryonic stem cells, who in their hearts absolutely believe they are doing the right thing and this will lead to cures, listed cancer, sickle cell anemia, Lou Gehrig's disease. We are going to deal with all of these things. With the promise of embryonic stem cells, we will cure these things. That is what they said on their side when we started this debate 6 years ago. Six years later—I could be off a year or 2—where are the cures? I say we have them. They are in adult and cord blood stem cells.

I ask unanimous consent to print in the RECORD at the end of my statement a sheet of human clinical applications using adult stem cells.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BROWNBACK. I want to read a few of the 69 from this document: Sickle cell anemia, aplastic anemia, chronic Epstein-Barr infection, lupus, Crohn's disease, rheumatoid arthritis, juvenile arthritis, multiple sclerosis, brain tumors, different cancers, lymphoma, non-Hodgkins lymphoma, a number of solid tumors, cardiovascular. This is an exciting area that is taking place where we now have people with acute heart damage, chronic coronary artery disease being treated with adult stem cells. Primarily, this has been an adult stem cell treatment where they harvest stem cells out of their own body and inject them right back into the damaged heart tissue.

Now we are seeing people who couldn't walk up a flight of steps going up eight flights, having hard tissue being regenerated with the use of their own adult stem cells. There is no rejection problem. This is their own cells. They take these adult stem cells from your body, which are repair cells, grow them outside of the body, put them back into the damaged heart tissue area, and now instead of congestive heart failure, without any ability to get enough blood throughout the body, the heart is pumping harder and better. It is actually working. They are regenerating the heart in these people. This is actually taking place in human clinical trials today. It is a beautiful issue.

The list goes on: chronic liver failure, Parkinson's disease. I had a gentleman in to testify who had taken stem cells out of a part of his body, grew them, put them in the left part of the brain. The right side of the body started functioning without Parkinson's disease. Later it came back, after several years, but he had several years free and was starting to learn how better this can work with Parkinson's disease.

Again, continuing from the list: spinal cord injury, stroke damage, limb gangrene, skull bone repair. We have recently had advances. For example, they took the stem cells out of a person's body. They had a form around which the bladder could be grown, outside a new bladder could be grown. They took the stem cells, put them around this form, and actually grew a bladder out of a person's own stem cells. These are marvelous, miraculous things that are taking place in 69 different areas of human clinical trials, adult and cord blood. I ask my colleagues from the other side, the ones who promised all of the cures from embryonic stem cells, as this debate moves forward, we will bring out statements that people made 5, 6 years ago about the cures that would come from embryonic stem cells. The cures have come from these noncontroversial areas. This is where we ought to be funding. This is what we ought to be doing. This is where we are getting treatments.

I ask my colleagues from the other side, where are the treatments with embryonic stem cells? Colleagues on the other side, for whom I have great respect and I know in their hearts are doing what they believe is the right thing to do, asked about reputable scientists opposed to embryonic stem cells. I ask unanimous consent to print in the RECORD this letter at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BROWNBACK. It is dated October 27, 2004. It is to Senator John F. Kerry, running for President at the time, signed by 57 scientists who have a real problem with embryonic stem cell research.

They say in this letter:

> As professionals trained in the life sciences we are alarmed at these statements.

They are referring to what Senator KERRY was saying, that this would be a

centerpiece issue for him in moving forward with science. This is in 2004.

First, your statement misrepresents science. In itself, science is not a policy or a political program.

Second, it is no mere ''ideology'' to be concerned about the possible misuse of humans in scientific research.

Here we come to the real rub of the issue on embryonic stem cell research. Is the embryo human life or isn't it? It is one or the other. It is either a human life or it isn't. It is alive. It is human in its genetic form. Is it a human life or not? If it is not a human life, do with it as you choose. If it is a human life, it deserves protection and respect. We do it for everybody in this room, no matter what your State is, your physical condition. Why wouldn't we do it while you are in the womb?

I have a letter signed by 57 scientists with a real problem with embryonic stem cell research. My colleague asked me to produce scientists who are opposed to embryonic stem cell research. Here they are.

I finally say to my colleagues on this topic, the promises they have made about embryonic stem cell research have not been realized to date, and reputable scientists question whether they will ever be realized. We are half a billion dollars later after investment from the Federal Government on embryonic stem cell research, animal and human. Now you are seeing—this is just the Federal Government, not about the private sector or other governments around the world. I will read to you what other scientists who support embryonic stem cell research are saying about the prospects of embryonic stem cell research. A British stem cell research expert, named Winston, warned colleagues that the political hype in support of human embryonic stem cells needs to be reined in. This is dated June 20, 2005, where he says this:

One of the problems is that in order to persuade the public that we must do this work, we often go rather too far in promising what we might achieve. This is a real issue for the scientists. I am not entirely convinced that embryonic stem cells will, in my lifetime, and possibly anybody's lifetime, for that matter, be holding quite the promise that we desperately hope they will.

Let's look at another researcher talking in this field. I want to get testimony in here from Jamie Thompson, the first scientist to grow human embryonic stem cells. This is the question posed to him:

People who use nuclear transfer generally say that the technique is optimized for producing stem cells rather than making babies. They would not want to equate this with the process that produces embryos that were fit for implantation, and they argue that they are used in the reproductive process differently.

I am talking about the use of embryonic stem cell research in a cloning procedure, where you create a clone, take the embryonic stem cells from the clone.

This is what Professor Thompson says:

So you are trying to define it away and it doesn't work. If you create an embryo by nuclear transfer and you give it to somebody, you didn't know where it came from, there would be no test you could do on that embryo to say where it came from. It is what it is. It is an embryo. It is a young human life. It's true that they have much lower probability of giving rise to a child, but by any reasonable definition, at least at some frequency, you are creating an embryo. If you are trying to define it away, you are being disingenuous.

My colleagues started to raise the issue that if you create an embryo by process of cloning, it is not really a young human life. But if you create an embryo that is a sheep, like Dolly, and grow it up to be Dolly the sheep, is Dolly not a sheep? Would that be the contention? That is simply not the case when they are creating a cloned individual or cloned human being, and that goes into the next step in this debate, to discuss human cloning. The other side calls it somatic nuclear cell transfer—the same process that created Dolly.

My point is that that is the next step on this continuum. We are talking about embryonic stem cell research funding and the lack of production taking place there for human treatment. The next step is that we need to clone and then we need to clone the individual and not harvest it in a day or two, but we need to grow the fetus out several weeks so we have sort of fetal farming, which is a ghastly thing to even consider. Yet it is being talked about in some research circles.

I conclude with the statement that if we want to be successful in this area and treat people, which I believe is the measure that we should go by—the treatment of individuals—our best bet, if my colleagues want human treatments to take place, they want to cure people, if that is what their effort is, let's fund what is working, which is adult cord blood. Let's move off of this politicized debate which is about the definition of young human life. Let's move off this debate and do something that is curing people. And we can.

That is the way we ought to go in this debate. We ought to also pass the Enzi proposal that gets more people health insurance, which is where we should focus this debate now because that is what we are talking about, rather than a politicized issue of embryonic stem cell research, which has not worked and is not working.

I yield the floor.

EXHIBIT 1

ADULT & NON-EMBRYONIC STEM CELL RESEARCH

ADVANCES & UPDATES FOR APRIL 2006

HIGHLIGHT OF THE MONTH—STEM CELL HOPE FOR LIVER PATIENTS

British doctors reported treatment of 5 patients with liver failure with the patients' own adult stem cells. Four of the 5 patients showed improvement, and 2 patients regained near normal liver function. The authors noted: ''Liver transplantation is the only current therapeutic modality for liver failure but it is available to only a small proportion of patients due to the shortage of organ donors. Adult stem cell therapy could solve the problem of degenerative disorders, including liver disease, in which organ transplantation is inappropriate or there is a shortage of organ donors.''—Stem Cells Express, Mar. 30, 2006

ADVANCES IN HUMAN TREATMENTS USING ADULT STEM CELLS—

Buerger's Disease: Scientists in Korea using adult stem cell treatments showed significant improvement in the limbs of patients with Buergers disease, where blood vessels are blocked and inflamed, eventually leading to tissue destruction and gangrene in the limb. Out of 27 patients there was a 79% positive response rate and improvement in the limbs, including the healing of previously non-healing ulcers.—Stem Cells Express, Jan. 26, 2006

Bladder Disease: Doctors at Wake Forest constructed new bladders for 7 patients with bladder disease, using the patients' own progenitor cells grown on an artificial framework in the laboratory. When implanted back into the patients, the tissue-engineered bladders appeared to function normally and improved the patients' conditions. ''This suggests that tissue engineering may one day be a solution to the shortage of donor organs in this country for those needing transplants,'' said Dr. Anthony Atala, the lead researcher.—The Lancet, Apr. 4, 2006; reported by the AP, Apr. 4, 2006

Lupus: Adult Stem Cell Transplant Offers Promise for Severe Lupus—Dr. Richard Burt of Northwestern Memorial Hospital is pioneering new research that uses a patient's own adult stem cells to treat extremely severe cases of lupus and other autoimmune diseases such as multiple sclerosis and rheumatoid arthritis. In a recent study of 50 patients with lupus, the treatment with the patients' adult stem cells resulted in stabilization of the disease or even improvement of previous organ damage, and greatly increased survival of patients. ''We bring the patient in, and we give them chemo to destroy their immune system,'' Dr. Burt said. ''And then right after the chemotherapy, we infuse the stems cells to make a brand-new immune system.''—ABC News, Apr. 11, 2006; Journal of the American Medical Assn, Feb. 1, 2006

Cancer: Bush policy may help cure cancer—''Unlike embryonic stem cells . . . cancer stem cells are mutated forms of adult stem cells. . . . Interest in the [adult stem cell] field is growing rapidly, thanks in part, paradoxically, to President George W. Bush's restrictions on embryonic-stem-cell research. Some of the federal funds that might otherwise have gone to embryonic stem cells could be finding their way into cancer [adult]-stem-cell studies.''—Time: Stem Cells that Kill, Apr. 17, 2006

Heart: Adult stem cells may inhibit remodeling and make the heart pump better and more efficiently.—Researchers in Pittsburgh have shown that adding a patient's adult stem cells along with bypass surgery can give significant improvement for those with chronic heart failure. Ten patients treated with their own bone marrow adult stem cells improved well beyond patients who had only standard bypass surgery. In addition, scientists in Arkansas and Boston administered the protein G-CSF to advanced heart failure patients, to activate the patients' bone marrow adult stem cells, and found significant heart improvement 9 months after the treatment.—Journal of Thoracic and Cardiovascular Surgery, Dec., 2005; American Journal of Cardiology, Mar., 2006

Stroke: Mobilizing adult stem cells helps stroke patients—Researchers in Taiwan have shown that mobilizing a stroke patient's bone marrow adult stem cells can improve

recovery. Seven stroke patients were given injections of a protein—G-CSF—that encourages bone marrow stem cells to leave the marrow and enter the bloodstream. From there, they home in on damaged brain tissue and stimulate repair. The 7 patients showed significantly greater improvement after stroke than patients receiving standard care.—Canadian Medical Association Journal Mar. 3, 2006

69 CURRENT HUMAN CLINICAL APPLICATIONS USING ADULT STEM CELLS

ANEMIAS & OTHER BLOOD CONDITIONS

Sickle cell anemia, Sideroblastic anemia, Aplastic anemia, Red cell aplasia (failure of red blood cell development), Amegakaryocytic thrombocytopenia, Thalassemia (genetic [inherited] disorders all of which involve underproduction of hemoglobin), Primary amyloidosis (A disorder of plasma cells), Diamond blackfan anemia, Fanconi's anemia, Chronic Epstein-Barr infection (similar to Mono).

AUTO-IMMUNE DISEASES

Systemic lupus (auto-immune condition that can affect skin, heart, lungs, kidneys, joints, and nervous system), Sjogren's syndrome (autoimmune disease w/symptoms similar to arthritis), Myasthenia (An autoimmune neuromuscular disorder), Autoimmune cytopenia, Scleromyxedema (skin condition), Scleroderma (skin disorder), Crohn's disease (chronic inflammatory disease of the intestines), Behcet's disease, Rheumatoid arthritis, Juvenile arthritis, Multiple sclerosis, Polychondritis (chronic disorder of the cartilage) Systemic vasculitis (inflammation of the blood vessels), Alopecia universalis, Buerger's disease (limb vessel constriction, inflammation).

CANCER

Brain tumors—medulloblastoma and glioma, Retinoblastoma (cancer), Ovarian cancer, Skin cancer: Merkel cell carcinoma, Testicular cancer, Lymphoma, Non-Hodgkin's lymphoma, Hodgkin's lymphoma, Acute lymphoblastic leukemia, Acute myelogenous leukemia, Chronic myelogenous leukemia, Juvenile myelomonocytic leukemia, Cancer of the lymph nodes: Angioimmunoblastic lymphadenopathy, Multiple myeloma (cancer affecting white blood cells of the immune system), Myelodysplasia (bone marrow disorder), Breast cancer, Neuroblastoma (childhood cancer of the nervous system), Renal cell carcinoma (cancer of the kidney), Soft tissue sarcoma (malignant tumor that begins in the muscle, fat, fibrous tissue, blood vessels), Various solid tumors, Waldenstrom's macroglobulinemia (type of lymphoma), Hemophagocytic lymphohistiocyctosis, POEMS syndrome (osteosclerotic myeloma), Myelofibrosis.

CARDIOVASCULAR

Acute Heart damage, Chronic coronary artery disease.

IMMUNODEFICIENCIES

Severe combined immunodeficiency syndrome, X-linked lymphoproliferative syndrome, X-linked hyper immunoglobulin M syndrome.

LIVER DISEASE

Chronic liver failure.

NEURAL DEGENERATIVE DISEASES & INJURIES

Parkinson's disease, Spinal cord injury, Stroke damage.

OCULAR

Corneal regeneration.

WOUNDS & INJURIES

Limb gangrene, Surface wound healing, Jawbone replacement, Skull bone repair.

OTHER METABOLIC DISORDERS

Sandhoff disease (hereditary genetic disorder), Hurler's syndrome (hereditary genetic disorder), Osteogenesis imperfecta (bone/cartilage disorder), Krabbe Leukodystrophy (hereditary genetic disorder), Osteopetrosis (genetic bone disorder), Cerebral X-linked adrenoleukodystrophy.

EXHIBIT 2

OCTOBER 27, 2004.

Senator JOHN F. KERRY,
*John Kerry for President,*
*Washington, DC.*

DEAR SENATOR KERRY: Recently you have made the promotion of embryonic stem cell research, including the cloning of human embryos for research purposes, into a centerpiece of your campaign. You have said you will make such research a ''top priority'' for government, academia and medicine (Los Angeles Times, 10/17/04). You have even equated support for this research with respect for ''science,'' and said that science must be freed from ''ideology'' to produce miracle cures for numerous diseases.

As professionals trained in the life sciences we are alarmed at these statements.

First, your statements misrepresent science. In itself, science is not a policy or a political program. Science is a systematic method for developing and testing hypotheses about the physical world. It does not ''promise'' miracle cures based on scanty evidence. When scientists make such assertions, they are acting as individuals, out of their own personal faith and hopes, not as the voice of ''science''. If such scientists allow their individual faith in the future of embryonic stem cell research to be interpreted as a reliable prediction of the outcome of this research, they are acting irresponsibly.

Second, it is no mere ''ideology'' to be concerned about the possible misuse of humans in scientific research. Federal bioethics advisory groups, serving under both Democratic and Republican presidents, have affirmed that the human embryo is a developing form of human life that deserves respect. Indeed you have said that human life begins at conception, that fertilization produces a ''human being.'' To equate concern for these beings with mere ''ideology'' is to dismiss the entire history of efforts to protect human subjects from research abuse.

Third, the statements you have made regarding the purported medical applications of embryonic stem cells reach far beyond any credible evidence, ignoring the limited state of our knowledge about embryonic stem cells and the advances in other areas of research that may render use of these cells unnecessary for many applications. To make such exaggerated claims, at this stage of our knowledge, is not only scientifically irresponsible—it is deceptive and cruel to millions of patients and their families who hope desperately for cures and have come to rely on the scientific community for accurate information.

What does science tell us about embryonic stem cells? The facts can be summed up as follows:

At present these cells can be obtained only by destroying live human embryos at the blastocyst (4–7 days old) stage. They proliferate rapidly and are extremely versatile, ultimately capable (in an embryonic environment) of forming any kind of cell found in the developed human body. Yet there is scant scientific evidence that embryonic stem cells will form normal tissues in a culture dish, and the very versatility of these cells is now known to be a disadvantage as well—embryonic stem cells are difficult to develop into a stable cell line, spontaneously accumulate genetic abnormalities in culture, and are prone to uncontrollable growth and tumor formation when placed in animals.

Almost 25 years of research using mouse embryonic stem cells have produced limited indications of clinical benefit in some animals, as well as indications of serious and potentially lethal side-effects. Based on this evidence, claims of a safe and reliable treatment for any disease in humans are premature at best.

Embryonic stem cells obtained by destroying cloned human embryos pose an additional ethical issue—that of creating human lives solely to destroy them for research—and may pose added practical problems as well. The cloning process is now known to produce many problems of chaotic gene expression, and this may affect the usefulness and safety of these cells. Nor is it proven that cloning will prevent all rejection of embryonic stem cells, as even genetically matched stem cells from cloning are sometimes rejected by animal hosts. Some animal trials in research cloning have required placing cloned embryos in a womb and developing them to the fetal stage, then destroying them for their more developed tissues, to provide clinical benefit—surely an approach that poses horrific ethical issues if applied to humans.

Non-embryonic stem cells have also received increasing scientific attention. Here the trajectory has been very different from that of embryonic stem cells: Instead of developing these cells and deducing that they may someday have a clinical use, researchers have discovered them producing undoubted clinical benefits and then sought to better understand how and why they work so they can be put to more uses. Bone marrow transplants were benefiting patients with various forms of cancer for many years before it was understood that the active ingredients in these transplants are stem cells. Non-embryonic stem cells have been discovered in many unexpected tissues—in blood, nerve, fat, skin, muscle, umbilical cord blood, placenta, even dental pulp—and dozens of studies indicate that they are far more versatile than once thought. Use of these cells poses no serious ethical problem, and may avoid all problems of tissue rejection if stem cells can be obtained from a patient for use in that same patient. Clinical use of non-embryonic stem cells has grown greatly in recent years. In contrast to embryonic stem cells, adult stem cells are in established or experimental use to treat human patients with several dozen conditions, according to the National Institutes of Health and the National Marrow Donor Program (Cong. Record, September 9, 2004, pages H6956–7). They have been or are being assessed in human trials for treatment of spinal cord injury, Parkinson's disease, stroke, cardiac damage, multiple sclerosis, and so on. The results of these experimental trials will help us better assess the medical prospects for stem cell therapies.

In the case of many conditions, advances are likely to come from sources other than any kind of stem cell. For example, there is a strong scientific consensus that complex diseases such as Alzheimer's are unlikely to be treated by any stem cell therapy. When asked recently why so many people nonetheless believe that embryonic stem cells will provide a cure for Alzheimer's disease, NIH stem cell expert Ron McKay commented that ''people need a fairy tale'' (Washington Post, June 10, 2004, page A3). Similarly, autoimmune diseases like juvenile diabetes, lupus and MS are unlikely to benefit from simple addition of new cells unless the underlying problem—a faulty immune system that attacks the body's own cells as though they were foreign invaders—is corrected.

In short, embryonic stem cells pose one especially controversial avenue toward understanding and (perhaps) someday treating various degenerative diseases. Based on the available evidence, no one can predict with

certainty whether they will ever produce clinical benefits—much less whether they will produce benefits unobtainable by other, less ethically problematic means.

Therefore, to turn this one approach into a political campaign—even more, to declare that it will be a ''top priority'' or receive any particular amount of federal funding, regardless of future evidence or the usual scientific peer review process—is, in our view, irresponsible. It is, in fact, a subordination of science to ideology.

Because politicians, biotechnology interests and even some scientists have publicly exaggerated the ''promise'' of embryonic stem cells, public perceptions of this avenue have become skewed and unrealistic. Politicians may hope to benefit from these false hopes to win elections, knowing that the collision of these hopes with reality will come only after they win their races. The scientific and medical professions have no such luxury. When desperate patients discover that they have been subjected to a salesman's pitch rather than an objective and candid assessment of possibilities, we have reason to fear a public backlash against the credibility of our professions. We urge you not to exacerbate this problem now by repeating false promises that exploit patients' hopes for political gain.

Signed by 57 doctors.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Minnesota is recognized.

Mr. DAYTON. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

REPORT ON HURRICANE KATRINA

Mr. DAYTON. Mr. President, last week the Senate Committee on Homeland Security and Governmental Affairs, of which I am a member, approved its report titled ''Hurricane Katrina, A Nation Still Unprepared.'' The committee's distinguished chairman set today as the deadline for additional views.

I reluctantly voted not to approve that draft of the report last week because it is seriously incomplete. While it is still lacking all of the information, documents, and testimony which President Bush and his subordinates denied the committee, last March 15 the ranking member asked the chairman to subpoena witnesses and documents that have been withheld by the White House. Regrettably, she declined to do so.

Earlier this year, on January 12, the chairman and ranking member wrote the White House Chief of Staff, Mr. Andrew Card, regarding the information they had previously requested. Their letter stated, in part:

This practice (of withholding information) must cease.

It continued:

We are willing to discuss claims of executive privilege asserted by the White House, either directly or through a Federal agency. But we will not stand for blanket instructions to refuse answering any questions concerning any communications with the EOP [Executive Office of the President].

Their insistence that either administration officials comply with this oversight committee's rightful demands or the President invoke his executive privilege not to do so was entirely appropriate. Unfortunately, when Mr. Card and his subordinates still refused to comply, the chairman denied the ranking member's request to issue subpoenas.

Regrettably, at its markup of the draft report, the Senate committee failed to support my motion to subpoena those documents and witnesses, which were being withheld by the White House without claim to executive privilege, and which were being wrongfully denied by executive agencies.

The administration's refusal to comply and cooperate with this investigation is deplorable, as is the Homeland Security Committee's failure to back the chairman and ranking member's proper insistence that the White House do so. That committee is charged by the full Senate with the responsibility to oversee the agencies, programs, and activities that are related to homeland security. The committee was expressly directed by the Senate majority leader to examine the Bush administration's failure to respond quickly or effectively to the disasters caused by Hurricane Katrina. This investigation is not complete without all of the information requested from the administration. Furthermore, the report's findings and conclusions can hardly be considered reliable if the White House has decided what information to provide and what information to withhold from the committee.

This unfortunate acquiescence confirms the judgment of the Senate Democratic leader that an independent bipartisan commission was necessary to ensure complete and unbiased investigation into the failed Federal, State, and local responses to Hurricane Katrina. His request has been repeatedly denied by the majority, with the assurance that the Senate committee would fulfill those responsibilities. Tragically and reprehensibly, it has failed to do so. Thus, the committee failed the Senate's constitutional obligations to be an independent, coequal branch of Government from the executive. It also failed the long-suffering victims of Hurricane Katrina, who deserve to know why their governments failed them, and all of the American people, who depend upon their elected representatives to protect their lives and their interests, without regard to partisan political considerations. That partisanship includes unjustified protection of an administration of the same political party, as much as undue criticism of one from another party.

That partisan protectionism is especially unwarranted given widespread agreement about the urgent need to understand the failures during and after Hurricane Katrina and to remedy them before another large-scale disaster, God forbid, should occur.

Now, 8 months after the hurricane, the lack of progress in cleanup, repair, and reconstruction in devastated areas provides further evidence of the Federal Government's continuing failure to respond efficiently or effectively. There is no time in which the helping hand of Government is more urgently needed and more surely deserved than during and after a disaster. Victims are damaged or devastated physically, emotionally, and financially.

Local officials and their public services are overwhelmed, if not destroyed. They need a Federal emergency response organization comprised of experienced, dedicated professionals, who have the resources necessary to alleviate short-term suffering and commence long-term recovery, and also have the authority to expeditiously commit those resources.

What the failed Federal response to Hurricane Katrina showed is the utter ineptitude of the Federal Emergency Management Agency, known as FEMA. Even worse, FEMA's indifference and incompetence in the aftermath of Katrina was not an isolated instance. In my direct experience with FEMA's disaster relief responses in Minnesota, the agency is too often a major obstruction to recovery projects rather than a principal ally.

Thus, I agree with the report's recommendation to create a new, comprehensive emergency management organization, to prepare for and respond to all disasters and catastrophes. I remain openminded about whether this new entity should remain within the Department of Homeland Security, as this recommendation intends, or be established as a separate Federal agency. The challenge for the committee, for all of Congress, and for the administration will be to actually recreate an existing Federal agency which has become dysfunctional and nonfunctional. Merely ''reforming'' FEMA by rearranging some boxes and lines in its organizational chart, revising it, and giving its head a new title, will be woefully inadequate. The new organization must be more streamlined, centralized, and compact than its predecessor. It must be less bureaucratic, less consumed with regulatory minutiae, and less resistant to local recovery initiatives. It must spend less time creating complex plans and cumbersome procedures, and more time in training and perfecting action responses to emergency situations.

History shows that ''if a student does not learn the lesson, the teacher reappears.'' This report describes some of the most important lessons from the failed response to Hurricane Katrina. The committee's and this Congress's subsequent actions to correct these serious deficiencies before the next catastrophe will indicate whether those lessons will be learned.

I yield the floor and 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. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2005

Mr. AKAKA. Mr. President, I rise today to talk about bipartisan legislation that is of critical importance to the people of Hawaii. S. 147, the Native Hawaiian Government Reorganization Act of 2005, would extend the Federal policy of self-governance and self-determination to Hawaii's indigenous peoples, Native Hawaiians, by authorizing a process for the reorganization of a Native Hawaiian governing entity for the purposes of a government-to-government relationship with the United States.

Together with my senior Senator and the rest of Hawaii's congressional delegation, I first introduced this bill in 1999. The bill passed the House in 2000, but, unfortunately, the Senate adjourned before we could complete consideration of that bill.

Since then, I have introduced a bill every Congress. In every Congress, the committees of jurisdiction—the Senate Committee on Indian Affairs and the House Committee on Resources—have favorably reported the bill and its companion measure.

I thank the majority leader, the senior Senator from Tennessee, who is working to uphold his commitment to bring this bill to the Senate floor for a debate and rollcall vote. I must tell my colleagues that he did try to meet his commitment in September 2005 and did schedule it for the floor. But at that time, Katrina happened, and we took it off the calendar.

I also appreciate the efforts of my colleague from Arizona who opposes the bill on substance, but has worked with me to uphold his promise to allow the bill to come to the floor for debate and rollcall vote.

S. 147 does three things. First, it authorizes the Office of Native Hawaiian Relations in the Department of the Interior. The office is intended to serve as a liaison between Native Hawaiians and the United States. It is not intended to become another Bureau of Indian Affairs, as the current program for Native Hawaiians will remain with the agencies that currently administer those programs.

Second, the bill establishes the Native Hawaiian interagency coordinating group. This is a Federal working group to be composed of representatives from Federal agencies who administer programs and services for Native Hawaiians. There is no statutory requirement for these agencies to work together. This working group can coordinate policies to ensure consistency and prevent unnecessary duplication in Federal policies impacting Native Hawaiians.

Finally, the bill authorizes a process for the reorganization of the Native Hawaiian governing entity. And we ask: Why do we need to organize the entity? It is because the Native Hawaiian Government was overthrown with the assistance of U.S. agents in 1893. Rather than shed the blood of the people, our beloved queen, Queen Lili'uokalani, abdicated her throne after being arrested and imprisoned in her own home.

Following the overthrow, a republic was formed. Any reformation of a native governing entity has been discouraged. Despite this fact, Native Hawaiians have established distinct communities and retained their language, culture, and traditions. They have done so in a way that also allows other cultures to flourish in Hawaii. Now their generosity is being used against them by opponents of this bill who claim that because Native Hawaiians do not have a governing entity, they cannot partake in the Federal policy of self-governance and self-determination that is offered to their native brethren in the United States.

My bill authorizes a process for the reorganization of the Native Hawaiian governing entity for the purposes of a federally recognized government-to-government relationship. There are many checks and balances in this process which has the structure necessary to comply—to comply—with Federal law and still maintains the flexibility for Native Hawaiians to determine the outcome of this process.

Further, my bill includes a negotiations process between the Native Hawaiian governing entity, the State of Hawaii, and the United States to address issues such as lands, natural resources, assets, criminal and civil jurisdiction, and historical grievances. Nothing that is currently within the jurisdiction of another level of government can be conveyed to the Native Hawaiian Government without going through this negotiations process.

I am proud of the fact that this bill respects the rights of Hawaii's indigenous peoples through a process that is consistent with Federal law and it provides the structured process for the people of Hawaii to address the longstanding issues which have plagued both Native Hawaiians and non-Native Hawaiians since the overthrow of the Kingdom of Hawaii.

I want to reiterate to my colleagues that this bill is not race based. This bill is based on the Federal policies toward indigenous peoples. Those who characterize this bill as race based fail to understand the Federal policies toward indigenous peoples. Those who characterize this bill as race based fail to understand the legal and political relationship the United States had with the indigenous peoples and their governments preexisting the United States.

Finally, those who characterize this bill as race based are saying that Native Hawaiians are not native enough. I find this offensive. And I ask that my colleagues join me in my efforts to bring parity to Native Hawaiians by enacting my bill.

This effort will continue from day-to-day here. We will continue to bring forward the history of Hawaii and the reasons why we are trying to enact this bill, not only for the benefit of the indigenous people of Hawaii but for the benefit of the United States as well.

Mr. President, 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. VOINOVICH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

MORNING BUSINESS

Mr. VOINOVICH. 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.

VOTE EXPLANATION

Mr. DURBIN. Mr. President, yesterday, the Senate voted on two motions to invoke cloture to proceed to legislation regarding medical malpractice. Due to a mechanical problem with the plane on my flight from Chicago, I was necessarily absent for this debate and the first vote. Had I been present for that vote, I would have voted against the motion to invoke cloture, and I did vote against the second motion.

Since 2003, the last time Congress considered this issue, 34 States have passed malpractice legislation. Four additional States have pending legislation in this year.

AMA counts 21 States as ''crisis'' States. Of those 21 States, 16 States passed legislation in the past 2 years, and two are currently considering bills.

Instead of considering ways to cap pain and suffering damages for injured patients, Congress should be working on other health care priorities.

Neither S. 22 nor S. 23 do anything to address medical errors, the underlying reason for medical malpractice lawsuits.

According to the Institute of Medicine, medical errors have caused more American deaths per year than breast cancer, AIDS and car accidents combined. It is equivalent to a jumbo jet liner crashing every 24 hours for 1 year.

When I sat on the Government Affairs Committee, Dr. Carolyn Clancy, Director of the Agency for Healthcare Research and Quality, testified about patient safety.

She called medical errors ''a national problem of epidemic proportions.'' She went on to say that Congress and HHS need to make sure that health care professionals work in systems that are designed to prevent mistakes and catch problems before they cause harm.

These bills will do nothing to reach that goal.

The most far-reaching study of the extent and cost of medical errors in our hospitals was published in the Journal of the American Medical Association, the authors of the study analyzed 7.45 million records from 994 hospitals in 28 States, a sample representative of about 20 percent of U.S. hospitals.

They concluded that medical injuries in hospitals ''pose a significant threat to patients and incur substantial costs to society'' and ''are a serious epidemic confronting our health care system.''

The study found that injuries in U.S. hospitals in 2000, just 1 year, led to approximately 32,600 deaths, at least 2.4 million extra days of patient hospitalization and additional costs of up to $9.3 billion. These injuries did not include adverse drug reactions or malfunctioning medical devices.

What do these bills do about these medical errors? Nothing.

Instead, these bills place an arbitrary, one-size-fits-all cap on noneconomic damages, forfeiting the right of a jury to decide the appropriate level of compensation for an injured person.

The answer to this problem is not to have Congress deciding what injured patients should receive. America has judges and juries who make those decisions. One hundred Senators do not have all the facts and should not place a blanket cap on all cases.

Proponents of this bill are saying it is a ''new'' medical malpractice proposal because a patient could receive up to $750,000 in pain and suffering as opposed to the $250,000 cap we considered in 2003.

However, the cap is still $250,000 for a doctor, a hospital or other provider. If a patient is injured at three hospitals or by three doctors, he or she could receive a total $750,000, but the cap is still $250,000 per provider.

Ten years ago, Donna Harnett arrived at a hospital in Chicago, IL, in labor with her first child. She waited nearly 5 hours before being admitted. Following an initial examination, her doctor decided that her labor was not progressing quickly enough and prescribed a drug to help induce more contractions.

Later, when Donna's labor still was not progressing, her doctor broke her water and found that it was abnormal. Rather than consider a C-section, Donna's doctor decided to continue administering the drug, in hopes that the labor would progress.

Six hours later, Donna still hadn't delivered, but her son's fetal monitoring system began alarming, indicating that the baby was in serious respiratory distress. The doctor finally decided that it was time to perform an emergency C-section, but it was another hour before Donna was taken into the operating room.

During that time, the doctor failed to administer oxygen or an IV to help the baby breathe. After Martin was born, he remained in the intensive care unit for 3 weeks. Examinations have since revealed that Martin has substantial brain damage and cerebral palsy—a direct result of the doctor's failure to respond to indications of serious oxygen deprivation and deliver in a timely manner.

Donna's doctor told her never to have more children because there was a serious problem with her DNA, which could result in similar mental and physical disabilities in any of her future children.

Donna has since given birth to three perfectly healthy sons. Donna sued the doctor responsible for Martin's delivery and received a settlement, but this doctor is still licensed and practicing medicine in Illinois—despite several other cases that have been filed against him.

Donna is thankful that she has money from a malpractice settlement to help cover the costs associated with Martin's care that are not covered by health insurance—such as the used, wheelchair-accessible van that she purchased for $50,000, and the $100,000 for renovating the new home she purchased to make it accessible for Martin.

If the law we are debating today had been in place when Donna filed her malpractice suit against the doctor who delivered Martin, she doubts that she would have been able to keep him out of an institution, because as someone who sustained permanent injuries as a newborn, Martin would not have been eligible for an economic damage award.

The problem with malpractice premiums is a cyclical insurance problem. We had a crisis during the 1970s and again in the 1980s. Dozens of States have passed tort reform. Yet we find ourselves faced with the same problems. That is because we haven't looked closely at insurance companies.

Property casualty insurers had a record year in 2005.

The property casualty insurance industry made $43 billion in profit last year.

The difference between the cost of the policies offered to doctors and hospitals, and the payouts from lawsuits is enormous. Payouts have remained steady while premiums have skyrocketed.

Wonder where that money is going?

Jeffry Immelt, the CEO of GE, made $19.23 million last year.

Martin Sullivan, CEO of American International Group, made $11 million.

Stephen Lilienthal, CEO of CNA Financial Corporation, made $3.2 million.

A. Derrill Crowe, CEO of ProAssurance, made $1.5 million.

This bill completely ignores the role of insurers in this problem.

Between 1993 and 2003, the annual premiums Americans paid for their health insurance increased by 79 percent and employer contributions to their employee insurance increased by 90 percent.

We need to be looking at the underlying reasons for rising health costs, and these bills do nothing to achieve that goal.

In fact, a new CBO report, published last Friday concluded that ''the estimated effect of implementing a package of previously proposed tort limits is near zero.''

In other words, capping pain and suffering for patients will not bring down health insurance costs.

Proponents of limiting pain and suffering claim frivolous lawsuits are at the root of the problem, but these bills do nothing to cut down on the number of lawsuits. They only punish those who have legitimate cases.

The people whose cases make it to jury verdicts have surmounted many hurdles. Cases without merit are thrown out before they ever reach the jury. Why would we want to limit pain and suffering for those whose cases make it through the system?

Medical malpractice is a complicated and multifaceted problem that requires a variety of solutions.

First, we must improve patient safety. Medicare is starting to embrace something called Pay for Performance that will go a long way toward improving quality.

The idea of Pay for Performance is to pay doctors based on whether they fulfill certain quality standards and use the best treatment methods, rather than simply reimbursing for all services performed.

Under a Medicare pilot program, doctors can qualify for bonuses if they provide services like vaccines and cancer screening, and eliminate unnecessary procedures.

Here is an example of how it can improve quality.

Hackensack University Medical Center in New Jersey signed up for the program. It agreed to report its performance on a variety of measures.

Right away, the hospitals noticed some problem areas. Under clinical guidelines, a patient who has had orthopedic surgery should be taken off IV antibiotics after 24 hours. Longer use of the drugs don't prevent infection, they cost money, and they can lead to greater antibiotic resistance.

Hackensack hospital found that 25 percent of their surgery patients were being kept on IV antibiotics longer than 24 hours. Within one week of the launch of the Pay for Performance program, 94 percent of patients were taken off the drugs on time.

Second, we must improve oversight. We have something called the National Practitioner Data Bank, which was set up to allow licensing boards and employers to check on doctors' records before they are hired so problem doctors could not move from state to state.

This data bank is not working. According to the federal Department of Health and Human Services, nearly 54 percent of all hospitals have never reported a disciplinary action to the data bank.

Federal law requires that hospitals and medical boards be penalized if they don't report to the data bank. But no fine or penalty has ever been levied.

Further, hospitals sometimes agree not to report doctors they are forcing from their staffs to smooth their departure. Also, physicians' names are removed from malpractice settlements to keep them out of the data bank.

The failings of the data bank create problems like the one faced by Gwyneth Vives. Three hours after giving birth to a healthy boy in 2001, Vives, a scientist at Los Alamos National Laboratory in New Mexico, suffered a complication and bled to death.

The OB/GYN who tended to Ms. Vives had a troubled history. She had previously been forced to leave a job at Duke University Medical Center in North Carolina when questions arose about her surgical skills and her complication rate.

According to the New Mexico Medical Board, she lied to get her New Mexico license, saying she had never lost hospital privileges.

After Ms. Vives died, the OB/GYN went to Michigan and got a license.

We must improve the national practitioner database system so the few doctors who are causing medical injuries cannot simply move to another State.

Contrary to popular belief about frivolous lawsuits, 95 percent of people who are injured by a doctor do not sue.

Studies have shown that the most significant reason people sue is because they feel their doctor or hospital did not acknowledge the problem, or apologize. In other words, they are angry.

Based on this data, a program called ''Sorry Works'' has been launched. Under the program, doctors and hospital staff conduct analyses after every patient injury, and if a medical error caused the problem, the doctors and hospital staff apologize, provide solutions to fix the problem, and offer upfront compensation to the patient, family, and their attorney.

This approach helps alleviate anger and actually reduces the chances of litigation and costly defense litigation bills. The program has worked successfully at hospitals such as the University of Michigan Hospital system, Stanford Medical Center, Children's Hospitals and Clinics of Minnesota, and the VA Hospital in Lexington, Kentucky.

I am proud to say that Illinois is the first State to enact a Sorry Works pilot program statewide.

My colleague from Illinois, BARACK OBAMA, has introduced a bill in the U.S. Senate to facilitate federal funding for apology programs.

The insurance industry has a blanket exemption from Federal antitrust laws. Using their exemption, insurers can collude to set rates, resulting in higher premiums than true competition would achieve—and because of this exemption, enforcement officials cannot investigate any such collusion.

There was an article in the Washington Post last Friday about Hank Greenberg, the former chairman of one of the largest malpractice insurers in the country, American Continental Group.

Mr. Greenberg has been sued by New York Attorney General Eliot Spitzer for fraudulent transactions aimed at manipulating the insurer's financial statements and deceiving regulators and investors.

If Congress is serious about controlling rising medical malpractice premiums, we must revoke this blanket exemption created in the McCarran-Ferguson act.

I am a cosponsor of a bill introduced by Senator LEAHY called the Medical Malpractice Insurance Antitrust Act. Our bill modifies the McCarran-Ferguson Act for the most pernicious antitrust offenses: price fixing, bid rigging, and market allocations.

Who could object to a prohibition on insurance carriers' fixing prices or dividing territories for anticompetitive purposes. After all, the rest of our Nation's industries manage either to abide by these laws or pay the consequences.

We need to stop insurers from gouging doctors and hospitals and this bill is a step in the right direction.

## LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On March 7, 2006, in New York, NY, Victor Lopez and David Andrade were sentenced separately to 8 years in prison for their involvement in a series of beatings that targeted gay men. Lopez and Andrade would pick up gay men, then beat and rob them. According to police, these attacks were motivated by the victims sexual orientation.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## HONORING OUR ARMED FORCES

### STAFF SERGEANT JOSEPH E. PROCTOR

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave man from Indianapolis. Joseph E. Proctor, 38 years old, was killed on May 2 in a suicide bombing near his observation post in Iraq. Leaving his life and family behind him, Joseph risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

After September 11, many Americans, including Joseph, felt a deep calling to help their country in its time of need. In the wake of the attacks, despite his family's concerns over his safety, Joseph signed up for the Indiana National Guard, where he had served 20 years ago as a young man. After his Guard service in the mid-1980s, he went into the Army on active duty and served in Desert Storm. Joseph re-enlisted in the Guard in 2002, and began work as a refueler in Iraq. His brother Eddie told a local news outlet that Joseph had seen his military service as a way to help out fellow soldiers. He recounted Joseph's selflessness, saying that one of the reasons Joseph went to Iraq was to give other soldiers a break to come home and see their families. At the time of his death, he was supposed to return home in just 2 weeks.

Joseph was killed while serving his country in Operation Iraqi Freedom. He was assigned to the 638th Aviation Support Battalion in Noblesville. This brave soldier leaves behind his wife, Beth, and three children, Joe, 20, Cassandra, 17, and Adam, 11, years old.

Today, I join Joseph's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Joseph, a memory that will burn brightly during these continuing days of conflict and grief.

Joseph was known for his dedication to his family and his love of country. Today and always, Joseph will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Joseph's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Joseph's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Joseph Proctor in the official record

of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Joseph's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Joseph.

HONORING CORPORAL ERIC LUEKEN

Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young Marine from Southern Indiana. Eric Lueken, 23 years old, died on April 22 in combat operations in the Anbar province of Iraq. With his entire life before him, Eric risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

A 2001 graduate of Northeast Dubois High School, Eric joined the Marine Corps in October 2003 to challenge himself and see the world. He previously served in Afghanistan for 8 months, before heading out to Iraq in March. He was a decorated war hero, who was awarded with a Purple Heart, two Combat Action Ribbons, a National Defense Service Medal, a Sea Service Deployment Ribbon, Iraq and Afghanistan Service Medals and the Global War on Terror Service Medal. A Marine who took his work seriously, Eric had planned to marry his girlfriend Ericka Merkel upon his return from Iraq. She told a local paper, ''He always put other people before him.'' I stand here today to express my gratitude for Eric's sacrifice and that of his family and loved ones.

Eric was killed while serving his country in Operation Iraqi Freedom. He was assigned to the 3rd Battalion, 3rd Marine Regiment, 3rd Marine Division, III Marine Expeditionary Force based at Kaneohe Bay, Hawaii. This brave young soldier leaves behind his parents Glenn ''Jake'' and Melinda Lueken, and his brother Brent.

Today, I join Eric's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Eric, a memory that will burn brightly during these continuing days of conflict and grief.

Eric was known for his dedication to his family and his love of country. Today and always, Eric will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Eric's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Eric's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Eric Lueken in the official record of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Eric's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Eric.

HONORING STAFF SERGEANT ERIC A. MC INTOSH

Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Indianapolis. Eric McIntosh, 29 years old, was one of three Marines killed on April 2 during combat operations in the Anbar province of Iraq. With his entire life before him, Eric risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

A former Roncalli High School student, Eric had been in the Marines for 10 years and was on his second tour in Iraq when he was killed. Although he graduated high school unsure of what he wanted to do with his life, he found purpose during his time as a Marine. After completing his second tour, he hoped to become a recruiter for the military. Despite having battled asthma as a child, Eric was an avid athlete and an enthusiastic surfer. His brother Richard, who served in the Army during the Gulf War, recalled his pride in Eric and Eric's passion for his job. ''He loved the Marines. He loved his job,'' said Richard. ''He was a way better soldier than I was.''

Eric was killed while serving his country in Operation Iraqi Freedom. He was a member of the 3rd Battalion, 8th Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force. This brave young soldier leaves behind his mother Betty, his brother Richard, his sister Lisa Schoenly; and his wife Cynthia.

Today, I join Eric's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Eric, a memory that will burn brightly during these continuing days of conflict and grief.

Eric was known for his dedication to his family and his love of country. Today and always, Eric will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Eric's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Eric's actions will live on far longer that any record of these words.

It is my sad duty to enter the name of Eric McIntosh in the official record of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Eric's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Eric.

## COSPONSORSHIP OF S. 722

Mr. BURNS. Mr. President, I rise today to express my support for legislation introduced in the Senate which has a significant impact on more than 800 small businesses in Montana and hundreds of thousands more around the country. S. 722 would reduce the tax burden on every barrel of beer, which currently stands at $18. Prior to 1991, this tax was only half of the cost today.

This tax was originally enacted as a means to pay for the U.S. Civil War. The lesson is that there is no such thing as a short-term tax. The tax on beer, which accounts for 44 percent of a bottle of beer and a whopping 80 percent cost of a six-pack, has been steadily increasing since 1991.

The taxation of beer falls unfairly on Montanans who can least afford to pay it. A report by Citizens for Tax Justice indicates that people whose family's income is in the top 20 percent pay five times less in excise beer tax than those whose family is in the bottom 20 percent.

The Tax Code was intended to raise revenue for the Federal Government. It should not be used to influence behavior or personal choice. This excessive tax on beer is not efficient at raising revenue, and the cost of each dollar imposed is much greater in terms of jobs lost and economic drag.

There are, of course, concerns about the social costs of alcohol consumption. I am very sensitive to those concerns and am encouraged by the reductions in drunk driving and alcohol abuse. But the fact is, this tax punishes all beer consumers instead of the minority who act dangerously. In any case, these problems must be addressed directly through specific legislation rather than indirectly through the Tax Code, which is already complicated enough.

Mr. President, because this tax has grown so much since 1991 and because it not only affects beer wholesalers and resellers but hard-working Montanans who enjoy these products responsibly, I am pleased to cosponsor this legislation in the Senate.

## PASSING THE MINIMUM WAGE

Mr. BIDEN. Mr. President, every day we see more evidence that this economy is not working for millions of Americans. One troubling trend is the growing divide between rich and poor the widening gap in income inequality and the distribution of wealth in our country.

Over the past 24 years, the most fortunate Americans, in the top 1 percent, saw their incomes more than double from an average of $306,000 to over $700,000. During that same period, the incomes of average Americans grew just 15 percent.

But the poorest fifth of our citizens saw their already inadequate incomes grow just $600—over 24 years.

As a result, the top 1 percent of Americans now get over 12 percent of all the income, up over 50 percent 24 years ago. And the share of the average family actually dropped. The share going to the bottom fifth dropped even more.

We are moving apart, not coming together, as a nation. Last year, the Chair of the Federal Reserve called growing concentration of income in the hands of a tiny minority ''a really serious problem.''

There are many things we need to do to get our economy working for working families. One place to start is at the bottom among those Americans who work at full-time jobs and remain below the poverty line. We should not permit that to happen. If we honor work, we have to reward it. We should not stand for any American to work a full-time job and come home too poor to meet the basic needs.

The minimum wage has not increased since 1996—and all of that increase has been wiped out by the cost of living. The minimum wage today, at $5.15 an hour, is even worth less in today's dollars than the $4.25 rate it replaced.

Today, the minimum wage is worth only a third of the average hourly wage of American workers, the lowest level in more than half a century. The bottom rung of the ladder of opportunity is broken. It is time to fix it.

That is why I am a cosponsor of S. 1062, which will raise the minimum wage in three stages, over the next 3 years, to $7.25 an hour.

That means a pay raise for over 7 million workers and lifting the floor under everybody's wages.

It has been 10 years since we last raised the minimum wage. Over the past few years, we have passed tax cuts that last year alone gave over $100,000 to the wealthiest among us. The gap between rich and poor is now as big as it was during the Great Depression.

Raising the minimum wage is only the first step in restoring balance and fairness to our economy. But it is past time for us to take that step. We must not wait any longer.

## BE KIND TO ANIMALS WEEK

Mr. ALLARD. Mr. President, I am pleased to announce that this week, May 7 to 13, 2006, has been designated by the American Humane Association as the 92nd Be Kind to Animals Week. The American Humane Association, which is headquartered in Englewood, CO, was founded in 1877 and is the oldest national organization dedicated to the mission of preventing cruelty to animals, as well as to children. Through this work, American Humane has helped America shed light on the nature and origins of cruelty and through this annual observance reminds us that the practice of kindness can both heal hurt and yield constructive reform.

When, in 1915, American Humane launched the Nation's first national week for animals, its purpose was simple: ''to direct the attention of the public to the importance of giving proper care and attention to animals.'' This message resonated powerfully with Americans and quickly evolved into a national public education campaign with a broader mission: promoting the teaching of humane education in our schools; promoting the good works of animal shelters; and helping Americans understand the unique bond between humans and animals.

Be Kind to Animals Week is the oldest event of its kind. Each year it reminds us how animals enrich our lives through their companionship, friendship and love. Over the last 91 years, a central theme of this annual event has been the importance of teaching the principles of kindness and compassion to children. Humane groups spend much of their time reacting to mistreatment of animals as it occurs. American Humane believes that, if we share our humane values with our children, these problems can be prevented and our society made safer and kinder.

American Humane's Be Kind to Animals Week is as much a lifelong attitude as it is a weeklong event. It is about animal shelters, veterinarians, humane educators, animal control professionals, and the faith community promoting discussion and reflection about kindness to animals, to individuals, within families and perhaps most important, within communities. But Be Kind to Animals Week isn't just about animals. It is also about children and those who care for and about them.

As a veterinarian, I have seen firsthand how important animals are to people. When a family adopts a pet, it becomes one of them. Usually, when people bring an animal to a veterinarian, it is because there is something wrong with the animal. It was always obvious to me the love that people had for their animals. The illness of a pet can cause great sorrow, but the healing of a pet brings great joy. Many studies have shown the increased happiness and healing powers of spending time with a pet.

During Be Kind to Animals Week, we should all keep in mind a simple but powerful message. The week should serve as a reminder that as humans, we need to be ever more compassionate about the animals in our world, whether they are companion pets, service animals such as seeing-eye dogs, zoo critters, livestock, or nature's wildlife. It is a reminder that the bond between humans and animals is a vital one and is capable of bringing joy and healing to people of all ages. It is also a reminder to be more kind and compassionate to our fellow man. We co-exist in this world—human to human and human to animal—and those bonds must be maintained, they must be kept strong.

## ADDITIONAL STATEMENTS

### HONORING SIGNATURE SCHOOL

• Mr. BAYH. Mr. President, I rise today to pay tribute to Evanville's Signature School, which was recently ranked by Newsweek Magazine as one of the top one hundred high schools in the Nation. This ranking is a remarkable honor to the school, and it demonstrates the hard work and dedication to educational excellence of the students and teachers at Signature.

I am honored to have the opportunity to commend the achievements of Signature's students and the commitment of Signature's families and teachers, which made this prestigious recognition possible. Now more than ever, education is the key to greater personal opportunity. Here in Washington, I have fought to ensure that education is available and accessible to all our Nation's students. However, the real, heroic work is done on the ground, in our schools. The Signature School is a perfect example of what can happen when teachers and students unite around the goal of achieving academic excellence.

Signature was the first charter school in Indiana, created to offer a

challenging curriculum and nurturing educational environment to its students. Signature was a half-day program offering accelerated courses for a decade, before the passage of Indiana's charter school law, allowing Signature to become a full-day, independent charter school in 2002. Since then, Signature has been able to focus full-time on offering Evansville students the opportunity to compete at a national level. As Newsweek's rankings demonstrate, the school has certainly succeeded in accomplishing its mission.

I wish to take a moment to pay special tribute to Signature's teachers and principal, Vicki Schneider. With their focus on quality education and dedication to their students, every teacher and staff person at Signature has helped ensure that their graduates have the necessary tools to excel in today's increasingly competitive world. This summer, as Signature's graduates take the next step in their lives, they do so well-prepared to assume the mantle of leadership for their generation. I look forward to following their future successes, and I hope they will remember their extraordinary education and someday return the favor and give back to the youth of our country so that they can enjoy similar opportunities.●

## IN RECOGNITION OF DELTA TAU DELTA'S BETA PHI CHAPTER

● Mr. CARPER. Mr. President. I rise today to recognize the Beta Phi Chapter of Delta Tau Delta for their reinstatement to the Ohio State University's fraternity system and for the chapter's commitment to living lives of excellence that can serve as an example for us all.

Founded at Bethany College in 1858, Delta Tau Delta began as a response by the eight founding members to suspicions that the student-run Neotrophian Literary Society had been compromised and that the results of a student oratory contest had been manipulated. This injustice was not to be tolerated by the young founding members, as they were devoted to the idea of truth in all matters. Their response was to found the fraternal society of Delta Tau Delta, which continues to thrive on college campuses across America.

This devotion to the truth is only one of the hallmarks of Delta Tau Delta. The ideals of courage, faith and power complete the quartet of founding principles. These guiding lights have illuminated the lives of many extraordinary young men who have undertaken the commitment that is required to become an active member of this outstanding organization.

Those men have gone on to serve in positions of trust and great responsibility today as CEOs of companies like GM and General Mills, as Governor of New Mexico, as U.S. Representatives, and as U.S. Senators of South Dakota and Delaware.

The Beta Phi chapter at the Ohio State University was founded on November 19, 1894. More than 2,000 young men have forged their college memories there through their participation in this chapter. Located less than 200 yards from campus, the Delta Tau Delta house stood for much of the past century as a testament to character, honesty, and integrity. The reinstatement of the Beta Phi chapter represents a return to those values.

These bonds of brotherhood do not dissolve at graduation. They continue through time because the brothers of Delta Tau Delta commit themselves to a cause that is larger than a single individual or graduating class.

With chapters on more than 200 college campuses across America and approximately 6,000 active members and more than 145,000 alumni, Delta Tau Delta has had an immeasurable impact on the communities in which its members—past and present—live and serve. Volunteer service is vital to the improvement of any community. It is one of the primary requirements for becoming an active member of Delta Tau Delta. By partnering with the Adopt-A-School volunteer service organization, the men of the Beta Phi Chapter have lent their time and energy at every turn to mentor and tutor thousands of schoolchildren less fortunate than they.

The Delta Tau Delta experience also allows young men to gain experience that the average college student does not receive by providing members with opportunities for responsibility and leadership that are not easily found in the many traditional college settings. Whether mentoring school children or organizing a community blood drive, the men of Delta Tau Delta accept responsibility for more than themselves. They learn to give back to their communities and strive for excellence at every opportunity.

With this proud tradition in mind, the men of Delta Tau Delta's Beta Phi chapter are to be commended and applauded for their reinstatement to the Ohio State University community and for this chapter's return to the principles on which it was founded more than a century ago.●

## IN RECOGNITION OF RETHA FISHER'S RETIREMENT

● Mr. CARPER. Mr. President. I rise to today in recognition of Retha Fisher upon her retirement. Retha has served as Westminster Presbyterian Church's director of social services for 29 years, and her leadership over that span of time has won her the respect and gratitude of our entire State. She has been, and remains, a trusted friend to many members of our congregation and of the community that we serve.

Retha was born in Fayetteville, NC, on April 18, 1936. She was the only child of Clara and Lester McLerin. Her early childhood ambition was to become a nurse, but she decided against it because she disliked the sight of blood. After many years of piano and voice lessons, she began her college career in Washington, DC, at Howard University where she majored in music. She later decided to follow her childhood desire to help her fellow man and changed her major to psychology and sociology with a minor in English. It was during this time that she made the decision to become a social worker.

After graduation and while looking for employment, Retha applied to what was then known as the State Department of Welfare, Child Welfare Division in Dover. During the interview process, she was asked if she would like to take advantage of a stipend to attend graduate school. While living in Wilmington, she attended the University of Pennsylvania's School of Social Work and was placed in a position in Dover. Her placement was with Child Welfare Services, and she soon discovered that working with children was her true calling. Twelve years later, Retha accepted a position with the Wilmington Housing Authority as their coordinator of social services.

Throughout these many years doing her fine work, Retha maintained and nourished some other ''loves of her life.'' She met and married Arland Roland Fisher, whom everyone called Roland. Together they had one daughter, Whitney Gayle Fisher, who now practices personal injury and criminal law in Newark, NJ. After her daughter's birth, Retha left her position to with the Wilmington Housing Authority to devote her time as a full-time wife and mother.

In 1977, though, Retha was asked by Westminster Presbyterian Church if she would be interested in interviewing for a job there. It was with this wonderful opportunity that Retha found her true calling. She became the church's director of social services, and the people of Westminster and of Delaware have been truly blessed by this decision for almost three decades.

Retha's service has extended far beyond the church walls and well into the community. In 1993, she founded the Food Bank of Delaware, a nonprofit agency that helps feed hungry people throughout our State. The Food Bank of Delaware is the only facility in Delaware with the equipment, warehouse, and staff to collect donations for all sectors of the food industry and to safely and efficiently redistribute it to the people who need it most. Through 235 member agencies, the Food Bank of Delaware distributes over 10 million pounds of food annually.

In addition to the Food Bank of Delaware, Retha has also helped countless low-income individuals with financial assistance. She founded F.A.I.T.H. Center, which provides financial assistance to the poor. In 1992, she also chaired the Conectiv—now Delmarva Power—Consumer Council, which continues to meet with representatives of the utility and the State of Delaware to bring financial support to those who cannot afford to pay their utility bills.

In 1989, Retha met with 10 Westminster couples to explore the possibility of how they might help homeless families get off the street and into adequate housing. To that end, Retha founded the Samaritans. From case management to furniture to mentoring, the Samaritans stand ready to provide support for the year or so that a homeless family needs to become stabilized.

At Christmastime, Retha embodies the true spirit of the holidays. Each year, Retha organizes and oversees Westminster's yearly program to distribute Christmas food and gift baskets to nearly 200 clients of the social services agencies of greater Wilmington.

Retha has not only brought financial assistance through her work in these various programs, but she has served as a spiritual leader as well. She has been an ear to the lonely and a person to pray with through the hard times. She has given each of these people who have come to her dignity and hope.

Through Retha's tireless efforts, she has made a profound difference in the lives of thousands of Delawareans. Upon her retirement, she leaves behind a legacy of commitment to public service for future generations to follow. I thank her for the friendship that many of us are privileged to share with Retha and for the inspiration that she provides through a lifetime of caring. On behalf of all Delawareans, I congratulate her on a truly remarkable and distinguished career and extend to her my very best wishes for every success in the future. I wish her and her family only the very best in all that lies ahead.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, 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 appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2389. A bill to amend the Communications Act of 1934 to prohibit the unlawful acquisition and use of confidential customer proprietary network information, and for other purposes (Rept. No. 109–253).

By Mr. WARNER, from the Committee on Armed Services, without amendment:

S. 2766. An original bill to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes (Rept. No. 109–254).

S. 2767. An original bill to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

S. 2768. An original bill to authorize appropriations for fiscal year 2007 for military construction, and for other purposes.

S. 2769. An original bill to authorize appropriations for fiscal year 2007 for defense activities of the Department of Energy, and for other purposes.

## 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. DODD (for himself and Mr. SMITH):

S. 2765. A bill to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. WARNER:

S. 2766. An original bill to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. WARNER:

S. 2767. An original bill to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. WARNER:

S. 2768. An original bill to authorize appropriations for fiscal year 2007 for military construction, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. WARNER:

S. 2769. An original bill to authorize appropriations for fiscal year 2007 for defense activities of the Department of Energy, and for other purposes; from the Committee on Armed Services; placed on the calendar.

By Mr. McCAIN (for himself, Mr. BIDEN, Mr. LIEBERMAN, and Mr. LEAHY):

S. 2770. A bill to impose sanctions on certain officials of Uzbekistan responsible for the Andijan massacre; to the Committee on Foreign Relations.

By Mr. VITTER:

S. 2771. A bill to increase the types of Federal housing assistance available to individuals and households in response to a major disaster, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. VOINOVICH (for himself, Mr. BINGAMAN, Mr. DEWINE, and Mr. AKAKA):

S. 2772. A bill to provide for innovation in health care through State initiatives that expand coverage and access and improve quality and efficiency in the health care system; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER:

S. 2773. A bill to require the Federal Government to purchase fuel efficient automobiles, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself, Ms. LANDRIEU, and Mr. CRAIG):

S. Res. 471. A resolution recognizing that, during National Foster Care Month, the leaders of the Federal, State, and local governments should provide leadership to improve the care given to children in foster care programs; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 185

At the request of Mr. NELSON of Florida, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 185, a bill to amend title 10, United States Code, to repeal the requirement for the reduction of certain Survivor Benefit Plan annuities by the amount of dependency and indemnity compensation and to modify the effective date for paid-up coverage under the Survivor Benefit Plan.

S. 401

At the request of Mr. HARKIN, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 401, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 713

At the request of Mr. ROBERTS, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 713, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 722

At the request of Mr. SANTORUM, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 722, a bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level.

S. 1278

At the request of Mr. LEAHY, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1278, a bill to amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

S. 1537

At the request of Mr. AKAKA, the names of the Senator from Illinois (Mr.

OBAMA) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1537, a bill to amend title 38, United States Code, to provide for the establishment of Parkinson's Disease Research Education and Clinical Centers in the Veterans Health Administration of the Department of Veterans Affairs and Multiple Sclerosis Centers of Excellence.

S. 1698

At the request of Mr. KERRY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1698, a bill to accelerate efforts to develop vaccines for diseases primarily affecting developing countries and for other purposes.

S. 1774

At the request of Mr. CORNYN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1774, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension.

S. 1934

At the request of Mr. SPECTER, the name of the Senator from Maryland (Ms. MIKULSKI) 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. 2039

At the request of Mr. DURBIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2039, a bill to provide for loan repayment for prosecutors and public defenders.

S. 2306

At the request of Mr. LEVIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2306, a bill to amend the National Organ Transplant Act to clarify that kidney paired donation and kidney list donation do not involve the transfer of a human organ for valuable consideration.

S. 2321

At the request of Mr. SANTORUM, the names of the Senator from North Dakota (Mr. DORGAN), the Senator from North Carolina (Mrs. DOLE) and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 2321, a bill to require the Secretary of the Treasury to mint coins in commemoration of Louis Braille.

S. 2452

At the request of Mr. BAYH, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2452, a bill to prohibit picketing at the funerals of members and former members of the armed forces.

S. 2491

At the request of Mr. CORNYN, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2491, a bill to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

S. 2510

At the request of Mr. DURBIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2510, a bill to establish a national health program administered by the Office of Personnel Management to offer health benefits plans to individuals who are not Federal employees, and for other purposes.

S. 2554

At the request of Mr. ENSIGN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2554, a bill to amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include premiums for non-group high deductible health plan coverage.

S. 2562

At the request of Mr. CRAIG, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2562, a bill to increase, effective as of December 1, 2006, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

S. 2644

At the request of Mrs. FEINSTEIN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2644, a bill to harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

S. 2652

At the request of Mrs. FEINSTEIN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 2652, a bill to amend chapter 27 of title 18, United States code, to prohibit the unauthorized construction, financing, or, with reckless disregard, permitting the construction or use on one's land, of a tunnel or subterranean passageway between the United States and another country.

S. 2658

At the request of Mr. BOND, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2658, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the Chief of the National Guard Bureau and the enhancement of the functions of the National Guard Bureau, and for other purposes.

At the request of Mr. LEAHY, the names of the Senator from Nevada (Mr. REID) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 2658, supra.

S. 2674

At the request of Mr. AKAKA, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2674, a bill to amend the Native American Languages Act to provide for the support of Native American language survival schools, and for other purposes.

S. 2692

At the request of Mr. LEVIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2692, a bill to suspend temporarily the duty on certain microphones used in automotive interiors.

S. 2694

At the request of Mr. CRAIG, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2694, a bill to amend title 38, United States Code, to remove certain limitations on attorney representation of claimants for veterans benefits in administrative proceedings before the Department of Veterans Affairs, and for other purposes.

S. 2697

At the request of Mr. LUGAR, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 2697, a bill to establish the position of the United States Ambassador for ASEAN.

S. 2703

At the request of Mr. LEAHY, the names of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Indiana (Mr. BAYH) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2703, a bill to amend the Voting Rights Act of 1965.

S. 2704

At the request of Mr. DEWINE, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2704, a bill to revise and extend the National Police Athletic League Youth Enrichment Act of 2000.

S. 2723

At the request of Mr. LAUTENBERG, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 2723, a bill to amend title XVIII of the Social Security Act to require the sponsor of a prescription drug plan or an organization offering an MA-PD plan to promptly pay claims submitted under part D, and for other purposes.

S. 2725

At the request of Mrs. CLINTON, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2725, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal Minimum wage and to ensure that increases in the Federal minimum wage keep pace with any pay adjustments for Members of Congress.

S. 2754

At the request of Mr. SANTORUM, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 2754, a bill to derive human pluripotent stem cell lines using techniques that do not knowingly harm embryos.

S. 2759

At the request of Mr. SMITH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2759, a bill to provide for additional outreach and education related to the Medicare program and to amend title XVIII of the Social Security Act to provide a special enrollment period for individuals who qualify for an income-related subsidy under the Medicare prescription drug program.

S. RES. 320

At the request of Mr. ENSIGN, the names of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. SCHUMER) 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.

S. RES. 436

At the request of Mr. MCCAIN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Res. 436, a resolution urging the Federation Internationale de Football Association to prevent persons or groups representing the Islamic Republic of Iran from participating in sanctioned soccer matches.

S. RES. 469

At the request of Mr. LIEBERMAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 469, a resolution condemning the April 25, 2006, beating and intimidation of Cuban dissident Martha Beatriz Roque.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Mr. DODD (for himself and Mr. SMITH):

S. 2765. A bill to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes; to the Committee on Foreign Relations.

Mr. President, I rise today to introduce, on behalf of myself and my friend, Senator GORDON SMITH of Oregon, the Child Health Investment for Long-term Development (CHILD and Newborn) Act of 2006. This legislation would perform four simple, yet critically important functions.

First, it would require the Administration to develop and implement a strategy to improve the health of, and reduce mortality rates among, newborns, children, and mothers in developing countries.

Second, it would mandate the establishment of a U.S. Government task force to assess, monitor, and evaluate the progress of U.S. efforts to meet the United Nations Millennium Development Goals by 2015—specifically as those goals relate to reducing mortality rates for mothers and for children less than 5 years of age in developing countries.

Third, it would authorize the President to furnish assistance for programs whose goal is to improve the health of newborns, children, and mothers in developing countries.

And fourth, this legislation would authorize appropriations to carry out its provisions—$660 million for fiscal year 2007, and $1.2 billion for each of fiscal years 2008–2011.

I know that some of my colleagues will look at this bill and ask why the U.S. should devote such large amounts of resources to combating child and maternal mortality in the developing world. Certainly, nobody would deny that it's an important cause, but should it really be this much of a priority?

I would argue that the answer to this is yes. Why? Because with U.S. leadership, the current reality for mothers and their young children in the developing world can be changed dramatically.

What is that reality?

Almost 11 million children under the age of 5 die every year in the developing world—that's approximately 30,000 each day. About four million of those children die in their first four weeks of life. In many cases, they aren't even provided with a fighting chance. Indeed, for children under the age of five in the developing world, preventable or treatable diseases such as measles, tetanus, diarrhea, pneumonia, and malaria are the most common causes of death.

Each year, more than 525,000 women die from causes related to pregnancy and childbirth—more than 1,400 each day. Ninety-nine percent of these deaths occur in the developing world. And the lifetime risk of an African woman dying from a pregnancy or childbirth-related complication is I in 16, a high level of risk that is all the more striking when compared to the same risk for women in more developed regions—1 in 2,800. Some of the most common risk factors for maternal death in developing countries include early pregnancy and childbirth, closely spaced births, infectious diseases, malnutrition, and complications during childbirth.

Mr. President, the deaths of these nearly 12 million mothers and children are from largely preventable causes. This is a tragic situation, and it shouldn't be the case.

Luckily, we can combat these high levels of mortality—and it won't require lots of sophisticated technology. Instead, it will require simple measures that we take for granted here in the developed world.

For instance, it is estimated that two-thirds of deaths among children under 5 years of age—that's 7.1 million children, including 3 million newborns—could be prevented by low-cost, low-tech health and nutritional interventions. These interventions include encouraging breastfeeding; providing vitamin supplements, immunizations, and antibiotics; offering oral rehydration therapy with clean water; and expansion of basic clinical care.

For expecting mothers, simple steps such as birth spacing, access to preventive care, skilled birth attendants, and emergency obstetric care can help reduce maternal morality rates. And keeping mothers healthy is critical because the welfare of newborns and infants is inextricably tied to the health of the mother.

Mr. President, the U.S. isn't new at this battle. Over the past 30 years, our work in promoting child survival and maternal health globally has resulted in millions of lives being saved.

And in 2000, the U.S. joined 188 other countries in supporting eight Millennium Development Goals laid out by the United Nations. Two of these goals are related to child and maternal health—one calls for a reduction by two-thirds in the mortality rate of children under 5, and the other calls for a reduction in maternal deaths by three-quarters. Both of these goals are targeted to be met by 2015.

But with current structures and at current funding levels, the world is unlikely to meet these laudable goals. Certainly, the U.S. can't meet these global needs alone. Addressing this critical issue can't be a unilateral effort—countries around the world must also do their part and come forward with much-needed funding.

But passing the CHILD and Newborn Act of 2006 would send a strong message to the international community that this is a priority issue, and it would encourage them to step up to the plate. Millions of lives could be saved in the process.

On September 14, 2005, President Bush stated that the U.S. is ''committed to the Millennium Development Goals.'' I commend the President for his words. But now, it is time for Congress to stand up and make sure that the U.S. fulfills this commitment to protect millions of innocent women and their children around the globe. I urge my colleagues to support this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2765

*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 ''Child Health Investment for Long-term Development (CHILD and Newborn) Act of 2006''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds the following:

(1) Around the world, approximately 10.8 million children under the age of five die each year, more than 30,000 per day, almost all in the developing world.

(2) Each year in the developing world, four million newborns die in their first four weeks of life.

(3) Sub-Saharan Africa, with only 10 percent of the world's population, accounts for 43 percent of all deaths among children under the age of five.

(4) Countries such as Afghanistan, Angola and Niger experience extreme levels of child mortality, with 25 percent of children dying before their fifth birthday.

(5) For children under the age of five in the developing world, preventable or treatable diseases, such as measles, tetanus, diarrhea, pneumonia, and malaria, are the most common causes of death.

(6) Throughout the developing world, the lack of basic health services, clean water, adequate sanitation, and proper nutrition contribute significantly to child mortality.

(7) Hunger and malnutrition contribute to over five million child deaths annually.

(8) The lack of low-cost antibiotics and anti-malarial drugs contribute to three million child deaths each year.

(9) Lack of access to health services results in 30 million children under the age of one year going without necessary immunizations.

(10) Every year an estimated 250,000 to 500,000 vitamin A-deficient children become blind, with one-half of such children dying within 12 months of losing their sight.

(11) Iron deficiency, affecting over 30 percent of the world's population, causes premature birth, low birth weight, and infections, elevating the risk of death in children.

(12) Two-thirds of deaths of children under five years of age, or 7.1 million children, including three million newborn deaths, could be prevented by low-cost, low-tech health and nutritional interventions.

(13) Exclusive breastfeeding—giving only breast milk for the first six months of life—could prevent an estimated 1.3 million newborn and infant deaths each year, primarily by protecting against diarrhea and pneumonia.

(14) An additional two million lives could be saved annually by providing oral-rehydration therapy prepared with clean water.

(15) During the 1990s, successful immunization programs reduced polio by 99 percent, tetanus deaths by 50 percent, and measles cases by 40 percent.

(16) Between 1998 and 2000, distribution of low-cost vitamin A supplements saved an estimated one million lives.

(17) Expansion of clinical care of newborns and mothers, such as clean delivery by skilled attendants, emergency obstetric care, and neonatal resuscitation, can avert 50 percent of newborn deaths.

(18) Keeping mothers healthy is essential for child survival because illness, complications, or maternal death during or following pregnancy increases the risk for death in newborns and infants.

(19) Each year more than 525,000 women die from causes related to pregnancy and childbirth, with 99 percent of these deaths occurring in developing countries.

(20) The lifetime risk of an African woman dying from a complication related to pregnancy or childbirth is 1 in 16, while the same risk for a woman in a developed country is 1 in 2,800.

(21) Risk factors for maternal death in developing countries include early pregnancy and childbirth, closely spaced births, infectious diseases, malnutrition, and complications during childbirth.

(22) Birth spacing, access to preventive care, skilled birth attendants, and emergency obstetric care can help reduce maternal mortality.

(23) The role of the United States in promoting child survival and maternal health over the past three decades has resulted in millions of lives being saved around the world.

(24) In 2000, the United States joined 188 other countries in supporting eight Millennium Development Goals designed to achieve ''a more peaceful, prosperous and just world''.

(25) Two of the Millennium Development Goals call for a reduction in the mortality rate of children under the age of five by two-thirds and a reduction in maternal deaths by three-quarters by 2015.

(26) On September 14, 2005, President George W. Bush stated before the leaders of the world: ''To spread a vision of hope, the United States is determined to help nations that are struggling with poverty. We are committed to the Millennium Development Goals.''.

(b) PURPOSES.—The purposes of this Act are to—

(1) authorize assistance to improve the health of newborns, children, and mothers in developing countries, including by strengthening the capacity of health systems and health workers;

(2) develop and implement a strategy to improve the health of newborns, children, and mothers, including reducing child and maternal mortality, in developing countries;

(3) to establish a task force to assess, monitor, and evaluate the progress and contributions of relevant departments and agencies of the Government of the United States in achieving the United Nations Millennium Development Goals by 2015 for reducing the mortality of children under the age of five by two-thirds and reducing maternal mortality by three-quarters in developing countries.

**SEC. 3. ASSISTANCE TO IMPROVE THE HEALTH OF NEWBORNS, CHILDREN, AND MOTHERS IN DEVELOPING COUNTRIES.**

(a) IN GENERAL.—Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) in section 104(c)—

(A) by striking paragraphs (2) and (3); and

(B) by redesignating paragraph (4) as paragraph (2);

(2) by redesignating sections 104A, 104B, and 104C as sections 104B, 104C, and 104D, respectively; and

(3) by inserting after section 104 the following new section:

**''SEC. 104A. ASSISTANCE TO IMPROVE THE HEALTH OF NEWBORNS, CHILDREN, AND MOTHERS.**

''(a) AUTHORIZATION.—Consistent with section 104(c), the President is authorized to furnish assistance, on such terms and conditions as the President may determine, to improve the health of newborns, children, and mothers in developing countries.

''(b) ACTIVITIES SUPPORTED.—Assistance provided under subsection (b) shall, to the maximum extent practicable, be used to carry out the following activities:

''(1) Activities to strengthen the capacity of health systems in developing countries, including training for clinicians, nurses, technicians, sanitation and public health workers, community-based health workers, midwives and birth attendants, peer educators, and private sector enterprises.

''(2) Activities to provide health care access to underserved and marginalized populations.

''(3) Activities to ensure the supply, logistical support, and distribution of essential drugs, vaccines, commodities, and equipment to regional, district, and local levels.

''(4) Activities to educate underserved and marginalized populations to seek health care when appropriate, including clinical and community-based activities.

''(5) Activities to integrate and coordinate assistance provided under this section with existing health programs for—

''(A) the prevention of the transmission of HIV from mother-to-child and other HIV/AIDS counseling, care, and treatment activities;

''(B) malaria;

''(C) tuberculosis; and

''(D) child spacing.

''(6) Activities to expand access to safe water and sanitation.

''(7) Activities to expand the use of and technical support for appropriate technology to reduce acute respiratory infection from firewood smoke inhalation.

''(c) GUIDELINES.—To the maximum extent practicable, programs, projects, and activities carried out using assistance provided under this section shall be—

''(1) carried out through private and voluntary organizations, as well as faith-based organizations, giving priority to organizations that demonstrate effectiveness and commitment to improving the health of newborns, children, and mothers;

''(2) carried out with input by host countries, including civil society and local communities, as well as other donors and multilateral organizations;

''(3) carried out with input by beneficiaries and other directly affected populations, especially women and marginalized communities; and

''(4) designed to build the capacity of host country governments and civil society organizations.

''(d) ANNUAL REPORT.—Not later than January 31 of each year, the President shall transmit to Congress a report on the implementation of this section for the prior fiscal year.

''(e) DEFINITIONS.—In this section:

''(1) AIDS.—The term 'AIDS' has the meaning given the term in section 104B(g)(1) of this Act.

''(2) HIV.—The term 'HIV' has the meaning given the term in section 104B(g)(2) of this Act.

''(3) HIV/AIDS.—The term 'HIV/AIDS' has the meaning given the term in section 104B(g)(3) of this Act.''.

(b) CONFORMING AMENDMENTS.—The Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) in section 104(c)(2) (as redesignated by subsection (a)(1)(B) of this section), by striking ''and 104C'' and inserting ''104C, and 104D'';

(2) in section 104B (as redesignated by subsection (a)(2) of this section)—

(A) in subsection (c)(1), by inserting ''and section 104A'' after ''section 104(c)'';

(B) in subsection (e)(2), by striking ''section 104B, and section 104C'' and inserting ''section 104C, and section 104D''; and

(C) in subsection (f), by striking ''section 104(c), this section, section 104B, and section 104C'' and inserting ''section 104(c), section 104A, this section, section 104C, and section 104D'';

(3) in subsection (c) of section 104C (as redesignated by subsection (a)(2) of this section), by inserting ''and section 104A'' after ''section 104(c)'';

(4) in subsection (c) of section 104D (as redesignated by subsection (a)(2) of this section), by inserting ''and section 104A'' after ''section 104(c)''; and

(5) in the first sentence of section 119(c), by striking ''section 104(c)(2), relating to Child Survival Fund'' and inserting ''section 104A''.

**SEC. 4. DEVELOPMENT OF STRATEGY TO IMPROVE THE HEALTH OF NEWBORNS, CHILDREN, AND MOTHERS IN DEVELOPING COUNTRIES.**

(a) DEVELOPMENT OF STRATEGY.—The President shall develop a comprehensive strategy to improve the health of newborns, children, and mothers, including reducing newborn, child, and maternal mortality, in developing countries.

(b) COMPONENTS.—The strategy developed pursuant to subsection (a) shall include the following:

(1) Programmatic areas and interventions providing maximum health benefits to populations at risk as well as maximum reduction in mortality, including—

(A) costs and benefits of programs and interventions; and

(B) investments needed in identified programs and interventions to achieve the greatest results.

(2) An identification of countries with priority needs for the five-year period beginning on the date of the enactment of this Act based on—

(A) the neonatal mortality rate;

(B) the mortality rate of children under the age of five;

(C) the maternal mortality rate;

(D) the percentage of women and children with limited or no access to basic health care; and

(E) additional criteria for evaluation such as—

(i) the percentage of one-year old children who are fully immunized;

(ii) the percentage of children under the age of five who sleep under insecticide-treated bed nets;

(iii) the percentage of children under the age of five with fever treated with anti-malarial drugs;

(iv) the percentage of children under the age of five who are covered by vitamin A supplementation;

(v) the percentage of children under the age of five with diarrhea who are receiving oral-rehydration therapy and continued feeding;

(vi) the percentage of children under the age of five with pneumonia who are receiving appropriate care;

(vii) the percentage of the population with access to improved sanitation facilities;

(viii) the percentage of the population with access to safe drinking water;

(ix) the percentage of children under the age of five who are underweight for their age;

(x) the percentage of births attended by skilled health care personnel;

(xi) the percentage of women with access to emergency obstetric care;

(xii) the potential for implementing newborn, child, and maternal health interventions at scale; and

(xiii) the demonstrated commitment of countries to newborn, child, and maternal health.

(3) A description of how United States assistance complements and leverages efforts by other donors, as well as builds capacity and self-sufficiency among recipient countries.

(4) An expansion of the Child Survival and Health Grants Program of the United States Agency for International Development to provide additional support programs and interventions determined to be efficacious and cost-effective in improving health and reducing mortality.

(5) Enhanced coordination among relevant departments and agencies of the Government of the United States engaged in activities to improve the health of newborns, children, and mothers in developing countries.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress a report that contains the strategy described in this section.

**SEC. 5. INTERAGENCY TASK FORCE ON CHILD SURVIVAL AND MATERNAL HEALTH IN DEVELOPING COUNTRIES.**

(a) ESTABLISHMENT.—There is established a task force to be known as the Interagency Task Force on Child Survival and Maternal Health in Developing Countries (in this section referred to as the ''Task Force'').

(b) DUTIES.—

(1) IN GENERAL.—The Task Force shall assess, monitor, and evaluate the progress and contributions of relevant departments and agencies of the Government of the United States in achieving the Millennium Development Goals by 2015 for reducing the mortality of children under the age of five by two-thirds and reducing maternal mortality by three-quarters in developing countries, including by—

(A) identifying and evaluating programs and interventions that directly or indirectly contribute to the reduction of child and maternal mortality rates;

(B) assessing effectiveness of programs, interventions, and strategies toward achieving the maximum reduction of child and maternal mortality rates;

(C) assessing the level of coordination among relevant departments and agencies of the Government of the United States, the international community, international organizations, faith-based organizations, academic institutions, and the private sector;

(D) assessing the contributions made by United States-funded programs toward achieving the Millennium Development Goals;

(E) identifying the bilateral efforts of other nations and multilateral efforts toward achieving the Millennium Development Goals; and

(F) preparing the annual report required by subsection (f).

(2) CONSULTATION.—To the maximum extent practicable, the Task Force shall consult with individuals with expertise in the matters to be considered by the Task Force who are not officers or employees of the Government of the United States, including representatives of United States-based nongovernmental organizations (including faith-based organizations and private foundations), academic institutions, private corporations, the United Nations Children's Fund (UNICEF), and the World Bank.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Task Force shall be composed of the following members:

(A) The Administrator of the United States Agency for International Development.

(B) The Assistant Secretary of State for Population, Refugees and Migration.

(C) The Coordinator of United States Government Activities to Combat HIV/AIDS Globally.

(D) The Director of the Office of Global Health Affairs of the Department of Health and Human Services.

(E) The Under Secretary for Food, Nutrition and Consumer Services of the Department of Agriculture.

(F) The Chief Executive Officer of the Millennium Challenge Corporation.

(G) The Director of the Peace Corps.

(H) Other officials of relevant departments and agencies of the Federal Government who shall be appointed by the President.

(2) CHAIRPERSON.—The Administrator of the United States Agency for International Development shall serve as chairperson of the Task Force.

(d) MEETINGS.—The Task Force shall meet on a regular basis, not less often than quarterly, on a schedule to be agreed upon by the members of the Task Force, and starting not later than 90 days after the date of the enactment of this Act.

(e) DEFINITION.—In this subsection, the term ''Millennium Development Goals'' means the key development objectives described in the United Nations Millennium Declaration, as contained in United Nations General Assembly Resolution 55/2 (September 2000).

(f) REPORT.—Not later than 120 days after the date of the enactment of this Act, and not later than April 30 of each year thereafter, the Task Force shall submit to Congress and the President a report on the implementation of this section.

**SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act, and the amendments made by this Act, $660,000,000 for fiscal year 2007 and $1,200,000,000 for each of the fiscal years 2008 through 2011.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

---

By Mr. VOINOVICH (for himself, Mr. BINGAMAN, Mr. DEWINE, and Mr. AKAKA):

S. 2772. A bill to provide for innovation in health care through State initiatives that expand coverage and access and improve quality and efficiency in the health care system; to the Committee on Health, Education, Labor, and Pensions.

Mr. VOINOVICH. Mr. President, I rise to speak about a bill my colleague Senator BINGAMAN and I introduced today, the Health Care Partnership Act. For too many years, I have listened to my colleagues on both sides of the aisle talk about the rising cost of health care and the growing number of uninsured Americans. Yet, we have not been able to make much progress here at the Federal level to find a meaningful solution for the dilemma this Nation is facing regarding access to quality, affordable health care. Next to the economy, it is the greatest domestic challenge facing our Nation. In fact, the rising cost of health care is a major part of what is hurting our competitiveness in the global marketplace.

While surveys have indicated that health insurance premiums have stabilized—a 9.2 percent increase in 2006 and 2005 and compared with a 12.3 percent in 2004; 14.7 percent in 2003; and 15.2 percent in 2002—health insurance costs continue to be a significant factor impacting American competitiveness. In addition, the share of costs that individuals have paid for employer sponsored insurance has risen roughly 2 percent each year, from 31.4 percent of health care costs in 2001 to 38.4 percent this year.

In fact, spending on health care in the United States reached $1.9 trillion in 2004—almost 16.5 percent of our GDP—the largest share ever.

Yet, despite all the increases in health care spending some 46 million Americans—15 percent of the population—had no health insurance at some point last year. This number has increased steadily. In 2000, that number was 39.8 million. In 2002 it was 43.6 million.

These statistics are startling and it is time that we do something about them. The bill Senator BINGAMAN and I are introducing today aims to break the log-jam here in Washington and

allow states the freedom to explore with health care reform options. This bill would support state-based efforts to reduce the uninsured and the cost of health care, improve quality, improve access to care, and expand information technology.

I have been in this situation before. As Governor of Ohio, I had to work creatively to expand coverage and deal with increasing health care costs for a growing number of uninsured Ohioans. I am happy to report that we were able to make some progress toward reducing the number of uninsured Ohioans during my time as the head of the state by negotiating with the state unions to move to managed care; by controlling Medicaid costs to the point where from 1995 to 1998, due to good stewardship and management, Ohio ended up underspending on Medicaid without harming families; and implementing the S-CHIP program to provide coverage for uninsured children.

Like we did in Ohio, a number of states are already actively pursuing efforts to reduce the number of their residents who lack adequate health care coverage. The Health Care Partnership Act will build on what states like Massachusetts and others are doing, while providing a mechanism to analyze results and make recommendations for future action at the Federal level.

Under the Health Partnership Act, Congress would authorize grants to individual states, groups of states, and Indian tribes and local governments to carry out any of a broad range of strategies to improve our Nation's health care delivery. The bill creates a mechanism for states to apply for grants to a bipartisan ''State Health Innovation Commission'' housed at the Department of Health and Human Services (HHS). After reviewing the state proposals, the Commission would submit to Congress a list of recommended state applications. The Commission would also recommend the amount of Federal grant money each state should receive to carry out the actions described in their plan.

Most importantly, at the end of the five-year period, the Commission would be required to report to Congress whether the states are meeting the goals of the Act. The Commission would then recommend future action Congress should take concerning overall reform, including whether or not to extend the state program.

I believe it is important that we pass this legislation to provide a platform from which we can have a thoughtful conversation about health care reform here in Washington. Since I have been in the Senate, Congress has made some progress toward improving health care, most notably for our 43 million seniors who now have access to affordable prescription medication through the Medicare Modernization Act. We have also increased funding for community health centers and safety net hospitals that provide health care for the uninsured and under insured; increased the use of technology in our health care delivery system; and improved the safety of medical care by passing a medical errors reporting bill.

Yet, these incremental steps are not enough, and we have been at this too long here in Washington without comprehensive, meaningful results. I ask for my colleagues' support for this bipartisan bill that I hope will move us closer toward a solution to the uninsured.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2772

*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 ''Health Partnership Act''.

**SEC. 2. STATE HEALTH REFORM PROJECTS.**

(a) PURPOSE; ESTABLISHMENT OF STATE HEALTH CARE EXPANSION AND IMPROVEMENT PROGRAM.—The purposes of the programs approved under this section shall include, but not be limited to—

(1) achieving the goals of increased health coverage and access;

(2) ensuring that patients receive high-quality, appropriate health care;

(3) improving the efficiency of health care spending; and

(4) testing alternative reforms, such as building on the public or private health systems, or creating new systems, to achieve the objectives of this Act.

(b) APPLICATIONS BY STATES, LOCAL GOVERNMENTS, AND TRIBES.—

(1) ENTITIES THAT MAY APPLY.—

(A) IN GENERAL.—A State, in consultation with local governments, Indian tribes, and Indian organizations involved in the provision of health care, may apply for a State health care expansion and improvement program for the entire State (or for regions of the State) under paragraph (2).

(B) REGIONAL GROUPS.—A regional entity consisting of more than one State may apply for a multi State health care expansion and improvement program for the entire region involved under paragraph (2).

(C) DEFINITION.—In this Act, the term ''State'' means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Such term shall include a regional entity described in subparagraph (B).

(2) SUBMISSION OF APPLICATION.—In accordance with this section, each State desiring to implement a State health care expansion and improvement program may submit an application to the State Health Innovation Commission under subsection (c) (referred to in this section as the ''Commission'') for approval.

(3) LOCAL GOVERNMENT APPLICATIONS.—

(A) IN GENERAL.—Where a State declines to submit an application under this section, a unit of local government of such State, or a consortium of such units of local governments, may submit an application directly to the Commission for programs or projects under this subsection. Such an application shall be subject to the requirements of this section.

(B) OTHER APPLICATIONS.—Subject to such additional guidelines as the Secretary may prescribe, a unit of local government, Indian tribe, or Indian health organization may submit an application under this section, whether or not the State submits such an application, if such unit of local government can demonstrate unique demographic needs or a significant population size that warrants a substate program under this subsection.

(c) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of the enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary;

(ii) four State governors to be appointed by the National Governors Association on a bipartisan basis;

(iii) two members of a State legislature to be appointed by the National Conference of State Legislators on a bipartisan basis;

(iv) two county officials to be appointed by the National Association of Counties on a bipartisan basis;

(v) two mayors to be appointed by the United States Conference of Mayors on a bipartisan basis;

(vi) two individuals to be appointed by the Speaker of the House of Representatives;

(vii) two individuals to be appointed by the Minority Leader of the House of Representatives;

(viii) two individuals to be appointed by the Majority Leader of the Senate;

(ix) two individuals to be appointed by the Minority Leader of the Senate; and

(x) two individuals who are members of federally-recognized Indian tribes to be appointed on a bipartisan basis by the National Congress of American Indians;

(B) upon approval of ⅔ of the members of the Commission, provide the States with a variety of reform options for their applications, such as tax credit approaches, expansions of public programs such as medicaid and the State Children's Health Insurance Program, the creation of purchasing pooling arrangements similar to the Federal Employees Health Benefits Program, individual market purchasing options, single risk pool or single payer systems, health savings accounts, a combination of the options described in this clause, or other alternatives determined appropriate by the Commission, including options suggested by States, Indian tribes, or the public;

(C) establish, in collaboration with a qualified and independent organization such as the Institute of Medicine, minimum performance measures and goals with respect to coverage, quality, and cost of State programs, as described under subsection (d)(1);

(D) conduct a thorough review of the grant application from a State and carry on a dialogue with all State applicants concerning possible modifications and adjustments;

(E) submit the recommendations and legislative proposal described in subsection (d)(4)(B);

(F) be responsible for monitoring the status and progress achieved under program or projects granted under this section;

(G) report to the public concerning progress made by States with respect to the performance measures and goals established under this Act, the periodic progress of the State relative to its State performance measures and goals, and the State program application procedures, by region and State jurisdiction;

(H) promote information exchange between States and the Federal Government; and

(I) be responsible for making recommendations to the Secretary and the Congress, using equivalency or minimum standards, for minimizing the negative effect of State program on national employer groups, provider organizations, and insurers because of

differing State requirements under the programs.

(2) PERIOD OF APPOINTMENT; REPRESENTATION REQUIREMENTS; VACANCIES.—Members shall be appointed for a term of 5 years. In appointing such members under paragraph (1)(A), the designated appointing individuals shall ensure the representation of urban and rural areas and an appropriate geographic distribution of such members. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(3) CHAIRPERSON, MEETINGS.—

(A) CHAIRPERSON.—The Commission shall select a Chairperson from among its members.

(B) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(C) MEETINGS.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting. The Commission shall meet at the call of the Chairperson.

(4) POWERS OF THE COMMISSION.—

(A) NEGOTIATIONS WITH STATES.—The Commission may conduct detailed discussions and negotiations with States submitting applications under this section, either individually or in groups, to facilitate a final set of recommendations for purposes of subsection (d)(4)(B). Such negotiations shall include consultations with Indian tribes, and be conducted in a public forum.

(B) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subsection.

(C) MEETINGS.—In addition to other meetings the Commission may hold, the Commission shall hold an annual meeting with the participating States under this section for the purpose of having States report progress toward the purposes in subsection (a)(1) and for an exchange of information.

(D) INFORMATION.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subsection. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission if the head of the department or agency involved determines it appropriate.

(E) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(5) PERSONNEL MATTERS.—

(A) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government or of a State or local government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(C) STAFF.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(D) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(E) TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(6) FUNDING.—For the purpose of carrying out this subsection, there are authorized to be appropriated $3,000,000 for fiscal year 2006 and each fiscal year thereafter.

(d) REQUIREMENTS FOR PROGRAMS.—

(1) STATE PLAN.—A State that seeks to receive a grant under subsection (f) to operate a program under this section shall prepare and submit to the Commission, as part of the application under subsection (b), a State health care plan that shall have as its goal improvements in coverage, quality and costs. To achieve such goal, the State plan shall comply with the following:

(A) COVERAGE.—With respect to coverage, the State plan shall—

(i) provide and describe the manner in which the State will ensure that an increased number of individuals residing within the State will have expanded access to health care coverage with a specific 5-year target for reduction in the number of uninsured individuals through either private or public program expansion, or both, in accordance with the options established by the Commission;

(ii) describe the number and percentage of current uninsured individuals who will achieve coverage under the State health program;

(iii) describe the minimum benefits package that will be provided to all classes of beneficiaries under the State health program;

(iv) identify Federal, State, or local and private programs that currently provide health care services in the State and describe how such programs could be coordinated with the State health program, to the extent practicable; and

(v) provide for improvements in the availability of appropriate health care services that will increase access to care in urban, rural, and frontier areas of the State with medically underserved populations or where there is an inadequate supply of health care providers.

(B) QUALITY.—With respect to quality, the State plan shall—

(i) provide a plan to improve health care quality in the State, including increasing effectiveness, efficiency, timeliness, patient focused, equity while reducing health disparities, and medical errors; and

(ii) contain appropriate results-based quality indicators established by the Commission that will be addressed by the State as well as State-specific quality indicators.

(C) COSTS.—With respect to costs, the State plan shall—

(i) provide that the State will develop and implement systems to improve the efficiency of health care, including a specific 5-year target for reducing administrative costs (including paperwork burdens);

(ii) describe the public and private sector financing to be provided for the State health program;

(iii) estimate the amount of Federal, State, and local expenditures, as well as, the costs to business and individuals under the State health program;

(iv) describe how the State plan will ensure the financial solvency of the State health program; and

(v) provide that the State will prepare and submit to the Secretary and the Commission such reports as the Secretary or Commission may require to carry out program evaluations.

(D) HEALTH INFORMATION TECHNOLOGY.—With respect to health information technology, the State plan shall provide methodology for the appropriate use of health information technology to improve infrastructure, such as improving the availability of evidence-based medical and outcomes data to providers and patients, as well as other health information (such as electronic health records, electronic billing, and electronic prescribing).

(2) TECHNICAL ASSISTANCE.—The Secretary shall, if requested, provide technical assistance to States to assist such States in developing applications and plans under this section, including technical assistance by private sector entities if determined appropriate by the Commission.

(3) INITIAL REVIEW.—With respect to a State application for a grant under subsection (b), the Secretary and the Commission shall complete an initial review of such State application within 60 days of the receipt of such application, analyze the scope of the proposal, and determine whether additional information is needed from the State. The Commission shall advise the State within such period of the need to submit additional information.

(4) FINAL DETERMINATION.—

(A) IN GENERAL.—Not later than 90 days after completion of the initial review under paragraph (3), the Commission shall determine whether to submit a State proposal to Congress for approval.

(B) VOTING.—

(i) IN GENERAL.—The determination to submit a State proposal to Congress under subparagraph (A) shall be approved by ⅔ of the members of the Commission who are eligible to participate in such determination subject to clause (ii).

(ii) ELIGIBILITY.—A member of the Commission shall not participate in a determination under subparagraph (A) if—

(I) in the case of a member who is a Governor, such determination relates to the State of which the member is the Governor; or

(II) in the case of member not described in subclause (I), such determination relates to the geographic area of a State of which such member serves as a State or local official.

(C) SUBMISSION.—Not later than 90 days prior to October 1 of each fiscal year, the Commission shall submit to Congress a list, in the form of a legislative proposal, of the State applications that the Commission recommends for approval under this section.

(D) APPROVAL.—With respect to a fiscal year, a State proposal that has been recommended under subparagraph (B) shall be deemed to be approved, and subject to the availability of appropriations, Federal funds shall be provided to such program, unless a joint resolution has been enacted disapproving such proposal as provided for in

subsection (e). Nothing in the preceding sentence shall be construed to include the approval of State proposals that involve waivers or modifications in applicable Federal law.

(5) PROGRAM OR PROJECT PERIOD.—A State program or project may be approved for a period of 5 years and may be extended for subsequent 5-year periods upon approval by the Commission and the Secretary, based upon achievement of targets, except that a shorter period may be requested by a State and granted by the Secretary.

(e) EXPEDITED CONGRESSIONAL CONSIDERATION.—

(1) INTRODUCTION AND COMMITTEE CONSIDERATION.—

(A) INTRODUCTION.—The legislative proposal submitted pursuant to subsection (d)(4)(B) shall be in the form of a joint resolution (in this subsection referred to as the ''resolution''). Such resolution shall be introduced in the House of Representatives by the Speaker, and in the Senate, by the Majority Leader, immediately upon receipt of the language and shall be referred to the appropriate committee of Congress. If the resolution is not introduced in accordance with the preceding sentence, the resolution may be introduced in either House of Congress by any member thereof.

(B) COMMITTEE CONSIDERATION.—A resolution introduced in the House of Representatives shall be referred to the Committee on Ways and Means of the House of Representatives. A resolution introduced in the Senate shall be referred to the Committee on Finance of the Senate. Not later than 15 calendar days after the introduction of the resolution, the committee of Congress to which the resolution was referred shall report the resolution or a committee amendment thereto. If the committee has not reported such resolution (or an identical resolution) at the end of 15 calendar days after its introduction or at the end of the first day after there has been reported to the House involved a resolution, whichever is earlier, such committee shall be deemed to be discharged from further consideration of such reform bill and such reform bill shall be placed on the appropriate calendar of the House involved.

(2) EXPEDITED PROCEDURE.—

(A) CONSIDERATION.—Not later than 5 days after the date on which a committee has been discharged from consideration of a resolution, the Speaker of the House of Representatives, or the Speaker's designee, or the Majority Leader of the Senate, or the Leader's designee, shall move to proceed to the consideration of the committee amendment to the resolution, and if there is no such amendment, to the resolution. It shall also be in order for any member of the House of Representatives or the Senate, respectively, to move to proceed to the consideration of the resolution at any time after the conclusion of such 5-day period. All points of order against the resolution (and against consideration of the resolution) are waived. A motion to proceed to the consideration of the resolution is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, to a motion to postpone consideration of the resolution, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion to proceed is agreed to or not agreed to shall not be in order. If the motion to proceed is agreed to, the House of Representatives or the Senate, as the case may be, shall immediately proceed to consideration of the resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the House of Representatives or the Senate, as the case may be, until disposed of.

(B) CONSIDERATION BY OTHER HOUSE.—If, before the passage by one House of the resolution that was introduced in such House, such House receives from the other House a resolution as passed by such other House—

(i) the resolution of the other House shall not be referred to a committee and may only be considered for final passage in the House that receives it under clause (iii);

(ii) the procedure in the House in receipt of the resolution of the other House, with respect to the resolution that was introduced in the House in receipt of the resolution of the other House, shall be the same as if no resolution had been received from the other House; and

(iii) notwithstanding clause (ii), the vote on final passage shall be on the reform bill of the other House.

Upon disposition of a resolution that is received by one House from the other House, it shall no longer be in order to consider the resolution bill that was introduced in the receiving House.

(C) CONSIDERATION IN CONFERENCE.—Immediately upon a final passage of the resolution that results in a disagreement between the two Houses of Congress with respect to the resolution, conferees shall be appointed and a conference convened. Not later than 10 days after the date on which conferees are appointed, the conferees shall file a report with the House of Representatives and the Senate resolving the differences between the Houses on the resolution. Notwithstanding any other rule of the House of Representatives or the Senate, it shall be in order to immediately consider a report of a committee of conference on the resolution filed in accordance with this subclause. Debate in the House of Representatives and the Senate on the conference report shall be limited to 10 hours, equally divided and controlled by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives or their designees and the Majority and Minority Leaders of the Senate or their designees. A vote on final passage of the conference report shall occur immediately at the conclusion or yielding back of all time for debate on the conference report.

(3) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(4) LIMITATION.—The amount of Federal funds provided with respect to any State proposal that is deemed approved under subsection (d)(3) shall not exceed the cost provided for such proposals within the concurrent resolution on the budget as enacted by Congress for the fiscal year involved.

(f) FUNDING.—

(1) IN GENERAL.—The Secretary shall provide a grant to a State that has an application approved under subsection (b) to enable such State to carry out an innovative State health program in the State.

(2) AMOUNT OF GRANT.—The amount of a grant provided to a State under paragraph (1) shall be determined based upon the recommendations of the Commission, subject to the amount appropriated under subsection (k).

(3) PERFORMANCE-BASED FUNDING ALLOCATION AND PRIORITIZATION.—In awarding grants under paragraph (1), the Secretary shall—

(A) fund a diversity of approaches as provided for by the Commission in subsection (c)(1)(B);

(B) give priority to those State programs that the Commission determines have the greatest opportunity to succeed in providing expanded health insurance coverage and in providing children, youth, and other vulnerable populations with improved access to health care items and services; and

(C) link allocations to the State to the meeting of the goals and performance measures relating to health care coverage, quality, and health care costs established under this Act through the State project application process.

(4) MAINTENANCE OF EFFORT.—A State, in utilizing the proceeds of a grant received under paragraph (1), shall maintain the expenditures of the State for health care coverage purposes for the support of direct health care delivery at a level equal to not less than the level of such expenditures maintained by the State for the fiscal year preceding the fiscal year for which the grant is received.

(5) REPORT.—At the end of the 5-year period beginning on the date on which the Secretary awards the first grant under paragraph (1), the State Health Innovation Advisory Commission established under subsection (c) shall prepare and submit to the appropriate committees of Congress, a report on the progress made by States receiving grants under paragraph (1) in meeting the goals of expanded coverage, improved quality, and cost containment through performance measures established during the 5-year period of the grant. Such report shall contain the recommendation of the Commission concerning any future action that Congress should take concerning health care reform, including whether or not to extend the program established under this subsection.

(g) MONITORING AND EVALUATION.—

(1) ANNUAL REPORTS AND PARTICIPATION BY STATES.—Each State that has received a program approval shall—

(A) submit to the Commission an annual report based on the period representing the respective State's fiscal year, detailing compliance with the requirements established by the Commission and the Secretary in the approval and in this section; and

(B) participate in the annual meeting under subsection (c)(4)(B).

(2) EVALUATIONS BY COMMISSION.—The Commission, in consultation with a qualified and independent organization such as the Institute of Medicine, shall prepare and submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce, the Committee on Education and the Workforce, and the Committee on Ways and Means of the House of Representatives annual reports that shall contain—

(A) a description of the effects of the reforms undertaken in States receiving approvals under this section;

(B) a description of the recommendations of the Commission and actions taken based on these recommendations;

(C) an evaluation of the effectiveness of such reforms in—

(i) expanding health care coverage for State residents;

(ii) improving the quality of health care provided in the States; and

(iii) reducing or containing health care costs in the States;

(D) recommendations regarding the advisability of increasing Federal financial assistance for State ongoing or future health program initiatives, including the amount and source of such assistance; and

(E) as required by the Commission or the Secretary under subsection (f)(5), a periodic, independent evaluation of the program.

(h) NONCOMPLIANCE.—

(1) CORRECTIVE ACTION PLANS.—If a State is not in compliance with a requirements of this section, the Secretary shall develop a corrective action plan for such State.

(2) TERMINATION.—For good cause and in consultation with the Commission, the Secretary may revoke any program granted under this section. Such decisions shall be subject to a petition for reconsideration and appeal pursuant to regulations established by the Secretary.

(i) RELATIONSHIP TO FEDERAL PROGRAMS.—

(1) IN GENERAL.—Nothing in this Act, or in section 1115 of the Social Security Act (42 U.S.C. 1315) shall be construed as authorizing the Secretary, the Commission, a State, or any other person or entity to alter or affect in any way the provisions of title XIX of such Act (42 U.S.C. 1396 et seq.) or the regulations implementing such title.

(2) MAINTENANCE OF EFFORT.—No payment may be made under this section if the State adopts criteria for benefits, income, and resource standards and methodologies for purposes of determining an individual's eligibility for medical assistance under the State plan under title XIX that are more restrictive than those applied as of the date of enactment of this Act.

(j) MISCELLANEOUS PROVISIONS.—

(1) APPLICATION OF CERTAIN REQUIREMENTS.—

(A) RESTRICTION ON APPLICATION OF PREEXISTING CONDITION EXCLUSIONS.—

(i) IN GENERAL.—Subject to subparagraph (B), a State shall not permit the imposition of any preexisting condition exclusion for covered benefits under a program or project under this section.

(ii) GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE.—If the State program or project provides for benefits through payment for, or a contract with, a group health plan or group health insurance coverage, the program or project may permit the imposition of a preexisting condition exclusion but only insofar and to the extent that such exclusion is permitted under the applicable provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 and title XXVII of the Public Health Service Act.

(B) COMPLIANCE WITH OTHER REQUIREMENTS.—Coverage offered under the program or project shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act insofar as such requirements apply with respect to a health insurance issuer that offers group health insurance coverage.

(2) PREVENTION OF DUPLICATIVE PAYMENTS.—

(A) OTHER HEALTH PLANS.—No payment shall be made to a State under this section for expenditures for health assistance provided for an individual to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided health assistance under the plan.

(B) OTHER FEDERAL GOVERNMENTAL PROGRAMS.—Except as provided in any other provision of law, no payment shall be made to a State under this section for expenditures for health assistance provided for an individual to the extent that payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations) under any other federally operated or financed health care insurance program, other than an insurance program operated or financed by the Indian Health Service, as identified by the Secretary. For purposes of this paragraph, rules similar to the rules for overpayments under section 1903(d)(2) of the Social Security Act shall apply.

(3) APPLICATION OF CERTAIN GENERAL PROVISIONS.—The following sections of the Social Security Act shall apply to States under this section in the same manner as they apply to a State under such title XIX:

(A) TITLE XIX PROVISIONS.—

(i) Section 1902(a)(4)(C) (relating to conflict of interest standards).

(ii) Paragraphs (2), (16), and (17) of section 1903(i) (relating to limitations on payment).

(iii) Section 1903(w) (relating to limitations on provider taxes and donations).

(iv) Section 1920A (relating to presumptive eligibility for children).

(B) TITLE XI PROVISIONS.—

(i) Section 1116 (relating to administrative and judicial review), but only insofar as consistent with this title.

(ii) Section 1124 (relating to disclosure of ownership and related information).

(iii) Section 1126 (relating to disclosure of information about certain convicted individuals).

(iv) Section 1128A (relating to civil monetary penalties).

(v) Section 1128B(d) (relating to criminal penalties for certain additional charges).

(vi) Section 1132 (relating to periods within which claims must be filed).

(4) RELATION TO OTHER LAWS.—

(A) HIPAA.—Health benefits coverage provided under a State program or project under this section shall be treated as creditable coverage for purposes of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and subtitle K of the Internal Revenue Code of 1986.

(B) ERISA.—Nothing in this section shall be construed as affecting or modifying section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) with respect to a group health plan (as defined in section 2791(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–91(a)(1))).

(k) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary in each fiscal year. Amounts appropriated for a fiscal year under this subsection and not expended may be used in subsequent fiscal years to carry out this section.

Mr. BINGAMAN. I am pleased to announce today the introduction of bipartisan legislation with Senator VOINOVICH entitled the ''Health Partnership Act of 2006'' with additional bipartisan support from Senators DEWINE and AKAKA. The ''Health Partnership Act'' is intended to move beyond the political gridlock in Washington, D.C., and set us on a path toward finding solutions to affordable, quality health care for all Americans by creating partnerships between the federal government, state and local governments, private payers, and health care providers to implement different and promising approaches to health care.

Federal funding and support would be committed to states to reduce the number of uninsured, reduce costs, and improve the quality of health care for all Americans. Should a state decline to apply or if a unique need exists, local governments also would be authorized to apply for a federal grant for such purposes.

States, local governments, and tribes and tribal governments would be able to submit applications to the federal government for funding to implement a state health care expansion and improvement program to a bipartisan ''State Health Innovation Commission.'' Based on funding available through the federal budget process, the Commission would approve a variety of reform options and innovative approaches.

This federalist approach to health reform would encourage a broad array of reform options that would be closely monitored to see what is working and what is not. As Supreme Court Justice Louis D. Brandeis wrote in 1932, ''It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.''

Our bipartisan legislation, the ''Health Partnership Act,'' encourages this type of state-based innovation and will help the nation better address both the policy and the politics of health care reform. We do not have consensus at the federal level on anyone approach and so encouraging states to adopt a variety of approaches will help us all better understand what may or may not work. And, it is well past the time when we need action to be taking place to address the growing and related problems of the uninsured and increasing health care costs.

In fact, spending on health care in our country has now reached $2 trillion annually, and yet, the number of uninsured has increased to 46 million people, which is six million more than in 2000. The consequences are staggering, as uninsured citizens get about half the medical care they need compared to those with health insurance and, according to the Institute of Medicine, about 18,000 unnecessary deaths occur each year in the United States because of lack of health Insurance.

While gridlock absent a solution continues to permeate Washington, DC, a number of states and local governments are moving ahead with health reform. The premise on which this bill is based is that the federal government should provide support for such efforts rather than constantly undermining them.

The ''Health Partnership Act'' would provide such support, as it authorizes grants to states, groups of states, local governments, and Indian tribes and organizations to carry out any of a broad range of strategies to reach the goals

of reducing the number of uninsured, reducing costs, and improving the quality of care.

As usual, state and local governments are not waiting around for federal action. This is exactly what was happening in the early 1990s as states such as New Mexico, Massachusetts, Pennsylvania, Florida, Rhode Island, Hawaii, Maryland, Tennessee, Vermont, and Washington led the way to expanding coverage to children through the enactment of a variety of health reforms. Some of these programs worked better than others and the federal government responded in 1997 with passage of the ''State Children's Health Insurance Program'' or SCHIP. This legislation received broad bipartisan support and was built upon the experience of the state expansions. SCHIP continues to be a state-based model that covers millions of children and continues to have broad-based bipartisan support across this nation.

So, why not use that successful model and build upon it? In fact, state and local governments are already taking up that challenge and the federal government should, through the enactment of the ''Health Partnership Act,'' do what it can to be helpful with those efforts. For example—

On November 15, 2005, Illinois Governor Rod Blagojevich signed into law the ''Covering All Kids Health Insurance Act'' which, beginning in July 2006, will attempt to make insurance coverage available to all uninsured children.

In Massachusetts, Governor Mitt Romney recently signed into law legislation that requires all Bay State residents to have health insurance. Virtually everyone interested in solutions to our nation's health care problems are looking at the Massachusetts ''experiment'' as a possible solution.

Other states, including New Mexico, Maine, West Virginia, Oklahoma, and New York have enacted other health reforms that have had mixed success.

All of these efforts are very important to add to our knowledge base, which can then lead to the formation of a possible national solution to our uninsured and affordability crisis. We can learn from each and every one of these efforts, whether successful or failed.

Commonwealth Fund President Karen Davis said it well by noting that state-based reforms, such as that passed in Massachusetts, are very good news. As she notes, ''First, any substantive effort to expand access to coverage is worthwhile, given the growing number of uninsured in this country and the large body of evidence showing the dangerous health implications of lacking coverage.''

She adds, ''But something more important is at work here, While we urgently need a national solution so that all Americans have insurance, it doesn't appear that we'll be getting one at the federal level any time soon. So what Massachusetts has done potentially holds lessons for every state.'' I would add that it holds lessons for the federal government as well and not just for the mechanics of implementing health reform policy but also to the politics of health reform.

As she concludes, ''One particularly cogent lesson is the manner in which the measure was crafted—via a civil process that successfully brought together numerous players from across the political business, health care delivery, and policy sectors.''

Mr. President, Senator VOINOVICH and I have worked together for many months now on this legislation via a process much like that described by Karen Davis. The legislation stems from past legislative efforts by senators such as Bob Graham, Mark Hatfield, and Paul Wellstone, but also from work across ideological lines by Henry Aaron of the Brookings Institute and Stuart Butler of the Heritage Foundation.

The legislation also received much advice and support from Dr. Tim Garson who, as Dean of the University of Virginia, brought a much needed provider perspective which is reflected in support for the legislation from the American Medical Association, the American Academy of Pediatrics, the American College of Physicians, the American College of Cardiology, American Gastroenterological Association, the Visiting Nurses Association, the National Association of Community Health Centers, and from state-based health providers such as the New Mexico Medical Society and Ohio Association of Community Health Centers.

And the legislation also received much comment and support from consumer-based groups advocating for national health reform, including that by Dr. Ken Frisof and UHCAN, which is the Universal Health Care Action Network, Bill Vaughan at Consumers Union, and from numerous health care advocates in New Mexico, including Community Action New Mexico, Health Action New Mexico, Health Care for All Campaign of New Mexico, New Mexico Center on Law and Poverty, New Mexico Health Choices Initiative, New Mexico POZ Coalition, New Mexico Public Health Association, New Mexico Religious Coalition for Reproductive Choice, New Mexico Progressive Alliance for Community Empowerment, and the Health Security for New Mexicans Campaign, which includes 115 organizations based in the State.

Support from all stakeholders in our nation's health care system has been sought and I would like to thank the many organizations from New Mexico for their support and input to this legislation. There is great urgency in New Mexico because our State, like all of those along the U.S.-Mexico border, faces a severe health care crisis. In fact, New Mexico ranks second only to Texas in the percentage of its citizens who are uninsured. New Mexico is also the only state in the country with less than half of its population having private health insurance coverage.

A rather shocking statistic, which also continues to worsen, is that one out of every three Hispanic citizens are uninsured. In fact, less than 43 percent of the Hispanic population now has employer-based coverage nationwide, which is in sharp comparison to the 68 percent of non-Hispanic whites who have employer-based coverage.

The State has also enacted its own health reform plan called the State Coverage Initiative, or SCI in July 2005. SCI is a public/private partnership that is intended to expand employer-sponsored insurance and was developed in part with grant funding from the Robert Wood Johnson Foundation. As of May 1, there were just over 4,500 people covered by this initiative and there are efforts to expand this effort to cover over 20,000 individuals. With federal support for my State, the hope would be to further expand coverage to as many New Mexicans as possible.

It is also important to note that the legislation encourages reforms at both the state and local levels of government. Senator VOINOVICH, as former Mayor of Cleveland, suggested language that would capture community-based efforts as well. Illinois, Georgia, Michigan, and Oregon have all initiated efforts at the local level for reform, including what is known as the ''three-share'' programs in Illinois and Michigan. These initiatives have employers, employees, and the community each pick up about one-third of the cost of the program.

Jeaneane Smith, deputy administrator in the Office of Oregon Health Policy and Research was quoted in a recent Academy Health publication saying, ''In recent years it has become apparent that there is a need to consider both state- and community-level approaches to improved access. We want to learn how best to support communities as they play an integral part in addressing the gaps in coverage.''

Our hope is to spawn as much creative innovation as possible. Brookings Institute Senior Health Fellow Henry Aaron and Heritage Foundation Vice President Stuart Butler wrote a Health Affairs article in March 2004 that lays out the foundation for this legislative effort. They argue that while we remain unable to reconcile how best to expand coverage at the federal level, we can agree to support states in their efforts to try widely differing solutions to health coverage, cost containment, and quality improvement. As they write, ''This approach offers both a way to improve knowledge about how to reform health care and a practical way to initiate a process of reform. Such a pluralist approach respects the real, abiding differences in politics, preferences, traditions, and institutions across the nation. It also implies a willingness to accept differences over an extended period in order to make progress. And it recognizes that permitting wide diversity can foster consensus by revealing the strengths and exposing the weaknesses of rival approaches.''

The most important message that I hope this bill carries is that we must stop having the perfect be the enemy of the good. This proposal is certainly not perfect but we hope it makes a very

important contribution to addressing our nation's health care crisis.

In addition to Dr. Garson, Mr. Aaron, Mr. Butler, and Dr. Frisof, I would like to express my appreciation to Dan Hawkins at the National Association of Community Health Centers, Bill Vaughan at Consumers Union, and both Jack Meyer and Stan Dorn at ESRI for their counsel and guidance on health reform and this legislation.

I would also like to commend the American College of Physicians, or ACP, for their outstanding leadership on the issue of the uninsured and for their willingness to support a variety of efforts to expand health coverage. ACP has been a longstanding advocate for expanding health coverage and has authored landmark reports on the important role that health insurance has in reducing people's morbidity and mortality. In fact, to cite the conclusion of one of those studies, ''Lack of insurance contributes to the endangerment of the health of each uninsured American as well as the collective health of the nation.''

And finally, I would also thank the many people at the Robert Wood Johnson Foundation on their forethought and knowledge on all the issues confronting the uninsured. Their efforts to maintain the focus and dialogue on addressing the uninsured has kept the issue alive for many years.

I hope we can break the gridlock and urge my colleagues to support this important legislation.

I would ask for unanimous consent for a Fact Sheet and copy of the Health Affairs article entitled ''How Federalism Could Spur Bipartisan Action on the Uninsured'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE HEALTH PARTNERSHIP ACT

Introduced by Senators Voinovich and Bingaman in May 2006—''A bill to provide for innovation in health care through state initiatives that expand coverage and access and improve quality and efficiency in the health care system.''

The Health Partnership Act, cosponsored by U.S. Senators Voinovich (R–OH) and Bingaman (D–NM), is a first step to move beyond the political deadlock that has prevented the United States from finding paths to affordable, quality health care for all. For decades, national solutions have proven impossible to attain because of sharp differences on how to pay for and organize health care services. The Health Partnership Act breaks through the impasse. It creates partnerships among the federal government, state governments, private payers and health care providers to implement different approaches to achieve sustainable reform that provides affordable, quality health care for all. It demonstrates federal leadership on health care through establishing a mechanism by which federal dollars are committed to states to reduce the number of uninsured and to improve the quality of health care for all.

A creative new bipartisan initiative to move beyond political deadlock and a potential first step towards affordable quality health care for all.

THE FEDERAL LEVEL

Federal dollars will fund five-year State Health Care Expansion and Improvement Grants. The amount of federal funding for new grants will be determined annually in the budgetary process.

The bill establishes a bipartisan State Health Innovation Commission composed of national, state and local leaders that will:

Issue requests for proposals.

Establish, in collaboration with an organization such as the Institute of Medicine, minimum performance standards and 5-year goals.

Provide states with a ''toolkit'' of reform options, such as single-payer systems, public program expansions, pay-or-play mechanisms, tax credit incentives, health savings accounts, etc.

Ensure the maintenance of Medicaid—prohibiting restrictive rule changes that would limit eligibility or benefits.

Recommend to Congress which grants to support, giving preference to states maximizing the reduction in numbers of the uninsured.

Monitor the progress of programs and promote information exchange on what works.

Recommend ways to minimize negative effects on national employer groups, providers and insurers related to differing state requirements.

STATE LEVEL

Each state applying for a grant will develop a health care plan to increase coverage, improve quality and reduce costs, with specific targets for reduction in the number of uninsured and the costs of administration.

States will receive renewable grants for five-year expansion and improvement programs.

States will receive from the federal level technical assistance, if requested, for developing proposals.

Each state plan would address:

Coverage by describing the process and setting a 5-year target for reducing the number of uninsured individuals in the state.

Quality by providing a plan to increase health care effectiveness, efficiency, timeliness, and equity while reducing health disparities and medical errors.

Costs by developing and implementing systems to improve the efficiency of health care, including a 5-year target to reduce administrative costs and paperwork burdens.

Information technology by designing the appropriate use of health information technology to improve infrastructure, to expand the availability of evidence-based medical and to provide outcomes data to providers and patients.

STATES IN THE LEAD: LESSONS ON THE PROCESS OF MAKING CHANGE

Given the inaction of the federal government on health care access issues, states have begun to address these challenges creatively with sensitivity to local ideas and conditions. Dozens of states are considering new proposals. Five have already acted.

Maine, June 2003—the Dirigo Health Plan.

California, October 2003—phased-in Employer Mandate (repealed by ballot initiative, November 2004).

Illinois, September 2005—Health Care for All Children.

Maryland, January 2006—Fair Share Health Care (employer mandate for the largest employers).

Massachusetts, April 2006—Massachusetts Health Reform Package—with both an individual and an employer mandate.

The recently passed Massachusetts law deserves special attention because it is the first one enacted cooperatively with a divided government—a strongly Democratic state legislature and a Republican governor.

The detailed policy particulars in each of these state measures are controversial, with strong supporters and strong detractors. But they teach us a lot about the process of reforming health care in America.

State political leadership at the highest level is necessary.

Active consumer advocacy plays an important role.

Some stakeholder leadership must be willing to put the larger public interest above their own narrow economic self-interest.

The proposals have implementation phased in over several years.

It is easier for these proposals to expand access than to restrain the growth of costs—the latter being critical to make them sustainable over the long term.

Massachusetts, in particular, demonstrated how modest federal financial incentives (in this case the threatened loss of less than 1/10 of federal Medicaid funding) can provide the critical stimulus for leaders to come together to create comprehensive reform.

POLITICAL ADVANTAGES OF THE HEALTH PARTNERSHIP ACT

The Health Partnership Act provides positive multi-year financial incentives to states to address these issues, making it more likely for them to take the first steps and less likely to backslide when money concerns arise.

Congress need not pick just one path to health care for all. Members may be willing to let other states try models that they would oppose in their home states.

Allowing states to design their own plans, based on simple federal standards, has the potential to break through the current political deadlock. Breakthroughs in some states could be replicated elsewhere.

Advocacy is needed concurrently at the state and federal levels, with each reinforcing the other.

Federal support has the potential to counteract likely opposition by special interests in state efforts.

POLICY ADVANTAGES OF THE HEALTH PARTNERSHIP ACT

The process of implementing a variety of partnerships recognizes that one national plan may not address the differences among states and encourages states to address creatively their own needs.

Lessons learned in testing diverse state plans would benefit other states and national reform.

---

HOW FEDERALISM COULD SPUR BIPARTISAN ACTION ON THE UNINSURED

(By Henry J. Aaron and Stuart M. Butler)

Nearly everyone thinks that something should be done to reduce the number of Americans lacking health insurance. Unfortunately, while numerous plans exist on how to reach that goal, few agree on any one. In deed, as authors we disagree on how best to extend and assure health insurance coverage. Nonetheless, we believe that using the pluralism and creative power of federalism is the best way to break the political logjam and to discover the best way to expand coverage.

Accordingly, we believe that states should be strongly encouraged to try any of a wide range of approaches to increasing health insurance coverage and rewarded for their success. This approach offers both a way to improve knowledge about how to reform health care and a practical way to initiate a process of reform. Such a pluralist approach respects the real, abiding differences in politics, preferences, traditions, and institutions across

the nation. It also implies a willingness to accept differences over an extended period in order to make progress. And it recognizes that permitting wide diversity can foster consensus by revealing the strengths and exposing the weaknesses of rival approaches.

Despite our abiding disagreements on which substantive approach to extending coverage is best, we believe that people of goodwill must be prepared to countenance the testing of ideas they oppose if progress is to be made. Moreover, we believe that there is no hope for legislation to begin to transform the largest U.S. industry—health care—unless such legislation enjoys strong support from both major political parties.

USING FEDERALISM TO SPUR ACTION

Proposals to reduce the number of uninsured Americans abound. Some favor expanding government programs, such as Medicaid. Others favor refundable tax credits to help families buy private health insurance. Still others favor regulatory approaches, such as changes in insurance rules. But working together in health care to achieve a goal shared by virtually everyone has proved to be impossible. One reason for this is that the capacity to reach substantive compromise in Washington has seriously eroded. Among the causes is the widespread view that reforming the complex health care system requires very carefully designed and internally consistent actions. Some say that it is like building a new airplane: Unless all the key parts are there and fit together perfectly, the airplane will not fly. Thus, many proponents of particular approaches fear that abandoning key components of their proposals to achieve a compromise will prevent a fair test of their favored approach and lead to failure. Another obstacle is that many lawmakers believe that approaches that might conceivably work in one part of the country, given the cultural, philosophical, or health industry conditions prevailing there, will not work in their state or district because of different local conditions. This view leads many in Congress to resist proposals that might work in some areas because they believe that those proposals could make things worse for their constituents.

These and other factors have stalled efforts to extend health insurance and achieve other reforms for decades. The enactment of Medicare and Medicaid stands as one notable—and instructive—exception to that pattern. Medicare sprang from comprehensive social insurance initiatives of congressional Democrats, Medicaid from limited needs based approaches of congressional Republicans. The passage of each program was possible only because the two initiatives were linked in the form of a trade-off, not so much by blending some elements of each approach but by moving forward with two programs in parallel: Medicare for the elderly and disabled, and Medicaid for the poor of all ages. That experience illustrates a principle of politics: that progress often requires combining elements of competing proposals into a hybrid legislative initiative, in which internally consistent approaches operate in parallel.

In our view, federalism offers a promising approach to the challenge of building support to tackle the problem of uninsurance. While proponents of nationwide measures to introduce health insurance tax credits, or to extend Medicare or the State Children's Health Insurance Program (SCHIP) to other groups, should of course continue to make their case for national policies, we emphasize an initiative designed to support states in launching a variety of localized initiatives. Under this process, the federal government would reward states that agreed to test comprehensive and internally consistent strategies that succeeded in extending coverage within their borders. In contrast to block grants, federal-state covenants would operate within congressionally specified policy constraints designed to achieve national goals for extending health insurance. These covenants would include plans ranging from heavy government regulation to almost none, as long as the plans were consistent with the broad goals and included specified protections. States could also select items from a federally designed ''policy toolbox'' to include in their proposals. Allowable state plans would include forms of single-payer plans, employer mandates, mandatory individual purchase of privately offered insurance, tax credits, and creative new approaches. States would be free not to undertake such experiments and continue with the current array of programs, but sizable financial incentives would be offered to those that chose to experiment and financial rewards given to those that achieve agreed-upon goals.

The model we propose builds upon proposals we have outlined elsewhere. It is also compatible with some other federalism approaches, such as the plan advanced by the Institute of Medicine. We favor a wide diversity of federal-state initiatives for three reasons. First, fostering a bold program in a state will produce much information that will aid the policy discovery process. Successes will encourage others to follow, while unanticipated problems will force redesign or abandonment and will be geographically contained. Second, encouraging bold state action will quickly and directly extend coverage to many of the uninsured. Instead of facing continued national inaction or the potential for disruption of state initiatives by future federal action, states would have the incentive and freedom to act decisively. Third, we see no evidence of an emerging consensus on how to deal with these problems at the national level. But our proposal is based on the observation that advocates of rival plans trust their preferred approaches enough to believe that a real-life version would persuade opponents and create a consensus. Not all can be right, of course, but all advocates of health insurance reform, like residents of Lake Wobegon, seem to believe that their plans are above average. Thus, they should be open to the idea of testing diverse proposals. Our proposal is a process to enable policymakers to discover which is right, either for the whole country or for a region.

CORE ELEMENTS

We propose that Congress provide financial assistance and a legal framework to trigger a diverse set of federal-state initiatives. To help break the impasse in Congress over most national approaches, we propose steps designed to enable ''first choice'' political ideas to be tried in limited areas, with the support of states and through the enactment of a federal ''policy toolbox'' of legislated approaches that would be available to states but not imposed on them. Our view is that elected officials would be prepared to authorize some approaches now bottled up in Congress if they knew that the approach would not be imposed on their states. Our proposed strategy would contain six key elements.

Goals and protections. First, Congress would set certain goals and general protections. Goals would be established for extending coverage, and perhaps improving the coverage of some of those with inadequate coverage today. One such goal could be a percentage reduction in the number of uninsured people in a state. The more precise the goals, the more contentious they are likely to be. But clear and measurable goals under the proposed covenants are necessary if the system of financial rewards described below is to work effectively.

What is ''insurance''? For a coverage goal to mean anything, it would have to define what constitutes ''insurance.'' Specifying adequate coverage in health care is no easier than quantifying an adequate high school education, and when money follows success, drafting such definitions becomes even more difficult.

In defining what is meant by adequate insurance, agreement on two characteristics is vital: the services to be covered and the maximum residual costs (deductibles and copayments) that the insured must bear. States could be more generous than these standards. Instead of speciying precisely what states must do in each of these dimensions, we suggest that Congress establish a required actuarial minimum—such as the cost of providing the benefit package of the Federal Employees Health Benefits Program (FEHBP) for the state's population—as the standard, with states retaining considerable latitude on which services to include and how much cost sharing to require. Whether to set this actuarial standard high or low will be controversial and will determine the overall cost to the federal government of eliciting state participation.

Both high and low benefit standards suffer from well-known problems. High standards would raise program costs and weaken individuals' incentives to be prudent purchasers of health care. Low standards expose patients to sizable financial risk and raise questions about whether to restrict patients' right to buy supplemental coverage. Thus, federal legislation would not specify the content of insurance plans beyond some such actuarial amount. States would then be free to design plans as they wish, although certain types of plans might be presumptively acceptable (see below), and others could be negotiated as part of a covenant. The exact mix of benefits could vary within reason, but no further limits would be imposed. One goal of this approach, after all, is to encourage experimentation to generate information on whether particular configurations of benefits work better than others. It might turn out, for example, that states would adopt quite different plans with similar actuarial values. One group might opt for high deductible plans covering a wide range of services with no cost sharing above the deductible and generous relief from the deductible for the poor, while others might adopt a system with low deductibles and modest cost sharing but covering a much narrower range of benefits. Discovering how individuals' and providers' attitudes and behavior differ under such plans and how health outcomes vary would provide valuable information for private health insurance planners and government officials.

Protections for individuals. In addition to the definitional question, the question also arises, What limitations and protections should be applied to state experiments? If a simple net reduction in uninsurance guaranteed a financial reward to a state, for example, the state would have the incentive to drop coverage of costly high-risk adults and extend coverage to less costly (healthier and younger) workers. Some such concerns could be addressed in negotiating covenants, but some broad protections and policy ''corridors'' would be established under our proposal and would be necessary to achieve political support.

One of the most politically sensitive would be a primum non nocere limitation. That is, states could not introduce a plan that reduced coverage for currently insured populations, most notably the Medicaid population, beyond some minimum amount. We believe that no reform proposal is likely to

be achievable without that restriction. Most Medicaid outlays in many states are not strictly mandated by federal law, in the sense that some beneficiaries and some services for all beneficiaries are optional. States provide optional coverage because federal law permits it, and the federal match makes its provision attractive to states. If incentives were introduced to cover the non-Medicaid population, states might find it financially and politically attractive to increase the total number of insured people by curtailing Medicaid eligibility and benefits and using the money saved, together with federal support, to cover a larger number of people who are uninsured but less poor.

Designing and enforcing rules to prohibit or limit such ''insurance swapping'' would be extremely challenging but politically—and, one could argue, morally—essential. On the other hand, we believe that states should have some opportunity to propose different ways of delivering the Medicaid commitment to the currently insured population, as long as the degree and quality of coverage were not diminished. That form of Medicaid protection could stimulate creativity and improvement in coverage for the poorest citizens while avoiding any threat to their existing coverage. To be sure, there are disagreements, including between us, on the degree of freedom states should have in deciding how to deliver the Medicaid commitment. Positions range from only minor tweaking to sweeping changes in the delivery system, such as allowing states to use Medicaid money to subsidize individual enrollment in an equivalent private plan. The degree of flexibility states should have, while maintaining eligibility and level of coverage, is a difficult political issue for Congress to decide.

Acceptable state proposals would also have to limit cost sharing and features analogous to pension nondiscrimination rules. We believe that requirements, consistent with the general goals and protections we propose, are needed to ensure that lower-income households do not face unaffordable coverage. Without such limits, states could reduce the number of uninsured people and secure attendant federal financial support, for example, by instituting an individual mandate with a high premium that would effectively make insurance universal among the financially secure and do little for the poor. States would need to propose a fair, plausible way of meeting the requirement, such as by mandating some form of community rating or through a cross-subsidy to more vulnerable populations.

The federal government should establish broad guidelines, but no more. A key principle of our proposal is that state officials are more likely than federal officials to design successful solutions to those problems that members of the policy or congressional staff community have failed to solve. Congress can and should set the parameters, but it should avoid micromanagement.

''Policy toolbox'' of federal policies and programs. A feature of the congressional impasse noted earlier is that many plausible health initiatives that might merit testing, and have support in some states, are blocked by other lawmakers who oppose the introduction of the approach in their own state or across the country. Thus, we propose that Congress enact presumptively legitimate approaches to the expansion of health insurance coverage as a ''policy toolbox'' that would be available to states a la carte to apply within their borders. Lawmakers could safely vote to permit an initiative, confident that it would not be imposed on their states. In this way, potentially useful policies and programs could be ''unlocked'' from Congress and become available for states to use in their own initiatives.

A policy toolbox likely would include expansions of existing policies, such as raising income limits under Medicaid or lowering the age of Medicare eligibility. It could include arrangements to subsidize individual buy-ins to the FEHBP, refundable tax credits or their equivalent (perhaps with some steps to modify the federal income tax exclusion for employee-sponsored health insurance costs), mandating employer or individual coverage, or creating a single state insurance plan though which everyone may buy subsidized coverage.

Other possible examples might include the following: (1) Remove regulatory and tax obstacles to churches, unions, and other organizations providing group health insurance plans. This could open up new forms of group coverage offered though organizations with an established membership and common values. (2) Allow Medicaid and SCHIP to cover additional populations, with greatly enhanced federal matching payments, and perhaps to operate in very different ways—with appropriate safeguards to protect those who are covered under current law. Both federal welfare legislation and SCHIP, for example, included safeguards to preserve existing Medicaid coverage. (3) Extend limited federal Employee Retirement Income Security Act (ERISA) protection to large corporate health plans willing to enroll nonemployees, and extend the tax exclusion to those enrollees. This could lead in a state to expanded access to comprehensive coverage. (4) Provide a voucher to individuals designed to mimic a comprehensive refundable tax credit for health insurance. This could allow the practical issues of a major tax credit approach to be examined. (5) Enact legislation to make forms of FEHBP-style coverage available to broader populations within states. This would enable states and federal government to explore the issues associated with extending the program to nonfederal employees and retirees. (6) Enable states to establish association plans and other innovative health organizations.

We emphasize that any menu of tools would be optional for states. None would be required. Members of Congress would be more likely to agree to the inclusion of elements they would deplore in their own states if they knew that no state, including their own, would be forced to adopt them than they would be in a nationally uniform system. Some lawmakers, for instance, oppose association plans be cause they believe that such plans would disrupt successful state insurance arrangements. Under the menu approach, association plans would be introduced only in states wishing to use them as part of their overall strategy.

State proposals, federal approval. Under our proposed strategy, states interested in a bold, creative initiative would design a proposal consistent with the goals and restrictions established by Congress. Typically this proposal would include some elements from the federal policy toolbox in conjunction with state initiatives.

Needless to say, a critical congressional decision would concern mechanisms for approving state plans and monitoring state performance. States would no doubt seek to take advantage of every financial opportunity to game the system and to stretch agreements to the limit, as the almost zany history of the Medicaid upper payment level (UPL) controversy makes painfully clear. Yet monitoring state behavior, determining state violations, and enforcing penalties on states is enormously difficult. Moreover, the entity could (and we think should) have the power to negotiate parts of a proposal, not merely approve or reject it, so that refinements could be made consistent with Congress's objectives.

But what entity should this be? It might seem natural to designate an executive agency that reports to the president, such as the Department of Health and Human Services (HHS). We suspect, however, that many members of Congress would refuse to cede so much selection authority to another branch of government and that roughly half would fear partisan decisions by an administration of the ''other'' party. Congress would likely insist on adding suffocating selection criteria and other restrictions to executive department decisions, jeopardizing the very creativity we intend. Thus, we favor instead an existing or newly created body that has independence but ultimately answers to Congress. A new bipartisan body might perform this function with members selected by Congress and the administration or with members also representing the states, with technical advice from the U.S. Government Accountability Office (GAO). This body would evaluate and negotiate draft state proposals according to the general requirements specified by Congress and then present a recommended ''slate'' of proposals to Congress for an up-or-down vote without amendment. Once the state proposals had been selected, HHS would be responsible for implementing the program.

Bipartisan willingness to authorize state programs and to appropriate sufficient funds to elicit state participation also requires that members of Congress believe that approaches they find congenial will receive a fair trial and agree that approaches they reject will also receive a fair trial. Unfortunately, current federal legislation makes two key approaches difficult to implement in individual states or even groups of states: a single-payer plan and an individual mandate combined with refundable tax credits. A federalist approach should include mechanisms that would enable states to give such proposals as fair and complete a test as possible, both because that would provide valuable information and because the political support of their advocates is important in Congress.

Crafting a single-payer experiment. ERISA, which exempts self-insured plans from state regulation, is the primary technical obstacle to testing single-payer plans. The political sensitivity to modifications in ERISA is difficult to exaggerate. Any attempt to carve out an exception from ERISA for state programs to extend cover age would probably doom federal legislation. But states could create ''wrap around'' plans to cover all who are not currently insured, or even to cover all who are not insured under plans exempted by ERISA from state regulation. While such an arrangement would not be a single-payer plan, it could achieve universal coverage, which is one defining characteristic of single-payer plans, and arguably be sufficient for a valid test. After all, the U.S. health care system is characterized by different subsystems for certain populations and has a form of single-payer coverage for military veterans. But of course the real test is whether advocates of single-payer plans regard such a limited arrangement as a fair trial.

An individual tax credit approach. The obstacles to a state level individual mandate with a refundable credit are also serious and complicated. We presume that an individual mandate would require some contribution from people with incomes above defined levels. Such a mandate raises both political and practical questions. Testing federal tax reform in selected geographic areas also raises constitutional and practical issues, although advocates of the approach maintain that other site-specific programs involving federal tax changes, such as enterprise zones,

have passed muster. In addition, for a limited experiment it might be possible to design subsidy programs that would mimic tax relief.

Administering a refundable tax credit would pose formidable difficulties for some states, particularly those that do not have a personal income tax. In all states, the logistics of providing a credit with reasonable accuracy on a timely basis would be challenging. So, too, would deciding how to address such administrative problems as households that live in one state yet work in another. Advocates for tax credits say they have solutions to these and similar challenges, just as supporters of single-payer approaches or employer mandates claim to have answers to challenges facing those approaches. For instance, some maintain that the employment-based tax withholding system could serve as a vehicle for refundable credits or equivalent subsidies and would make individual enrollment practical. Whether or not they are right is of course disputed by their critics. The beauty of a ''put up or shut up'' federalism initiative is that it offers a chance for advocates to offer such solutions in practice instead of in theory.

Using ''managed federalism'' to build support? Deciding how many states could qualify for experiments is an open political and technical question. One approach would be to limit it to a few states. This would limit costs but has little else to be said for it. Accordingly, we would favor opening the program to all states wishing to accept a federal offer. Nevertheless, we recognize that some lawmakers would be reluctant to vote for a process of federal-state innovation unless they were sure that certain ''generic'' or ''standard'' approaches were included—especially if the number of states in the program were to be limited. In particular, we believe that our proposal can win congressional support only if liberals and conservatives alike are fully convinced that the approaches each holds dear will receive a fair and full trial in practice.

While we believe that any state initiative that meets approval should be welcomed, political considerations thus might require that no state's proposal would be approved unless a sufficient range of acceptable variants was proposed. For example, strong advocates of market-based or single-payer approaches might find the federalism option acceptable only if each was confident that favored approaches would be tested.

Adequate data collection. To determine whether a state was actually making progress toward a goal, accurate and timely data would be needed. These data would include surveys of insurance coverage, with sufficient detail to provide state-level estimates. Such surveys would be essential to show whether the states were making progress in extending health insurance coverage. They are vital to the success of the whole approach because payments to states (apart from modest planning assistance) should be based on actual progress in extending coverage, not on compliance with procedural milestones.

Congress should also assure that states report on use of health services, costs, health status, and any other information deemed necessary to judge the relative success of various approaches to extending coverage. Only a national effort could ensure that data are comparable across states. States' cooperation with data collection would be one element of the determination of whether a state was in compliance with its covenant and was therefore eligible for full incentive payments. The experience with state waivers under welfare before enactment of the 1996 welfare reform clearly illustrates the power and importance of such data collection. The cumulative effect of the reports showing the effectiveness of welfare-to-work requirements in reducing rolls, increasing earnings, and raising recipients' satisfaction transformed the political environment and made welfare reform inescapable.

Rewarding progress. Congress would design a formula under which states would be rewarded for their progress in meeting the agreed federal-state goals of extending insurance coverage. As experience with countless grant programs attests, haggling over such formulas can become politics at its grubbiest, with elected officials voting solely on the basis of what a particular formula does for their districts. Even without political parochialism, designing a formula that rewards progress fairly is no easy task. For one thing, states will be starting from quite different places. The proportion of states' uninsured populations under age sixty-five during 1997–1999 ranged from 27.7 percent in New Mexico and 26.8 percent in Texas to 9.6 percent in Rhode Island and 10.5 percent in Minnesota and Hawaii. Designing an incentive formula to reward progress amid such diverse conditions is both an analytical and a political challenge. Moreover, the per capita cost of health care varies across the nation, which further complicates the assessment of progress. The cost of extending coverage depends on the geographic location, income, and health status of the uninsured population. Having financial access may be hollow in communities where services are physically unavailable or highly limited. Extending coverage may require supply-side measures to supplement financial access.

We believe that the only way to design such a formula is to remove the detailed design decisions from congressional micromanagement. We suggest that Congress be asked to adopt the domestic equivalent of ''fast-track'' trade negotiation rules or base-closing legislation. Under this arrangement, Congress would designate a body appointed in equal numbers by the two parties, to design an incentive formula that Congress would agree to vote up or down, without amendments. Such a formula would have to recognize the different positions from which various states would start. Any acceptable formula would have to reward both absolute and relative reductions in the proportions of uninsured people. Whether financial incentives would be offered for other dimensions of performance and how performance would be measured constitute additional important challenges.

Sources of funding. Bleak budget prospects could cause one to give up on this or any other attempt to extend health insurance coverage broadly. But as recent history amply illustrates, the political and budgetary weather can change dramatically and with little notice. What funding approach would be desirable if funds were available? Under our proposal, the federal funding would be intended for several broad purposes: (1) A large portion of the money would be used to help states actually fund approaches to be tested. (2) Some funding (perhaps with assistance from private foundations) would provide national support and technical assistance to states. A model to consider for such support is the Health Resources and Services Administration (HRSA) State Planning Grants program, which both funds state planning activities and provides federal support and technical assistance. (3) Some funds would cover the cost of independent performance monitoring. (4) Some funds would be set aside to reward states for meeting the goals in their agreed-upon plan. Congress might consider an automatic ''performance bonus'' system similar to the mechanism used in welfare reform. Congress could also consider withholding the periodic release of part of a state's grant pending a periodic assessment by the independent monitor of the degree to which the state is accomplishing the objectives specified in its covenant. Only those states willing to offer proposals designed to achieve the national goals would be eligible for a share of the funding or for the menu of federal policy tools. A state could decline to offer a proposal and remain under current programs.

Federalism enables the states to undertake innovative approaches to challenges facing the United States. Federal legislation often grants states broad discretion in designing even those programs for which the federal government bears much or most of the cost. In health care as well as education or welfare, states have been the primary innovators. But the federal government limits, shapes, and facilitates such innovation through regulation, taxation, and grants. Such a partnership is bound to be marked by conflict and tension as state and federal interests diverge.

A creative federalism approach of the kind we propose would change the dynamics of discovering better ways to expand insurance coverage, just as a version of this approach triggered a radical change in the way states addressed welfare dependency. By actually testing competing approaches to reach common goals, rather than endlessly debating them, the United States is far more likely to find the solution to the perplexing and seemingly intractable problem of uninsurance.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 471—RECOGNIZING THAT, DURING NATIONAL FOSTER CARE MONTH, THE LEADERS OF THE FEDERAL, STATE, AND LOCAL GOVERNMENTS SHOULD PROVIDE LEADERSHIP TO IMPROVE THE CARE GIVEN TO CHILDREN IN FOSTER CARE PROGRAMS

Mr. COLEMAN (for himself, Ms. LANDRIEU, and Mr. CRAIG) submitted the following resolution, which was considered and agreed to:

S. Res 471

Whereas more than 500,000 children are in foster care programs throughout the United States;

Whereas, while approximately ¼ of all children in foster care programs are available for adoption, only about 50,000 foster children are adopted each year;

Whereas many of the children in foster care programs have endured—

(1) numerous years in the foster care system; and

(2) frequent moves to and from foster homes;

Whereas approximately 50 percent of foster care children have been placed in foster care programs for longer than 1 year;

Whereas 25 percent of foster care children have been placed in foster care programs for at least 3 years;

Whereas children who spend longer amounts of time in foster care programs often experience worse outcomes than children who are placed for shorter periods of time;

Whereas children who spend time in foster care programs are more likely to—

(1) become teen parents;

(2) rely on public assistance when they become adults; and

(3) interact with the criminal justice system;

Whereas Federal, State, and local governments—

(1) share a unique relationship with foster children; and

(2) have removed children from their homes to better provide for the safety, permanency, and well-being of the children;

Whereas unfortunately, studies indicate that Federal, State, and local governments have not been entirely successful in caring for foster children;

Whereas Congress recognizes the commitment of Federal, State, and local governments to ensure the safety and permanency of children placed in foster care programs; and

Whereas every child deserves a loving family: Now, therefore, be it

*Resolved,* That the Senate—

(1) recognizes—

(A) May 2006 as ''National Foster Care Month''; and

(B) that, during National Foster Care Month, the leaders of the Federal, State, and local governments should rededicate themselves to provide better care to the foster children of the United States; and

(2) resolves to provide leadership to help identify the role that Federal, State, and local governments should play to ensure that foster children receive appropriate parenting throughout their entire childhood.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 3861. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, to amend the title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table.

SA 3862. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3863. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3864. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3865. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3866. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3867. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3868. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3869. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3870. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3871. Mrs. FEINSTEIN (for herself, Mr. DORGAN, Mr. BINGAMAN, and Ms. STABENOW) submitted an amendment intended to be proposed by her to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3872. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

SA 3873. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 3861.** Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Local Law Enforcement Enhancement Act of 2005''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) The prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including—

(A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and

(B) by preventing members of targeted groups from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(7) Perpetrators cross State lines to commit such violence.

(8) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(9) Such violence is committed using articles that have traveled in interstate commerce.

(10) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(11) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct ''races''. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(12) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(13) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States and local jurisdictions.

**SEC. 3. DEFINITION OF HATE CRIME.**

In this Act, the term ''hate crime'' has the same meaning as in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note).

**SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.**

(a) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—At the request of a law enforcement official of a State or Indian tribe; the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that—

(A) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(B) constitutes a felony under the laws of the State or Indian tribe; and

(C) is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim, or is a violation of the hate crime laws of the State or Indian tribe.

(2) PRIORITY.—In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than 1 State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) GRANTS.—

IN GENERAL.—The Attorney General may award grants to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS.—In implementing the grant program, the Office of Justice Programs shall work closely with the funded jurisdictions to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION.—

(A) IN GENERAL.—Each State that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION.—Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS.—A State or political subdivision of a State or tribal official applying for assistance under this subsection shall—

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State; political subdivision, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, political subdivision, or tribal official has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single jurisdiction within a 1 year period.

(6) REPORT.—Not later than December 31, 2006, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2006 and 2007.

**SEC. 5. GRANT PROGRAM.**

(a) AUTHORITY TO MAKE GRANTS.—The Office of Justice Programs of the Department of Justice shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

**SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE AND LOCAL LAW ENFORCEMENT.**

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Community Relations Service, for fiscal years 2006, 2007, and 2008 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section 7.

**SEC. 7. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

**§ 249. Hate crime acts**

''(a) IN GENERAL.—

''(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

''(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(i) death results from the offense; or

''(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(I) death results from the offense; or

''(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

''(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

''(I) across a State line or national border; or

''(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

''(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

''(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

''(iv) the conduct described in subparagraph (A)—

''(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

''(II) otherwise affects interstate or foreign commerce.

''(b) CERTIFICATION REQUIREMENT.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

''(1) he or she has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

''(2) he or his designee or she or her designee has consulted with State or local law enforcement officials regarding the prosecution and determined that—

''(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

''(B) the State has requested that the Federal Government assume jurisdiction;

''(C) the State does not object to the Federal Government assuming jurisdiction; or

''(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

''(c) DEFINITIONS.—In this section—

''(1) the term 'explosive or incendiary device' has the meaning given the term in section 232 of this title; and

''(2) the term 'firearm' has the meaning given the term in section 921(a) of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

''249. Hate crime acts''.

**SEC. 8. DUTIES OF FEDERAL SENTENCING COMMISSION.**

(a) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—Pursuant to the authority provided under section 994 of title 28, United States Code, the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements (in addition to the sentencing enhancement provided for the use of a minor during the commission of an offense) for adult defendants who recruit juveniles to assist in the commission of hate crimes.

(b) CONSISTENCY WITH OTHER GUIDELINES.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishments for substantially the same offense.

**SEC. 9. STATISTICS.**

Subsection (b)(1) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting ''gender,'' after ''race,''.

**SEC. 10. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

---

**SA 3862.** Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the ''Kids Come First Act of 2006''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—EXPANDED COVERAGE OF CHILDREN UNDER MEDICAID AND SCHIP

Sec. 101. State option to receive 100 percent FMAP for medical assistance for children in poverty in exchange for expanded coverage of children in working poor families under medicaid or SCHIP.
Sec. 102. Elimination of cap on SCHIP funding for States that expand eligibility for children.

TITLE II—STATE OPTIONS FOR INCREMENTAL CHILD COVERAGE EXPANSIONS
Sec. 201. State option to provide wrap-around SCHIP coverage to children who have other health coverage.
Sec. 202. State option to enroll low-income children of State employees in SCHIP.
Sec. 203. Optional coverage of legal immigrant children under medicaid and SCHIP.
Sec. 204. State option for passive renewal of eligibility for children under medicaid and SCHIP.
TITLE III—TAX INCENTIVES FOR HEALTH INSURANCE COVERAGE OF CHILDREN
Sec. 301. Refundable credit for health insurance coverage of children.
Sec. 302. Forfeiture of personal exemption for any child not covered by health insurance.
TITLE IV—MISCELLANEOUS
Sec. 401. Requirement for group market health insurers to offer dependent coverage option for workers with children.
Sec. 402. Effective date.
TITLE V—REVENUE PROVISION
Sec. 501. Partial repeal of rate reduction in the highest income tax bracket.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) NEED FOR UNIVERSAL COVERAGE.—

(A) Currently, there are 9,000,000 children under the age of 19 that are uninsured. One out of every 8 children are uninsured while 1 in 5 Hispanic children and 1 in 7 African American children are uninsured. Three-quarters, approximately 6,800,000, of these children are eligible but not enrolled in the medicaid program or the State children's health insurance program (SCHIP). Long-range studies found that 1 in 3 children went without health insurance for all or part of 2002 and 2003.

(B) Low-income children are 3 times as likely as children in higher income families to be uninsured. It is estimated that 65 percent of uninsured children have at least 1 parent working full time over the course of the year.

(C) It is estimated that 50 percent of all legal immigrant children in families with income that is less than 200 percent of the Federal poverty line are uninsured. In States without programs to cover immigrant children, 57 percent of non-citizen children are uninsured.

(D) Children in the Southern and Western parts of the United States were nearly 1.7 times more likely to be uninsured than children in the Northeast. In the Northeast, 9.4 percent of children are uninsured while in the Midwest, 8.3 percent are uninsured. The South's rate of uninsured children is 14.3 percent while the West has an uninsured rate of 13 percent.

(E) Children's health care needs are neglected in the United States. One-quarter of young children in the United States are not fully up to date on their basic immunizations. One-third of children with chronic asthma do not get a prescription for the necessary medications to manage the disease.

(F) According to the Centers for Disease Control and Prevention, nearly ½ of all uninsured children have not had a well-child visit in the past year. One out of every 5 children has problems accessing needed care, and 1 out of every 4 children do not receive annual dental exams. One in 6 uninsured children had a delayed or unmet medical need in the past year. Minority children are less likely to receive proven treatments such as prescription medications to treat chronic disease.

(G) There are 7,600,000 young adults between the ages of 19 and 20. In the United States, approximately 28 percent, or 2,100,000 individuals, of this group are uninsured.

(H) Chronic illness and disability among children are on the rise. Children most at risk for chronic illness and disability are children who are most likely to be poor and uninsured.

(2) ROLE OF THE MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS.—

(A) The medicaid program and SCHIP serve as a crucial health safety net for 30,000,000 children. During the recent economic downturn and the highest number of uninsured individuals ever recorded in the United States, the medicaid program and SCHIP offset losses in employer-sponsored coverage. While the number of children living in low-income families increased by 2,000,000 between 2000 and 2003, the number of uninsured children fell due to the medicaid program and SCHIP.

(B) In 2003, 25,000,000 children were enrolled in the medicaid program, accounting for ½ of all enrollees and only 19 percent of total program costs.

(C) The medicaid program and SCHIP do more than just fill in the gaps. Gains in public coverage have reduced the percentage of low-income uninsured by a ⅓ from 1997 to 2003. In addition, a recent study found that publicly-insured children are more likely to obtain medical care, preventive care and dental care than similar low-income privately-insured children.

(D) Publicly funded programs such as the medicaid program and SCHIP actually improve children's health. Children who are currently insured by public programs are in better health than they were a year ago. Expansion of coverage for children and pregnant women under the medicaid program and SCHIP reduces rates of avoidable hospitalizations by 22 percent.

(E) Studies have found that children enrolled in public insurance programs experienced a 68 percent improvement in measures of school performance.

(F) Despite the success of expansions in general under the medicaid program and SCHIP, due to current budget constraints, many States have stopped doing aggressive outreach and have raised premiums and cost-sharing requirements on families under these programs. In addition, 8 States stopped enrollment in SCHIP for a period of time between April 2003 and July 2004. As a result, SCHIP enrollment fell by 200,000 children for the first time in the program's history.

(G) It is estimated that nearly 50 percent of children covered through SCHIP do not remain in the program due to reenrollment barriers. A recent study found that between 10 and 40 percent of these children are ''lost'' in the system. Difficult renewal policies and reenrollment barriers make seamless coverage in SCHIP unattainable. Studies indicate that as many as 67 percent of children who were eligible but not enrolled for SCHIP had applied for coverage but were denied due to procedural issues.

(H) While the medicaid program and SCHIP expansions to date have done much to offset what otherwise would have been a significant loss of coverage among children because of declining access to employer coverage, the shortcomings of previous expansions, such as the failure to enroll all eligible children and caps on enrollment in SCHIP because of under-funding, also are clear.

## TITLE I—EXPANDED COVERAGE OF CHILDREN UNDER MEDICAID AND SCHIP

**SEC. 101. STATE OPTION TO RECEIVE 100 PERCENT FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN POVERTY IN EXCHANGE FOR EXPANDED COVERAGE OF CHILDREN IN WORKING POOR FAMILIES UNDER MEDICAID OR SCHIP.**

(a) STATE OPTION.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by redesignating section 1939 as section 1940, and by inserting after section 1938 the following:

''STATE OPTION FOR INCREASED FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN POVERTY IN EXCHANGE FOR EXPANDED COVERAGE OF CHILDREN IN WORKING POOR FAMILIES UNDER THIS TITLE OR TITLE XXI

''SEC. 1939. (a) 100 PERCENT FMAP.—

''(1) IN GENERAL.—Notwithstanding any other provision of this title, in the case of a State that, through an amendment to each of its State plans under this title and title XXI (or to a waiver of either such plan), agrees to satisfy the conditions described in subsections (b), (c), and (d) the Federal medical assistance percentage shall be 100 percent with respect to the total amount expended by the State for providing medical assistance under this title for each fiscal year quarter beginning on or after the date described in subsection (e) for children whose family income does not exceed 100 percent of the poverty line.

''(2) LIMITATION ON SCOPE OF APPLICATION OF INCREASE.—The increase in the Federal medical assistance percentage for a State under this section shall apply only with respect to the total amount expended for providing medical assistance under this title for a fiscal year quarter for children described in paragraph (1) and shall not apply with respect to—

''(A) any other payments made under this title, including disproportionate share hospital payments described in section 1923;

''(B) payments under title IV or XXI; or

''(C) any payments made under this title or title XXI that are based on the enhanced FMAP described in section 2105(b).

''(b) ELIGIBILITY EXPANSIONS.—The condition described in this subsection is that the State agrees to do the following:

''(1) COVERAGE UNDER MEDICAID OR SCHIP FOR CHILDREN IN FAMILIES WHOSE INCOME DOES NOT EXCEED 300 PERCENT OF THE POVERTY LINE.—

''(A) IN GENERAL.—The State agrees to provide medical assistance under this title or child health assistance under title XXI to children whose family income exceeds the medicaid applicable income level (as defined in section 2110(b)(4) but by substituting 'January 1, 2006' for 'March 31, 1997'), but does not exceed 300 percent of the poverty line.

''(B) STATE OPTION TO EXPAND COVERAGE THROUGH SUBSIDIZED PURCHASE OF FAMILY COVERAGE.—A State may elect to carry out subparagraph (A) through the provision of assistance for the purchase of dependent coverage under a group health plan or health insurance coverage if—

''(i) the dependent coverage is consistent with the benefit standards under this title or title XXI, as approved by the Secretary; and

''(ii) the State provides additional benefits under this title or title XXI.

''(C) DEEMED SATISFACTION FOR CERTAIN STATES.—A State that, as of January 1, 2006, provides medical assistance under this title or child health assistance under title XXI to children whose family income is 300 percent of the poverty line shall be deemed to satisfy this paragraph.

''(2) COVERAGE FOR CHILDREN UNDER AGE 21.—The State agrees to define a child for

purposes of this title and title XXI as an individual who has not attained 21 years of age.

''(3) OPPORTUNITY FOR HIGHER INCOME CHILDREN TO PURCHASE SCHIP COVERAGE.—The State agrees to permit any child whose family income exceeds 300 percent of the poverty line to purchase full or additional coverage under title XXI at the full cost of providing such coverage, as determined by the State.

''(4) COVERAGE FOR LEGAL IMMIGRANT CHILDREN.—The State agrees to—

''(A) provide medical assistance under this title and child health assistance under title XXI for alien children who are lawfully residing in the United States (including battered aliens described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance in accordance with section 1903(v)(4) and 2107(e)(1)(E); and

''(B) not establish or enforce barriers that deter applications by such aliens, including through the application of the removal of the barriers described in subsection (c).

''(c) REMOVAL OF ENROLLMENT AND ACCESS BARRIERS.—The condition described in this subsection is that the State agrees to do the following:

''(1) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State agrees to—

''(A) provide presumptive eligibility for children under this title and title XXI in accordance with section 1920A;

''(B) treat any items or services that are provided to an uncovered child (as defined in section 2110(c)(8)) who is determined ineligible for medical assistance under this title as child health assistance for purposes of paying a provider of such items or services, so long as such items or services would be considered child health assistance for a targeted low-income child under title XXI.

''(2) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State agrees to provide that eligibility for assistance under this title and title XXI shall not be regularly redetermined more often than once every year for children.

''(3) ACCEPTANCE OF SELF-DECLARATION OF INCOME.—The State agrees to permit the family of a child applying for medical assistance under this title or child health assistance under title XXI to declare and certify by signature under penalty of perjury family income for purposes of collecting financial eligibility information.

''(4) ADOPTION OF ACCEPTANCE OF ELIGIBILITY DETERMINATIONS FOR OTHER ASSISTANCE PROGRAMS.—The State agrees to accept determinations (made within a reasonable period, as found by the State, before its use for this purpose) of an individual's family or household income made by a Federal or State agency (or a public or private entity making such determination on behalf of such agency), including the agencies administering the Food Stamp Act of 1977, the Richard B. Russell National School Lunch Act, and the Child Nutrition Act of 1966, notwithstanding any differences in budget unit, disregard, deeming, or other methodology, but only if—

''(A) such agency has fiscal liabilities or responsibilities affected or potentially affected by such determinations; and

''(B) any information furnished by such agency pursuant to this subparagraph is used solely for purposes of determining eligibility for medical assistance under this title or for child health assistance under title XXI.

''(5) NO ASSETS TEST.—The State agrees to not (or demonstrates that it does not) apply any assets or resources test for eligibility under this title or title XXI with respect to children.

''(6) ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS.—

''(A) IN GENERAL.—The State agrees for purposes of initial eligibility determinations and redeterminations of children under this title and title XXI not to require a face-to-face interview and to permit applications and renewals by mail, telephone, and the Internet.

''(B) NONDUPLICATION OF INFORMATION.—

''(i) IN GENERAL.—For purposes of redeterminations of eligibility for currently or previously enrolled children under this title and title XXI, the State agrees to use all information in its possession (including information available to the State under other Federal or State programs) to determine eligibility or redetermine continued eligibility before seeking similar information from parents.

''(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed as limiting any obligation of a State to provide notice and a fair hearing before denying, terminating, or reducing a child's coverage based on such information in the possession of the State.

''(7) NO WAITING LIST FOR CHILDREN UNDER SCHIP.—The State agrees to not impose any numerical limitation, waiting list, waiting period, or similar limitation on the eligibility of children for child health assistance under title XXI or to establish or enforce other barriers to the enrollment of eligible children based on the date of their application for coverage.

''(8) ADEQUATE PROVIDER PAYMENT RATES.—The State agrees to—

''(A) establish payment rates for children's health care providers under this title that are no less than the average of payment rates for similar services for such providers provided under the benchmark benefit packages described in section 2103(b);

''(B) establish such rates in amounts that are sufficient to ensure that children enrolled under this title or title XXI have adequate access to comprehensive care, in accordance with the requirements of section 1902(a)(30)(A); and

''(C) include provisions in its contracts with providers under this title guaranteeing compliance with these requirements.

''(d) MAINTENANCE OF MEDICAID ELIGIBILITY LEVELS FOR CHILDREN.—

''(1) IN GENERAL.—The condition described in this subsection is that the State agrees to maintain eligibility income, resources, and methodologies applied under this title (including under a waiver of such title or under section 1115) with respect to children that are no more restrictive than the eligibility income, resources, and methodologies applied with respect to children under this title (including under such a waiver) as of January 1, 2006.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as implying that a State does not have to comply with the minimum income levels required for children under section 1902(l)(2).

''(e) DATE DESCRIBED.—The date described in this subsection is the date on which, with respect to a State, a plan amendment that satisfies the requirements of subsections (b), (c), and (d) is approved by the Secretary.

''(f) DEFINITION OF POVERTY LINE.—In this section, the term 'poverty line' has the meaning given that term in section 2110(c)(5).''.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by inserting before the period the following: '', and with respect to amounts expended for medical assistance for children on or after the date described in subsection (d) of section 1939, in the case of a State that has, in accordance with such section, an approved plan amendment under this title and title XXI''.

(2) Section 1903(f)(4) of the Social Security Act (42 U.S.C. 1396b(f)(4)) is amended—

(A) in subparagraph (C), by adding ''or'' after ''section 1611(b)(1),''; and

(B) by inserting after subparagraph (C), the following:

''(D) who would not receive such medical assistance but for State electing the option under section 1939 and satisfying the conditions described in subsections (b), (c), and (d) of such section,''.

**SEC. 102. ELIMINATION OF CAP ON SCHIP FUNDING FOR STATES THAT EXPAND ELIGIBILITY FOR CHILDREN.**

(a) IN GENERAL.—Section 2105 of the Social Security Act (42 U.S.C. 1397dd) is amended by adding at the end the following:

''(h) GUARANTEED FUNDING FOR CHILD HEALTH ASSISTANCE FOR COVERAGE EXPANSION STATES.—

''(1) IN GENERAL.—Only in the case of a State that has, in accordance with section 1939, an approved plan amendment under this title and title XIX, any payment cap that would otherwise apply to the State under this title as a result of having expended all allotments available for expenditure by the State with respect to a fiscal year shall not apply with respect to amounts expended by the State on or after the date described in section 1939(d).

''(2) APPROPRIATION.—There is appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose of paying a State described in paragraph (1) for each quarter beginning on or after the date described in section 1939(d), an amount equal to the enhanced FMAP of expenditures described in paragraph (1) and incurred during such quarter.''.

(b) CONFORMING AMENDMENTS.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended—

(1) in subsection (a), by inserting ''subject to section 2105(h),'' after ''under this section,'';

(2) in subsection (b)(1), by inserting ''and section 2105(h)'' after ''Subject to paragraph (4)''; and

(3) in subsection (c)(1), by inserting ''subject to section 2105(h),'' after ''for a fiscal year,''.

## TITLE II—STATE OPTIONS FOR INCREMENTAL CHILD COVERAGE EXPANSIONS

**SEC. 201. STATE OPTION TO PROVIDE ADDITIONAL SCHIP COVERAGE TO CHILDREN WHO HAVE OTHER HEALTH COVERAGE.**

(a) IN GENERAL.—Section 2110(b) of the Social Security Act (42 U.S.C. 1397jj(b)) is amended—

(1) in paragraph (1)(C), by inserting '', subject to paragraph (5),'' after ''under title XIX or''; and

(2) by adding at the end the following new paragraph:

''(5) STATE OPTION TO PROVIDE ADDITIONAL COVERAGE.—

''(A) IN GENERAL.—A State may waive the requirement of paragraph (1)(C) that a targeted low-income child may not be covered under a group health plan or under health insurance coverage in order to provide—

''(i) items or services that are not covered, or are only partially covered, under such plan or coverage; or

''(ii) cost-sharing protection.

''(B) ELIGIBILITY.—In waiving such requirement, a State may limit the application of the waiver to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the maximum income level otherwise established for other children under the State child health plan.

''(C) CONTINUED APPLICATION OF DUTY TO PREVENT SUBSTITUTION OF EXISTING COVERAGE.—Nothing in this paragraph shall be construed as modifying the application of section 2102(b)(3)(C) to a State.''.

(b) APPLICATION OF ENHANCED MATCH UNDER MEDICAID.—Section 1905 of such Act (42 U.S.C. 1396d) is amended—

(1) in subsection (b), in the fourth sentence, by striking ''subsection (u)(3)'' and inserting ''(u)(3), or (u)(4)''; and

(2) in subsection (u), by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following:

''(4) For purposes of subsection (b), the expenditures described in this paragraph are expenditures for items and services for children described in section 2110(b)(5).''.

(c) APPLICATION OF SECONDARY PAYOR PROVISIONS.—Section 2107(e)(1) of such Act (42 U.S.C. 1397gg(e)(1)) is amended—

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

(2) by inserting after subparagraph (A) the following new subparagraph:

''(B) Section 1902(a)(25) (relating to coordination of benefits and secondary payor provisions) with respect to children covered under a waiver described in section 2110(b)(5).''.

**SEC. 202. STATE OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES IN SCHIP.**

Section 2110(b)(2) of the Social Security Act (42 U.S.C. 1397jj(b)(2)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively and realigning the left margins of such clauses appropriately;

(2) by striking ''Such term'' and inserting the following:

''(A) IN GENERAL.—Such term''; and

(3) by adding at the end the following:

''(B) STATE OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES.—At the option of a State, subparagraph (A)(ii) shall not apply to any low-income child who would otherwise be eligible for child health assistance under this title but for such subparagraph.''.

**SEC. 203. OPTIONAL COVERAGE OF LEGAL IMMIGRANT CHILDREN UNDER MEDICAID AND SCHIP.**

(a) MEDICAID PROGRAM.—Section 1903(v) of the Social Security Act (42 U.S.C. 1396b(v)) is amended—

(1) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (4)''; and

(2) by adding at the end the following:

''(4)(A) A State may elect (in a plan amendment under this title) to provide medical assistance under this title for aliens who are lawfully residing in the United States (including battered aliens described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance, within any of the following eligibility categories:

''(i) CHILDREN.—Children (as defined under such plan), including optional targeted low-income children described in section 1905(u)(2)(B).

''(B)(i) In the case of a State that has elected to provide medical assistance to a category of aliens under subparagraph (A), no debt shall accrue under an affidavit of support against any sponsor of such an alien on the basis of provision of assistance to such category and the cost of such assistance shall not be considered as an unreimbursed cost.

''(ii) The provisions of sections 401(a), 402(b), 403, and 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not apply to a State that makes an election under subparagraph (A).''.

(b) TITLE XXI.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following:

''(E) Section 1903(v)(4) (relating to optional coverage of permanent resident alien children), but only if the State has elected to apply such section to that category of children under title XIX.''.

**SEC. 204. STATE OPTION FOR PASSIVE RENEWAL OF ELIGIBILITY FOR CHILDREN UNDER MEDICAID AND SCHIP.**

(a) IN GENERAL.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended by adding at the end the following:

''(5) Notwithstanding any other provision of this title, a State may provide that an individual who has not attained 21 years of age who has been determined eligible for medical assistance under this title shall remain eligible for medical assistance until such time as the State has information demonstrating that the individual is no longer so eligible.''.

(b) APPLICATION UNDER TITLE XXI.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)) is amended—

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

(2) by inserting after subparagraph (A), the following:

''(B) Section 1902(l)(5) (relating to passive renewal of eligibility for children).''.

## TITLE III—TAX INCENTIVES FOR HEALTH INSURANCE COVERAGE OF CHILDREN

**SEC. 301. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE OF CHILDREN.**

(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. HEALTH INSURANCE COVERAGE OF CHILDREN.**

''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to so much of the amount paid during the taxable year, not compensated for by insurance or otherwise, for qualified health insurance for each dependent child of the taxpayer, as exceeds 5 percent of the adjusted gross income of such taxpayer for such taxable year.

''(b) DEPENDENT CHILD.—For purposes of this section, the term 'dependent child' means any child (as defined in section 152(f)(1)) who has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins and with respect to whom a deduction under section 151 is allowable to the taxpayer.

''(c) QUALIFIED HEALTH INSURANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified health insurance' means insurance, either employer-provided or made available under title XIX or XXI of the Social Security Act, which constitutes medical care as defined in section 213(d) without regard to—

''(A) paragraph (1)(C) thereof, and

''(B) so much of paragraph (1)(D) thereof as relates to qualified long-term care insurance contracts.

''(2) EXCLUSION OF CERTAIN OTHER CONTRACTS.—Such term shall not include insurance if a substantial portion of its benefits are excepted benefits (as defined in section 9832(c)).

''(d) MEDICAL SAVINGS ACCOUNT AND HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—

''(1) IN GENERAL.—If a deduction would (but for paragraph (2)) be allowed under section 220 or 223 to the taxpayer for a payment for the taxable year to the medical savings account or health savings account of an individual, subsection (a) shall be applied by treating such payment as a payment for qualified health insurance for such individual.

''(2) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under section 220 or 223 for that portion of the payments otherwise allowable as a deduction under section 220 or 223 for the taxable year which is equal to the amount of credit allowed for such taxable year by reason of this subsection.

''(e) SPECIAL RULES.—

''(1) DETERMINATION OF INSURANCE COSTS.—The Secretary shall provide rules for the allocation of the cost of any qualified health insurance for family coverage to the coverage of any dependent child under such insurance.

''(2) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—In the case of a taxpayer who is eligible to deduct any amount under section 162(l) for the taxable year, this section shall apply only if the taxpayer elects not to claim any amount as a deduction under such section for such year.

''(3) COORDINATION WITH MEDICAL EXPENSE AND HIGH DEDUCTIBLE HEALTH PLAN DEDUCTIONS.—The amount which would (but for this paragraph) be taken into account by the taxpayer under section 213 or 224 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

''(4) DENIAL OF CREDIT TO DEPENDENTS.—No credit shall be allowed under this section to 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.

''(5) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under subsection (a) if the credit under section 35 is allowed and no credit shall be allowed under 35 if a credit is allowed under this section.

''(6) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year.''.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following new section:

**''SEC. 6050U. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.**

''(a) IN GENERAL.—Any governmental unit or any person who, in connection with a trade or business conducted by such person, receives payments during any calendar year from any individual for coverage of a dependent child (as defined in section 36(b)) of such individual under creditable health insurance, shall make the return described in subsection (b) (at such time as the Secretary may by regulations prescribe) with respect to each individual from whom such payments were received.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe, and

''(2) contains—

''(A) the name, address, and TIN of the individual from whom payments described in subsection (a) were received,

''(B) the name, address, and TIN of each dependent child (as so defined) who was provided by such person with coverage under creditable health insurance by reason of such payments and the period of such coverage, and

''(C) such other information as the Secretary may reasonably prescribe.

''(c) CREDITABLE HEALTH INSURANCE.—For purposes of this section, the term 'creditable health insurance' means qualified health insurance (as defined in section 36(c)).

''(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS 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 under subsection (b)(2)(A) to be set forth in such return a written statement showing—

''(1) the name and address of the person required to make such return and the phone number of the information contact for such person,

''(2) the aggregate amount of payments described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished, and

''(3) the information required under subsection (b)(2)(B) with respect to such payments.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

''(e) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).''.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xiii) through (xviii) as clauses (xiv) through (xix), respectively, and by inserting after clause (xii) the following new clause:

''(xiii) section 6050U (relating to returns relating to payments for qualified health insurance),''.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ''or'' at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting '', or'', and by adding at the end the following new subparagraph:

''(CC) section 6050U(d) (relating to returns relating to payments for qualified health insurance).''.

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050T the following new item:

''Sec. 6050U. Returns relating to payments for qualified health insurance.''.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period '', or from section 36 of such Code''.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

''Sec. 36. Health insurance coverage of children.

''Sec. 37. Overpayments of tax.''. Q

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

**SEC. 302. FORFEITURE OF PERSONAL EXEMPTION FOR ANY CHILD NOT COVERED BY HEALTH INSURANCE.**

(a) IN GENERAL.—Section 151(d) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended by adding at the end the following new paragraph:

''(5) REDUCTION OF EXEMPTION AMOUNT FOR ANY CHILD NOT COVERED BY HEALTH INSURANCE.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the exemption amount otherwise determined under this subsection for any dependent child (as defined in section 36(b)) for any taxable year shall be reduced by the same percentage as the percentage of such taxable year during which such dependent child was not covered by qualified health insurance (as defined in section 36(c)).

''(B) FULL REDUCTION IF NO PROOF OF COVERAGE IS PROVIDED.—For purposes of subparagraph (A), in the case of any taxpayer who fails to attach to the return of tax for any taxable year a copy of the statement furnished to such taxpayer under section 6050U, the percentage reduction under such subparagraph shall be deemed to be 100 percent.

''(C) NONAPPLICATION OF PARAGRAPH TO TAXPAYERS IN LOWEST TAX BRACKET.—This paragraph shall not apply to any taxpayer whose taxable income for the taxable year does not exceed the initial bracket amount determined under section 1(i)(1)(B).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2006.

## TITLE IV—MISCELLANEOUS

**SEC. 401. REQUIREMENT FOR GROUP MARKET HEALTH INSURERS TO OFFER DEPENDENT COVERAGE OPTION FOR WORKERS WITH CHILDREN.**

(a) ERISA.—

(1) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

**''SEC. 714. REQUIREMENT TO OFFER OPTION TO PURCHASE DEPENDENT COVERAGE FOR CHILDREN.**

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall offer an individual who is enrolled in such coverage the option to purchase dependent coverage for a child of the individual.

''(b) NO EMPLOYER CONTRIBUTION REQUIRED.—An employer shall not be required to contribute to the cost of purchasing dependent coverage for a child by an individual who is an employee of such employer.

''(c) DEFINITION OF CHILD.—In this section, the term 'child' means an individual who has not attained 21 years of age.''.

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) is amended by inserting after the item relating to section 713 the following:

''Sec. 714. Requirement to offer option to purchase dependent coverage for children.''.

(b) PUBLIC HEALTH SERVICE ACT.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following:

**''SEC. 2707. REQUIREMENT TO OFFER OPTION TO PURCHASE DEPENDENT COVERAGE FOR CHILDREN.**

''(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall offer an individual who is enrolled in such coverage the option to purchase dependent coverage for a child of the individual.

''(b) NO EMPLOYER CONTRIBUTION REQUIRED.—An employer shall not be required to contribute to the cost of purchasing dependent coverage for a child by an individual who is an employee of such employer.

''(c) DEFINITION OF CHILD.—In this section, the term 'child' means an individual who has not attained 21 years of age.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning on or after January 1, 2007.

**SEC. 402. EFFECTIVE DATE.**

Unless otherwise provided, the amendments made by this Act shall take effect on October 1, 2006, and shall apply to child health assistance and medical assistance provided on or after that date without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

## TITLE V—REVENUE PROVISION

**SEC. 501. PARTIAL REPEAL OF RATE REDUCTION IN THE HIGHEST INCOME TAX BRACKET.**

Section 1(i)(2) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence:

''In the case of taxable years beginning during calendar year 2006 and thereafter, the final item in the fourth column in the preceding table shall be applied by substituting for '35.0%' such rate as the Secretary determines is necessary to provide sufficient revenues to offset the Federal outlays required to implement the provisions of, and amendments made by, the Kids Come First Act of 2006.''.

---

**SA 3863.** Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

In section 2922 of the Public Health Service Act, as added by section 201 of the bill, strike subsection (a) and insert the following:

''(a) BENEFIT CHOICE OPTIONS.—

''(1) DEVELOPMENT.—Not later than 6 months after the date of enactment of this title, the Secretary shall issue, by interim final rule, Benefit Choice Standards that implement a standard benefit package as provided for in this part.

''(2) REQUIREMENT.—The Benefit Choice Standards shall provide that a health insurance issuer in a State, may offer a coverage plan or plan in the small group market, individual market, large group market, or through a small business health plan, that does not comply with one or more mandates regarding covered benefits, services, or category of provider as may be in effect in such State with respect to such market or markets (either prior to or following the date of enactment of this title), if such coverage or plan provides for coverage of a standard benefit package as provided for in paragraph (3).

''(3) STANDARD BENEFIT PACKAGE.—A health insurance issuer described in paragraph (2) shall offer to purchasers (including, with respect to a small business health plan, the participating employers of such plan) a plan that, at a minimum, provides coverage for such benefits, services, and categories of providers as are required under the laws of at least 25 States, as determined by the Secretary.

''(4) PUBLICATION OF BENEFIT PACKAGE.—Not later than 3 months after the date of enactment of this title, and on the first day of every calendar year thereafter, the Secretary shall publish in the Federal Register

the standard benefit package required under this subsection. In making such publication the Secretary shall resolve any variations that exist in the scope of the benefits, services, and categories of providers required under the laws of the States considered by the Secretary for purposes of paragraph (3).

''(5) UPDATING OF BENEFIT PACKAGE.—Not later than 2 years after the date on which the standard benefit package is issued under paragraph (3), and every 2 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall update the package. The Secretary shall issue the updated package by regulation, and such updated package shall be effective upon the first plan year following the issuance of such regulation.

---

**SA 3864.** Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

''(____) PROVISION OF MENTAL HEALTH BENEFITS.—The standard benefit package under this part shall require that health plans include coverage (and cost sharing if applicable) for mental health care in a manner that is comparable to the coverage (and cost sharing if applicable) provided under such plan for items and services relating to physical health.

---

**SA 3865.** Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

In section 2922(a) of the Public Health Service Act, as added by section 201 of the bill, add at the end the following:

''(5) APPLICATION OF COST SHARING.—A health insurance issuer in a State that offers a basic option plan as provided for in paragraph (2) and an enhanced option plan as provided for in paragraph (3), shall ensure that any cost sharing required under either such option is comparable, with respect to dollar amounts, to the cost sharing required under the other such option.

---

**SA 3866.** Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

In section 2922(a) of the Public Health Service Act, as added by section 201 of the bill, add at the end the following:

''(5) PROVISION OF MENTAL HEALTH BENEFITS.—A health insurance issuer in a State that offers a basic option plan as provided for in paragraph (2) and an enhanced option plan as provided for in paragraph (3), shall ensure that each such plan provides coverage (and cost sharing if applicable) for mental health care in a manner that is comparable to the coverage (and cost sharing if applicable) provided under each such plan for items and services relating to physical health.

---

**SA 3867.** Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ____. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.**

(a) IN GENERAL.—Section 1860D–11 (42 U.S.C. 1395w–111) is amended by striking subsection (i) (relating to noninterference) and inserting the following:

''(i) AUTHORITY TO NEGOTIATE PRICES WITH MANUFACTURERS.—

''(1) IN GENERAL.—Subject to paragraph (4), in order to ensure that beneficiaries enrolled under prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part.

''(2) MANDATORY RESPONSIBILITIES.—The Secretary shall be required to—

''(A) negotiate contracts with manufacturers of covered part D drugs for each fallback prescription drug plan under subsection (g); and

''(B) participate in negotiation of contracts of any covered part D drug upon request of an approved prescription drug plan or MA–PD plan.

''(3) RULE OF CONSTRUCTION.—Nothing in paragraph (2) shall be construed to limit the authority of the Secretary under paragraph (1) to the mandatory responsibilities under paragraph (2).

''(4) NO PARTICULAR FORMULARY OR PRICE STRUCTURE.—In order to promote competition under this part and in carrying out this part, the Secretary may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

---

**SA 3868.** Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Hospital Quality Report Card Act of 2006''.

**SEC. 2. PURPOSE.**

The purpose of this Act is to expand hospital quality reporting by establishing the Hospital Quality Report Card Initiative under the Medicare program to ensure that hospital quality measures data are readily available and accessible in order to—

(1) assist patients and consumers in making decisions about where to get health care;

(2) assist purchasers and insurers in making decisions that determine where employees, subscribers, members, or participants are able to go for their health care;

(3) assist health care providers in identifying opportunities for quality improvement and cost containment; and

(4) enhance the understanding of policy makers and public officials of health care issues, raise public awareness of hospital quality issues, and to help constituents of such policy makers and officials identify quality health care options.

**SEC. 3. HOSPITAL QUALITY REPORT CARD INITIATIVE.**

(a) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

**''SEC. 1898. HOSPITAL QUALITY REPORT CARD INITIATIVE.**

''(a) IN GENERAL.—Not later than 18 months after the date of the enactment of the Hospital Quality Report Card Act of 2006, the Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services (in this section referred to as the 'Administrator') and in consultation with the Director of the Agency for Healthcare Research and Quality, shall, directly or through contracts with States, establish and implement a Hospital Quality Report Card Initiative (in this section referred to as the 'Initiative') to report on health care quality in subsection (d) hospitals.

''(b) SUBSECTION (d) HOSPITAL.—For purposes of this section, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B).

''(c) REQUIREMENTS OF INITIATIVE.—

''(1) QUALITY MEASUREMENT REPORTS FOR HOSPITALS.—

''(A) QUALITY MEASURES.—Not less than 2 times each year, the Secretary shall publish reports on hospital quality. Such reports shall include quality measures data submitted under section 1886(b)(3)(B)(viii), and other data as feasible, that allow for an assessment of health care—

''(i) effectiveness;

''(ii) safety;

''(iii) timeliness;

''(iv) efficiency;

''(v) patient-centeredness; and

''(vi) equity.

''(B) REPORT CARD FEATURES.—In collecting and reporting data as provided for under subparagraph (A), the Secretary shall include hospital information, as possible, relating to—

''(i) staffing levels of nurses and other health professionals, as appropriate;

''(ii) rates of nosocomial infections;

''(iii) the volume of various procedures performed;

''(iv) the availability of interpreter services on-site;

''(v) the accreditation of hospitals, as well as sanctions and other violations found by accreditation or State licensing boards;

''(vi) the quality of care for various patient populations, including pediatric populations and racial and ethnic minority populations;

''(vii) the availability of emergency rooms, intensive care units, obstetrical units, and burn units;

''(viii) the quality of care in various hospital settings, including inpatient, outpatient, emergency, maternity, and intensive care unit settings;

''(ix) the use of health information technology, telemedicine, and electronic medical records;

''(x) ongoing patient safety initiatives; and

''(xi) other measures determined appropriate by the Secretary.

''(C) TAILORING OF HOSPITAL QUALITY REPORTS.—The Director of the Agency for Healthcare Research and Quality may modify and publish hospital reports to include quality measures for diseases and health conditions of particular relevance to certain regions, States, or local areas.

''(D) RISK ADJUSTMENT.—

''(i) IN GENERAL.—In reporting data as provided for under subparagraph (A), the Secretary may risk adjust quality measures to account for differences relating to—

''(I) the characteristics of the reporting hospital, such as licensed bed size, geography, teaching hospital status, and profit status; and

''(II) patient characteristics, such as health status, severity of illness, insurance status, and socioeconomic status.

''(ii) AVAILABILITY OF UNADJUSTED DATA.—If the Secretary reports data under subparagraph (A) using risk-adjusted quality measures, the Secretary shall establish procedures for making the unadjusted data available to the public in a manner determined appropriate by the Secretary.

''(E) COSTS.—The Secretary shall—

''(i) compile data relating to the average hospital cost for ICD-9 conditions for which quality measures data are collected; and

''(ii) report such information in a manner that allows cost comparisons between or among subsection (d) hospitals.

''(F) VERIFICATION.—Under the Initiative, the Secretary may verify data reported under this paragraph to ensure accuracy and validity.

''(G) DISCLOSURE.—The Secretary shall disclose the entire methodology for the reporting of data under this paragraph to all relevant organizations and all subsection (d) hospitals that are the subject of any such information that is to be made available to the public prior to the public disclosure of such information.

''(H) PUBLIC INPUT.—The Secretary shall provide an opportunity for public review and comment with respect to the quality measures to be reported for subsection (d) hospitals under this section for at least 60 days prior to the finalization by the Secretary of the quality measures to be used for such hospitals.

''(I) AVAILABILITY OF REPORTS AND FINDINGS.—

''(i) ELECTRONIC AVAILABILITY.—The Secretary shall ensure that reports are made available under this section in an electronic format, in an understandable manner with respect to various populations (including those with low functional health literacy), and in a manner that allows health care quality comparisons to be made between local hospitals.

''(ii) FINDINGS.—The Secretary shall establish procedures for making report findings available to the public, upon request, in a non-electronic format, such as through the toll-free telephone number 1–800–MEDICARE.

''(J) IDENTIFICATION OF METHODOLOGY.—The analytic methodologies and limitations on data sources utilized by the Secretary to develop and disseminate the comparative data under this section shall be identified and acknowledged as part of the dissemination of such data, and include the appropriate and inappropriate uses of such data.

''(K) ADVERSE SELECTION OF PATIENTS.—On at least an annual basis, the Secretary shall compare quality measures data submitted by each subsection (d) hospital under section 1886(b)(3)(B)(viii) with data submitted in the prior year or years by the same hospital in order to identify and report actions that would lead to false or artificial improvements in the hospital's quality measurements, including—

''(i) adverse selection against patients with severe illness or other factors that predispose patients to poor health outcomes; and

''(ii) provision of health care that does not meet established recommendations or accepted standards for care.

''(2) DATA SAFEGUARDS.—

''(A) UNAUTHORIZED USE AND DISCLOSURE.—The Secretary shall develop and implement effective safeguards to protect against the unauthorized use or disclosure of hospital data that is reported under this section.

''(B) INACCURATE INFORMATION.—The Secretary shall develop and implement effective safeguards to protect against the dissemination of inconsistent, incomplete, invalid, inaccurate, or subjective hospital data.

''(C) IDENTIFIABLE DATA.—The Secretary shall ensure that identifiable patient data shall not be released to the public.

''(d) GRANTS AND TECHNICAL ASSISTANCE.—The Secretary may award grants to national or State organizations, partnerships, or other entities that may assist with hospital quality improvement.

''(e) HOSPITAL QUALITY ADVISORY COMMITTEE.—

''(1) ESTABLISHMENT.—The Administrator, in consultation with the Director of the Agency for Healthcare Research and Quality, shall establish the Hospital Quality Advisory Committee (in this subsection referred to as the 'Advisory Committee') to provide advice to the Administrator on the submission, collection, and reporting of quality measures data. The Administrator shall serve as the chairperson of the Advisory Committee.

''(2) MEMBERSHIP.—The Advisory Committee shall include representatives of the following (except with respect to subparagraphs (A) through (D), to be appointed by the Administrator):

''(A) The Agency for Healthcare Research and Quality.

''(B) The Health Resources and Services Administration.

''(C) The Department of Veterans Affairs.

''(D) The Centers for Disease Control and Prevention.

''(E) National membership organizations that focus on health care quality improvement.

''(F) Public and private hospitals.

''(G) Physicians, nurses, and other health professionals.

''(H) Patients and patient advocates.

''(I) Health insurance purchasers and other payers.

''(J) Health researchers, policymakers, and other experts in the field of health care quality.

''(K) Health care accreditation entities.

''(L) Other agencies and groups as determined appropriate by the Administrator.

''(3) DUTIES.—The Advisory Committee shall review and provide guidance and recommendations to the Administrator on—

''(A) the establishment of the Initiative;

''(B) integration and coordination of Federal quality measures data submission requirements, to avoid needless duplication and inefficiency;

''(C) legal and regulatory barriers that may hinder quality measures data collection and reporting; and

''(D) necessary technical and financial assistance to encourage quality measures data collection and reporting;

''(4) STAFF AND RESOURCES.—The Administrator shall provide the Advisory Committee with appropriate staff and resources for the functioning of the Advisory Committee.

''(5) DURATION.—The Advisory Committee shall terminate at the discretion of the Administrator, but in no event later than 5 years after the date of enactment of this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2007 through 2016.''.

(b) CONFORMING AMENDMENT.—Section 1886(b)(3)(B)(viii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(viii)), as added by section 5001 of the Deficit Reduction Act of 2005, is amended to read as follows:

''(VII) The Secretary shall use the data submitted under this clause for the Hospital Quality Report Card Initiative under section 1898.''.

**SEC. 4. EVALUATION OF THE HOSPITAL QUALITY REPORT CARD INITIATIVE.**

(a) IN GENERAL.—The Director of the Agency for Healthcare Research and Quality, directly or through contract, shall evaluate and periodically report to Congress on the effectiveness of the Hospital Quality Report Card Initiative established under section 1898 of the Social Security Act, as added by section 3, including the effectiveness of the Initiative in meeting the purpose described in section 2. The Director shall make such reports available to the public.

(b) RESEARCH.—The Director of the Agency for Healthcare Research and Quality, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall use the outcomes from the evaluation conducted pursuant to subsection (a) to increase the usefulness of the Hospital Quality Report Card Initiative, particularly for patients, as necessary.

---

**SA 3869.** Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Health Care for Hybrids Act''.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The United States imports over half the oil it consumes.

(2) According to present trends, the United States reliance on foreign oil will increase to 68 percent of its total consumption by 2025.

(3) With only 3 percent of the world's known oil reserves, the health of the United States economy is dependent on world oil prices.

(4) World oil prices are overwhelmingly dictated by countries other than the United States, thus endangering our economic and national security.

(5) Legacy health care costs associated with retiree workers are an increasing burden on the global competitiveness of American industries.

(6) American automakers have lagged behind their foreign competitors in producing

hybrid and other energy efficient automobiles.

(7) Innovative uses of new technology in automobiles in the United States will help retain American jobs, support health care obligations for retiring workers in the automotive sector, decrease America's dependence on foreign oil, and address pressing environmental concerns.

## TITLE I—PROGRAM

**SEC. 101. COORDINATING TASK FORCE.**

Not later than 6 months after the date of enactment of this Act, the Secretary of Energy, the Secretary of Health and Human Services, the Secretary of Transportation, and the Secretary of the Treasury shall establish, and appoint an equal number of representatives to, a task force (referred to in this Act as the ''task force'') to administer the program established under this Act.

**SEC. 102. ESTABLISHMENT OF PROGRAM.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the task force established under section 101 shall establish a program to provide financial assistance to eligible domestic automobile manufacturers for the costs incurred in providing health benefits to their retired employees.

(b) CONSULTATION.—In establishing the program under subsection (a), the task force shall consult with representatives from the domestic automobile manufacturers, unions representing employees of such manufacturers, and consumer and environmental groups.

(c) ELIGIBLE DOMESTIC AUTOMOBILE MANUFACTURER.—To be eligible to receive financial assistance under the program established under subsection (a), a domestic automobile manufacturer shall—

(1) submit an application to the task force at such time, in such manner, and containing such information as the task force shall require;

(2) certify that such manufacturer is providing full health care coverage to all of its domestic employees;

(3) provide an assurance that the manufacturer will invest an amount equal to not less than 50 percent of the amount of health savings derived by the manufacturer as a result of its retiree health care costs being covered under the program under this section, in—

(A) the domestic manufacture and commercialization of petroleum fuel reduction technologies, including alternative or flexible fuel vehicles, hybrids, and other state-of-the-art fuel saving technologies;

(B) the retraining of workers and retooling of assembly lines for such domestic manufacture and commercialization;

(C) research and development, design, commercialization, and other costs related to the diversifying of domestic production of automobiles through the offering of high performance fuel efficient vehicles; and

(D) assisting domestic automobile component suppliers to retool their domestic manufacturing plants to produce components for petroleum fuel reduction technologies, including alternative or flexible fuel vehicles, hybrid, advanced diesel, or other state-of-the-art fuel saving technologies; and

(4) provide additional assurances and information as the task force may require, including information needed by the task force to audit the manufacturer's compliance with the requirements of the program.

(d) LIMITATION.—The total amount of financial assistance that may be provided each year under the program under this section with respect to any single domestic automobile manufacturer shall not exceed an amount equal to 10 percent of the retiree health care costs of that manufacturer for that year.

**SEC. 103. REPORTING.**

Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the task force shall submit to Congress a report on any financial assistance provided under this program under this Act and the resulting changes in the manufacture and commercialization of fuel saving technologies implemented by auto manufacturers as a result of such financial assistance. Not later than 1 year after the date of enactment of this Act, the task force shall submit a report to Congress on the effectiveness of current consumer incentives available for the purchase of hybrid vehicles in encouraging the purchase of such vehicles and whether these incentives should be expanded.

**SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated, such sums as may be necessary in each fiscal year to carry out this Act.

**SEC. 105. LIMITATION ON BACKSLIDING.**

To be eligible to receive financial assistance under this title, a manufacturer shall provide assurances to the task force that fuel savings achieved with respect its average adjusted fuel economy will not result in decreases with respect to fuel economy elsewhere in the domestic fleet. The task force shall determine compliance with such assurances using accepted measurements of fuel savings.

**SEC. 106. TERMINATION OF PROGRAM.**

The program established under this title shall terminate on December 31, 2015.

## TITLE II—OFFSETS

**SEC. 201. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

''(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTION WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under title I with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by title I. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under title I.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

''(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

''(I) depreciation,

''(II) any tax credit, or

''(III) any other deduction as provided in guidance by the Secretary, and

''(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

**SEC. 202. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

(a) IN GENERAL.—Subchapter A of chapter 68 of the Internal Revenue Code of 1986 is amended by inserting after section 6662A the following new section:

**''SEC. 6662A. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''.

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) The second sentence of section 6662(d)(2)(A) of the Internal Revenue Code of 1986 is amended by inserting ''and without regard to items with respect to which a penalty is imposed by section 6662B'' before the period at the end.

(2) Subsection (e) of section 6662A of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1), by inserting ''and noneconomic substance transaction understatements'' after ''reportable transaction understatements'' both places it appears,

(B) in paragraph (2)(A), by inserting ''and a noneconomic substance transaction understatement'' after ''reportable transaction understatement'',

(C) in paragraph (2)(B), by inserting ''6662B or'' before ''6663'',

(D) in paragraph (2)(C)(i), by inserting ''or section 6662B'' before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting ''and section 6662B'' after ''This section'',

(F) in paragraph (3), by inserting ''or noneconomic substance transaction understatement'' after ''reportable transaction understatement'', and

(G) by adding at the end the following new paragraph:

''(3) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).''.

(3) Subsection (e) of section 6707A of the Internal Revenue Code of 1986 is amended—

(A) by striking ''or'' at the end of subparagraph (B), and

(B) by striking subparagraph (C) and inserting the following new subparagraphs:

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction, or

''(D) is required to pay a penalty under section 6662(h) with respect to any transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c) or under section 6662B,''.

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

**SEC. 203. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.**

(a) IN GENERAL.—Section 163(m) of the Internal Revenue Code of 1986 (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking ''attributable'' and all that follows and inserting the following: ''attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''; and

(2) by inserting ''and noneconomic substance transactions'' after ''transactions''.

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

---

**SA 3870.** Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike out all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Healthy Places Act of 2006''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BUILT ENVIRONMENT.—The term ''built environment'' means an environment consisting of all buildings, spaces, and products that are created or modified by people, including—

(A) homes, schools, workplaces, parks and recreation areas, greenways, business areas, and transportation systems;

(B) electric transmission lines;

(C) waste disposal sites; and

(D) land-use planning and policies that impact urban, rural, and suburban communities.

(3) DIRECTOR.—The term ''Director'' means the Director of the Centers for Disease Control and Prevention.

(4) ENVIRONMENTAL HEALTH.—The term ''environmental health'' means the health and well-being of a population as affected by—

(A) the direct pathological effects of chemicals, radiation, and some biological agents; and

(B) the effects (often indirect) of the broad physical, psychological, social, and aesthetic environment.

(5) HEALTH IMPACT ASSESSMENT.—The term ''health impact assessment'' means any combination of procedures, methods, tools, and means used under section 4 to analyze the actual or potential effects of a policy, program, or project on the health of a population (including the distribution of those effects within the population).

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

**SEC. 3. INTERAGENCY WORKING GROUP ON ENVIRONMENTAL HEALTH.**

(a) DEFINITIONS.—In this section:

(1) INSTITUTE.—The term ''Institute'' means the Institute of Medicine of the National Academies of Science.

(2) IWG.—The term ''IWG'' means the interagency working group established under subsection (b).

(b) ESTABLISHMENT.—The Secretary, in coordination with the Administrator, shall establish an interagency working group to discuss environmental health concerns, particularly concerns disproportionately affecting disadvantaged populations.

(c) MEMBERSHIP.—The IWG shall be composed of a representative from each Federal agency (as appointed by the head of the agency) that has jurisdiction over, or is affected by, environmental policies and projects, including—

(1) the Council on Environmental Quality;

(2) the Department of Agriculture;

(3) the Department of Commerce;

(4) the Department of Defense;

(5) the Department of Education;

(6) the Department of Energy;

(7) the Department of Health and Human Services;

(8) the Department of Housing and Urban Development;

(9) the Department of the Interior;

(10) the Department of Justice;

(11) the Department of Labor;

(12) the Department of State;

(13) the Department of Transportation;

(14) the Environmental Protection Agency; and

(15) such other Federal agencies as the Administrator and the Secretary jointly determine to be appropriate.

(d) DUTIES.—The IWG shall—

(1) facilitate communication and partnership on environmental health-related projects and policies—

(A) to generate a better understanding of the interactions between policy areas; and

(B) to raise awareness of the relevance of health across policy areas to ensure that the potential positive and negative health consequences of decisions are not overlooked;

(2) serve as a centralized mechanism to coordinate a national effort—

(A) to discuss and evaluate evidence and knowledge on the relationship between the general environment and the health of the population of the United States;

(B) to determine the range of effective, feasible, and comprehensive actions to improve environmental health; and

(C) to examine and better address the influence of social and environmental determinants of health;

(3) survey Federal agencies to determine which policies are effective in encouraging, and how best to facilitate outreach without duplicating, efforts relating to environmental health promotion;

(4) establish specific goals within and across Federal agencies for environmental health promotion, including determinations of accountability for reaching those goals;

(5) develop a strategy for allocating responsibilities and ensuring participation in environmental health promotions, particularly in the case of competing agency priorities;

(6) coordinate plans to communicate research results relating to environmental health to enable reporting and outreach activities to produce more useful and timely information;

(7) establish an interdisciplinary committee to continue research efforts to further understand the relationship between the built environment and health factors (including air quality, physical activity levels, housing quality, access to primary health care practitioners and health care facilities, injury risk, and availability of nutritional, fresh food) that coordinates the expertise of the public health, urban planning, and transportation communities;

(8) develop an appropriate research agenda for Federal agencies—

(A) to support—

(i) longitudinal studies;

(ii) rapid-response capability to evaluate natural conditions and occurrences; and

(iii) extensions of national databases; and

(B) to review evaluation and economic data relating to the impact of Federal interventions on the prevention of environmental health concerns;

(9) initiate environmental health impact demonstration projects to develop integrated place-based models for addressing community quality-of-life issues;

(10) provide a description of evidence-based best practices, model programs, effective guidelines, and other strategies for promoting environmental health;

(11) make recommendations to improve Federal efforts relating to environmental health promotion and to ensure Federal efforts are consistent with available standards and evidence and other programs in existence as of the date of enactment of this Act;

(12) monitor Federal progress in meeting specific environmental health promotion goals;

(13) assist in ensuring, to the maximum extent practicable, integration of the impact of environmental policies, programs, and activities on the areas under Federal jurisdiction;

(14) assist in the implementation of the recommendations from the reports of the Institute of Medicine entitled ''Does the Built Environment Influence Physical Activity? Examining the Evidence'' and dated January 11, 2005, and ''Rebuilding the Unity of Health and the Environment: A New Vision of Environmental Health for the 21st Century'' and dated January 22, 2001, including recommendations for—

(A) the expansion of national public health and travel surveys to provide more detailed information about the connection between the built environment and health, including expansion of such surveys as—

(i) the Behavioral Risk Factor Surveillance System, the National Health and Nutrition Examination Survey, and the National Health Interview Survey conducted by the Centers for Disease Control and Prevention;

(ii) the American Community survey conducted by the Census Bureau;

(iii) the American Time Use Survey conducted by the Bureau of Labor Statistics;

(iv) the Youth Risk Behavior Survey conducted by the Centers for Disease Control and Prevention; and

(v) the National Longitudinal Cohort Survey of American Children (the National Children's Study) conducted by the National Institute of Child Health and Human Development;

(B) collaboration with national initiatives to learn from natural experiments such as observations from changes in the built environment and the consequent effects on health;

(C) development of a program of research with a defined mission and recommended budget, concentrating on multiyear projects and enhanced data collection;

(D) development of interdisciplinary education programs—

(i) to train professionals in conducting recommended research; and

(ii) to prepare practitioners with appropriate skills at the intersection of physical activity, public health, transportation, and urban planning;

(15) not later than 2 years after the date of enactment of this Act, submit to Congress a report that describes the extent to which recommendations from the Institute of Medicine reports described in paragraph (14) were executed; and

(16) assist the Director with the development of guidance for the assessment of the potential health effects of land use, housing, and transportation policy and plans.

(e) MEETINGS.—

(1) IN GENERAL.—The IWG shall meet at least 3 times each year.

(2) ANNUAL CONFERENCE.—The Secretary, acting through the Director and in collaboration with the Administrator, shall sponsor an annual conference on environmental health and health disparities to enhance coordination, build partnerships, and share best practices in environmental health data collection, analysis, and reporting.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

**SEC. 4. HEALTH IMPACT ASSESSMENTS.**

(a) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ''eligible entity'' means any unit of State or local government the jurisdiction of which includes individuals or populations the health of which are or will be affected by an activity or a proposed activity.

(b) ESTABLISHMENT.—The Secretary, acting through the Director and in collaboration with the Administrator, shall—

(1) establish a program at the National Center of Environmental Health at the Centers for Disease Control and Prevention focused on advancing the field of health impact assessment, including—

(A) collecting and disseminating best practices;

(B) administering capacity building grants, in accordance with subsection (d);

(C) providing technical assistance;

(D) providing training;

(E) conducting evaluations; and

(F) awarding competitive extramural research grants;

(2) in accordance with subsection (f), develop guidance to conduct health impact assessments; and

(3) establish a grant program to allow eligible entities to conduct health impact assessments.

(c) GUIDANCE.—The Director, in collaboration with the IWG, shall—

(1) develop guidance for the assessment of the potential health effects of land use, housing, and transportation policy and plans, including—

(A) background on international efforts to bridge urban planning and public health institutions and disciplines, including a review of health impact assessment best practices internationally;

(B) evidence-based causal pathways that link urban planning, transportation, and housing policy and objectives to human health objectives;

(C) data resources and quantitative and qualitative forecasting methods to evaluate both the status of health determinants and health effects; and

(D) best practices for inclusive public involvement in planning decision-making;

(2) not later than 1 year after the date of enactment of this Act, promulgate the guidance; and

(3) present the guidance to the public at the annual conference described in section 3(e)(2).

(d) GRANT PROGRAM.—The Secretary, acting through the Director and in collaboration with the Administrator, shall establish a program under which the Secretary shall provide funding and technical assistance to eligible entities to prepare health impact assessments—

(1) to ensure that appropriate health factors are taken into consideration as early as practicable during any planning, review, or decision-making process; and

(2) to evaluate the effect on the health of individuals and populations, and on social and economic development, of decisions made outside of the health sector that result in modifications of a physical or social environment.

(e) APPLICATIONS.—

(1) IN GENERAL.—To receive a grant under this section, an eligible entity shall submit to the Secretary an application in accordance with this subsection, in such time, in such manner, and containing such additional information as the Secretary may require.

(2) INCLUSION.—

(A) IN GENERAL.—An application under this subsection shall include an assessment by the eligible entity of the probability that an applicable activity or proposed activity will have at least 1 significant, adverse health effect on an individual or population in the jurisdiction of the eligible entity, based on the criteria described in subparagraph (B).

(B) CRITERIA.—The criteria referred to in subparagraph (A) include, with respect to the applicable activity or proposed activity—

(i) any substantial adverse effect on—

(I) existing air quality, ground or surface water quality or quantity, or traffic or noise levels;

(II) a significant habitat area;

(III) physical activity;

(IV) injury;

(V) mental health;

(VI) social capital;

(VII) accessibility;

(VIII) the character or quality of an important historical, archeological, architectural, or aesthetic resource (including neighborhood character) of the community of the eligible entity; or

(IX) any other natural resource;

(ii) any increase in—

(I) solid waste production; or

(II) problems relating to erosion, flooding, leaching, or drainage;

(iii) any requirement that a large quantity of vegetation or fauna be removed or destroyed;

(iv) any conflict with the plans or goals of the community of the eligible entity;

(v) any major change in the quantity or type of energy used by the community of the eligible entity;

(vi) any hazard presented to human health;

(vii) any substantial change in the use, or intensity of use, of land in the jurisdiction of the eligible entity, including agricultural, open space, and recreational uses;

(viii) the probability that the activity or proposed activity will result in an increase in tourism in the jurisdiction of the eligible entity;

(ix) any substantial, adverse aggregate impact on environmental health resulting from—

(I) changes caused by the activity or proposed activity to 2 or more elements of the environment; or

(II) 2 or more related actions carried out under the activity or proposed activity; and

(x) any other significant change of concern, as determined by the eligible entity.

(C) FACTORS FOR CONSIDERATION.—In making an assessment under subparagraph (A), an eligible entity may take into consideration any reasonable, direct, indirect, or cumulative effect relating to the applicable activity or proposed activity, including the effect of any action that is—

(i) included in the long-range plan relating to the activity or proposed activity;

(ii) likely to be carried out in coordination with the activity or proposed activity;

(iii) dependent on the occurrence of the activity or proposed activity; or

(iv) likely to have a disproportionate impact on disadvantaged populations.

(f) USE OF FUNDS.—

(1) IN GENERAL.—An eligible entity shall use assistance received under this section to prepare and submit to the Secretary a health impact assessment in accordance with this subsection.

(2) PURPOSES.—The purposes of a health impact assessment are—

(A) to facilitate the involvement of State and local health officials in community planning and land use decisions to identify any potential health concern relating to an activity or proposed activity;

(B) to provide for an investigation of any health-related issue addressed in an environmental impact statement or policy appraisal relating to an activity or a proposed activity;

(C) to describe and compare alternatives (including no-action alternatives) to an activity or a proposed activity to provide clarification with respect to the costs and benefits of the activity or proposed activity; and

(D) to contribute to the findings of an environmental impact statement with respect to the terms and conditions of implementing an activity or a proposed activity, as necessary.

(3) REQUIREMENTS.—A health impact assessment prepared under this subsection shall—

(A) describe the relevance of the applicable activity or proposed activity (including the policy of the activity) with respect to health issues;

(B) assess each health impact of the applicable activity or proposed activity;

(C) provide recommendations of the eligible entity with respect to—

(i) the mitigation of any adverse impact on health of the applicable activity or proposed activity; or

(ii) the encouragement of any positive impact of the applicable activity or proposed activity;

(D) provide for monitoring of the impacts on health of the applicable activity or proposed activity, as the eligible entity determines to be appropriate; and

(E) include a list of each comment received with respect to the health impact assessment under subsection (e).

(4) METHODOLOGY.—In preparing a health impact assessment under this subsection, an eligible entity—

(A) shall follow guidelines developed by the Director, in collaboration with the IWG, that—

(i) are consistent with subsection (c);

(ii) will be established not later than 1 year after the date of enactment of this Act; and

(iii) will be made publicly available at the annual conference described in section 3(e)(2); and

(B) may establish a balance, as the eligible entity determines to be appropriate, between the use of—

(i) rigorous methods requiring special skills or increased use of resources; and

(ii) expedient, cost-effective measures.

(g) PUBLIC PARTICIPATION.—

(1) IN GENERAL.—Before preparing and submitting to the Secretary a final health impact assessment, an eligible entity shall request and take into consideration public and agency comments, in accordance with this subsection.

(2) REQUIREMENT.—Not later than 30 days after the date on which a draft health impact assessment is completed, an eligible entity shall submit the draft health impact assessment to each Federal agency, and each State and local organization, that—

(A) has jurisdiction with respect to the activity or proposed activity to which the health impact assessment applies;

(B) has special knowledge with respect to an environmental or health impact of the activity or proposed activity; or

(C) is authorized to develop or enforce any environmental standard relating to the activity or proposed activity.

(3) COMMENTS REQUESTED.—

(A) REQUEST BY ELIGIBLE ENTITY.—An eligible entity may request comments with respect to a health impact assessment from—

(i) affected Indian tribes;

(ii) interested or affected individuals or organizations; and

(iii) any other State or local agency, as the eligible entity determines to be appropriate.

(B) REQUEST BY OTHERS.—Any interested or affected agency, organization, or individual may—

(i) request an opportunity to comment on a health impact assessment; and

(ii) submit to the appropriate eligible entity comments with respect to the health impact assessment by not later than—

(I) for a Federal, State, or local government agency or organization, the date on which a final health impact assessment is prepared; and

(II) for any other individual or organization, the date described in subclause (I) or another date, as the eligible entity may determine.

(4) RESPONSE TO COMMENTS.—A final health impact assessment shall describe the response of the eligible entity to comments received within a 90-day period under this subsection, including—

(A) a description of any means by which the eligible entity, as a result of such a comment—

(i) modified an alternative recommended with respect to the applicable activity or proposed activity;

(ii) developed and evaluated any alternative not previously considered by the eligible entity;

(iii) supplemented, improved, or modified an analysis of the eligible entity; or

(iv) made any factual correction to the health impact assessment; and

(B) for any comment with respect to which the eligible entity took no action, an explanation of the reasons why no action was taken and, if appropriate, a description of the circumstances under which the eligible entity would take such an action.

(h) HEALTH IMPACT ASSESSMENT DATABASE.—The Secretary, acting through the Director and in collaboration with the Administrator, shall establish and maintain a health impact assessment database, including—

(1) a catalog of health impact assessments received under this section;

(2) an inventory of tools used by eligible entities to prepare draft and final health impact assessments; and

(3) guidance for eligible entities with respect to the selection of appropriate tools described in paragraph (2).

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary.

**SEC. 5. GRANT PROGRAM.**

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of the Centers for Disease Control and Prevention, acting in collaboration with the Administrator and the Director of the National Institute of Environmental Health Sciences.

(2) ELIGIBLE ENTITY.—The term ''eligible entity'' means a State or local community that—

(A) bears a disproportionate burden of exposure to environmental health hazards;

(B) has established a coalition—

(i) with not less than 1 community-based organization; and

(ii) with not less than 1—

(I) public health entity;

(II) health care provider organization; or

(III) academic institution;

(C) ensures planned activities and funding streams are coordinated to improve community health; and

(D) submits an application in accordance with subsection (c).

(b) ESTABLISHMENT.—The Director shall establish a grant program under which eligible entities shall receive grants to conduct environmental health improvement activities.

(c) APPLICATION.—To receive a grant under this section, an eligible entity shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may require.

(d) COOPERATIVE AGREEMENTS.—An eligible entity may use a grant under this section—

(1) to promote environmental health; and

(2) to address environmental health disparities.

(e) AMOUNT OF COOPERATIVE AGREEMENT.—

(1) IN GENERAL.—The Director shall award grants to eligible entities at the 2 different funding levels described in this subsection.

(2) LEVEL 1 COOPERATIVE AGREEMENTS.—

(A) IN GENERAL.—An eligible entity awarded a grant under this paragraph shall use the funds to identify environmental health problems and solutions by—

(i) establishing a planning and prioritizing council in accordance with subparagraph (B); and

(ii) conducting an environmental health assessment in accordance with subparagraph (C).

(B) PLANNING AND PRIORITIZING COUNCIL.—

(i) IN GENERAL.—A prioritizing and planning council established under subparagraph (A)(i) (referred to in this paragraph as a ''PPC'') shall assist the environmental health assessment process and environmental health promotion activities of the eligible entity.

(ii) MEMBERSHIP.—Membership of a PPC shall consist of representatives from various organizations within public health, planning, development, and environmental services and shall include stakeholders from vulnerable groups such as children, the elderly, disabled, and minority ethnic groups that are often not actively involved in democratic or decision-making processes.

(iii) DUTIES.—A PPC shall—

(I) identify key stakeholders and engage and coordinate potential partners in the planning process;

(II) establish a formal advisory group to plan for the establishment of services;

(III) conduct an in-depth review of the nature and extent of the need for an environmental health assessment, including a local epidemiological profile, an evaluation of the service provider capacity of the community, and a profile of any target populations; and

(IV) define the components of care and form essential programmatic linkages with related providers in the community.

(C) ENVIRONMENTAL HEALTH ASSESSMENT.—

(i) IN GENERAL.—A PPC shall carry out an environmental health assessment to identify environmental health concerns.

(ii) ASSESSMENT PROCESS.—The PPC shall—

(I) define the goals of the assessment;

(II) generate the environmental health issue list;

(III) analyze issues with a systems framework;

(IV) develop appropriate community environmental health indicators;

(V) rank the environmental health issues;

(VI) set priorities for action;

(VII) develop an action plan;

(VIII) implement the plan; and

(IX) evaluate progress and planning for the future.

(D) EVALUATION.—Each eligible entity that receives a grant under this paragraph shall evaluate, report, and disseminate program findings and outcomes.

(E) TECHNICAL ASSISTANCE.—The Director may provide such technical and other non-financial assistance to eligible entities as the Director determines to be necessary.

(3) LEVEL 2 COOPERATIVE AGREEMENTS.—

(A) ELIGIBILITY.—

(i) IN GENERAL.—The Director shall award grants under this paragraph to eligible entities that have already—

(I) established broad-based collaborative partnerships; and

(II) completed environmental assessments.

(ii) NO LEVEL 1 REQUIREMENT.—To be eligible to receive a grant under this paragraph, an eligible entity is not required to have successfully completed a Level 1 Cooperative Agreement (as described in paragraph (2).

(B) USE OF GRANT FUNDS.—An eligible entity awarded a grant under this paragraph shall use the funds to further activities to carry out environmental health improvement activities, including—

(i) addressing community environmental health priorities in accordance with paragraph (2)(C)(ii), including—

(I) air quality;

(II) water quality;

(III) solid waste;

(IV) land use;

(V) housing;

(VI) food safety;

(VII) crime;

(VIII) injuries; and

(IX) healthcare services;

(ii) building partnerships between planning, public health, and other sectors, to address how the built environment impacts food availability and access and physical activity to promote healthy behaviors and lifestyles and reduce obesity and related comorbidities;

(iii) establishing programs to address—

(I) how environmental and social conditions of work and living choices influence physical activity and dietary intake; or

(II) how those conditions influence the concerns and needs of people who have impaired mobility and use assistance devices, including wheelchairs and lower limb prostheses; and

(iv) convening intervention programs that examine the role of the social environment in connection with the physical and chemical environment in—

(I) determining access to nutritional food; and

(II) improving physical activity to reduce morbidity and increase quality of life.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $25,000,000 for fiscal year 2007; and

(2) such sums as are necessary for the period of fiscal years 2008 through 2011.

**SEC. 6. ADDITIONAL RESEARCH ON THE RELATIONSHIP BETWEEN THE BUILT ENVIRONMENT AND THE HEALTH OF COMMUNITY RESIDENTS.**

(a) DEFINITION OF ELIGIBLE INSTITUTION.—In this section, the term ''eligible institution'' means a public or private nonprofit institution that submits to the Secretary and the Administrator an application for a grant under the grant program authorized under subsection (b)(2) at such time, in such manner, and containing such agreements, assurances, and information as the Secretary and Administrator may require.

(b) RESEARCH GRANT PROGRAM.—

(1) DEFINITION OF HEALTH.—In this section, the term ''health'' includes—

(A) levels of physical activity;

(B) consumption of nutritional foods;

(C) rates of crime;

(D) air, water, and soil quality;

(E) risk of injury;

(F) accessibility to healthcare services; and

(G) other indicators as determined appropriate by the Secretary.

(2) GRANTS.—The Secretary, in collaboration with the Administrator, shall provide grants to eligible institutions to conduct and coordinate research on the built environment and its influence on individual and population-based health.

(3) RESEARCH.—The Secretary shall support research that—

(A) investigates and defines the causal links between all aspects of the built environment and the health of residents;

(B) examines—

(i) the extent of the impact of the built environment (including the various characteristics of the built environment) on the health of residents;

(ii) the variance in the health of residents by—

(I) location (such as inner cities, inner suburbs, and outer suburbs); and

(II) population subgroup (such as children, the elderly, the disadvantaged); or

(iii) the importance of the built environment to the total health of residents, which is the primary variable of interest from a public health perspective;

(C) is used to develop—

(i) measures to address health and the connection of health to the built environment; and

(ii) efforts to link the measures to travel and health databases;

(D) distinguishes carefully between personal attitudes and choices and external influences on observed behavior to determine how much an observed association between the built environment and the health of residents, versus the lifestyle preferences of the people that choose to live in the neighborhood, reflects the physical characteristics of the neighborhood; and

(E)(i) identifies or develops effective intervention strategies to promote better health among residents with a focus on behavioral interventions and enhancements of the built environment that promote increased use by residents; and

(ii) in developing the intervention strategies under clause (i), ensures that the intervention strategies will reach out to high-risk populations, including low-income urban and rural communities.

(4) PRIORITY.—In providing assistance under the grant program authorized under paragraph (2), the Secretary and the Administrator shall give priority to research that incorporates—

(A) interdisciplinary approaches; or

(B) the expertise of the public health, physical activity, urban planning, and transportation research communities in the United States and abroad.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

---

**SA 3871.** Mrs. FEINSTEIN (for herself, Mr. DORGAN, Mr. BINGAMAN, and Ms. STABENOW) submitted an amendment intended to be proposed by her to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Medicare Drug Formulary Protection Act''.

**SEC. 2. REMOVAL OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.**

(a) LIMITATION ON REMOVAL OR CHANGE OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.—Section 1860D–4(b)(3)(E) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(E)) is amended to read as follows:

''(E) REMOVING A DRUG FROM FORMULARY OR IMPOSING A RESTRICTION OR LIMITATION ON COVERAGE.—

''(i) LIMITATION ON REMOVAL, LIMITATION, OR RESTRICTION.—

''(I) IN GENERAL.—Subject to subclause (II) and clause (ii), beginning with 2006, the PDP sponsor of a prescription drug plan may not remove a covered part D drug from the plan formulary or impose a restriction or limitation on the coverage of such a drug (such as through the application of a preferred status, usage restriction, step therapy, prior authorization, or quantity limitation) other than at the beginning of each plan year.

''(II) SPECIAL RULE FOR NEWLY ENROLLED INDIVIDUALS.—Subject to clause (ii), in the case of an individual who enrolls in a prescription drug plan on or after the date of enactment of this subparagraph, the PDP sponsor of such plan may not remove a covered part D drug from the plan formulary or impose a restriction or limitation on the coverage of such a drug (such as through the application

of a preferred status, usage restriction, step therapy, prior authorization, or quantity limitation) during the period beginning on the date of such enrollment and ending on December 31 of the immediately succeeding plan year.

''(ii) EXCEPTIONS TO LIMITATION ON REMOVAL.—Clause (i) shall not apply with respect to a covered part D drug that—

''(I) is a brand name drug for which there is a generic drug approved under section 505(j) of the Food and Drug Cosmetic Act (21 U.S.C. 355(j)) that is placed on the market during the period in which there are limitations on removal or change in the formulary under clause (i);

''(II) is a brand name drug that goes off-patent during such period;

''(III) is a drug for which the Commissioner of Food and Drugs issues a clinical warning that imposes a restriction or limitation on the drug during such period or removes the drug from the market;

''(IV) is a drug that the plan's pharmacy and therapeutic committee determines, based on scientific evidence, to be unsafe or ineffective during such period; or

''(V) is a drug for which the Secretary has determined an exception to such application is appropriate (such as to take into account new therapeutic uses and newly covered part D drugs).

''(iii) NOTICE OF REMOVAL UNDER APPLICATION OF EXCEPTION TO LIMITATION.—The PDP sponsor of a prescription drug plan shall provide appropriate notice (such as under subsection (a)(3)) of any removal or change under clause (ii) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists.''.

(b) NOTICE FOR CHANGE IN FORMULARY AND OTHER RESTRICTIONS OR LIMITATIONS ON COVERAGE.—

(1) IN GENERAL.—Section 1860D–4(a) of such Act (42 U.S.C. 1395w–104(a)) is amended by adding at the end the following new paragraph:

''(5) ANNUAL NOTICE OF CHANGES IN FORMULARY AND OTHER RESTRICTIONS OR LIMITATIONS ON COVERAGE.—Each PDP sponsor offering a prescription drug plan shall furnish to each enrollee at the time of each annual coordinated election period (referred to in section 1860D–1(b)(1)(B)(iii)) for a plan year a notice of any changes in the formulary or other restrictions or limitations on coverage of a covered part D drug under the plan that will take effect for the plan year.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to annual, coordinated election periods beginning after the date of the enactment of this Act.

---

**SA 3872.** Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

**SEC. ____. CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES.**

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following:

**''SEC. 45N. EMPLOYEE HEALTH INSURANCE EXPENSES.**

''(a) GENERAL RULE.—For purposes of section 38, in the case of a qualified small employer, the employee health insurance expenses credit determined under this section is an amount equal to the applicable percentage of the amount paid by the taxpayer during the taxable year for qualified employee health insurance expenses.

''(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is—

''(1) 50 percent in the case of an employer with less than 10 qualified employees,

''(2) 25 percent in the case of an employer with more than 9 but less than 25 qualified employees, and

''(3) 20 percent in the case of an employer with more than 24 but less than 50 qualified employees.

''(c) PER EMPLOYEE DOLLAR LIMITATION.—

''(1) IN GENERAL.—The amount of qualified employee health insurance expenses taken into account under subsection (a) with respect to any qualified employee for any taxable year shall not exceed—

''(A) $4,000 for self-only coverage, and

''(B) $10,000 for family coverage.

''(2) PHASEOUT OF PER EMPLOYEE DOLLAR LIMITATION.—

''(A) IN GENERAL.—The amount determined under paragraph (1) with respect to any qualified employee for any taxable year shall be reduced by the amount determined under subparagraph (B).

''(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph shall be the amount which bears the same ratio to such amount determined under paragraph (1) as—

''(i) the excess of—

''(I) the qualified employee's compensation from the qualified small employer for such taxable year, over

''(II) $30,000, bears to

''(ii) $20,000.

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED SMALL EMPLOYER.—

''(A) IN GENERAL.—The term 'qualified small employer' means any small employer which—

''(i) provides eligibility for health insurance coverage (after any waiting period (as defined in section 9801(b)(4))) to all qualified employees of the employer under similar terms, and

''(ii) pays at least 50 percent of the cost of such coverage for each qualified employee.

''(B) SMALL EMPLOYER.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'small employer' means, with respect to any taxable year, any employer if—

''(I) the average gross receipts of such employer for the preceding 3 taxable years does not exceed $5,000,000, and

''(II) such employer employed an average of more than 1 but less than 50 employees on business days during the preceding taxable year.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—For purposes of clause (i)(II)—

''(I) a preceding taxable year may be taken into account only if the employer was in existence throughout such year, and

''(II) in the case of an employer which was not in existence throughout the preceding taxable year, the determination of whether such employer is a qualified small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current taxable year.

''(iii) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as one person for purposes of this subparagraph.

''(iv) PREDECESSORS.—The Secretary may prescribe regulations which provide for references in this subparagraph to an employer to be treated as including references to predecessors of such employer.

''(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

''(A) IN GENERAL.—The term 'qualified employee health insurance expenses' means any amount paid by an employer for health insurance coverage to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

''(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

''(C) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning given such term by section 9832(b)(1).

''(3) QUALIFIED EMPLOYEE.—

''(A) IN GENERAL.—The term 'qualified employee' means an employee of an employer who, with respect to any period, is not provided health insurance coverage under—

''(i) a health plan of the employee's spouse,

''(ii) title XVIII, XIX, or XXI of the Social Security Act,

''(iii) chapter 17 of title 38, United States Code,

''(iv) chapter 55 of title 10, United States Code,

''(v) chapter 89 of title 5, United States Code, or

''(vi) any other provision of law.

For purposes of clause (i), the Secretary shall prescribe by regulation the manner by which an employee's health insurance coverage under a health plan of the employee's spouse is certified to the employee's employer.

''(B) EMPLOYEE.—The term 'employee'—

''(i) means any individual, with respect to any calendar year, who is reasonably expected to receive at least $5,000, but not more than $50,000, of compensation from the employer during such year, and

''(ii) includes a leased employee within the meaning of section 414(n).

''(C) COMPENSATION.—The term 'compensation' means amounts described in section 6051(a)(3).

''(D) INFLATION ADJUSTMENT.—

''(i) IN GENERAL.—In the case of a taxable year beginning after 2007, the $50,000 amount in subparagraph (B)(i) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2006' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

''(e) PORTION OF CREDIT MADE REFUNDABLE.—

''(1) IN GENERAL.—The aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under subsection (a) without regard to this subsection and the limitation under section 38(c), or

''(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year

were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

''(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'employer payroll taxes' means the taxes imposed by—

''(i) subsections (a) and (b) of section 3111, and

''(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the sum of the rates under subsections (a) and (b) of section 3111).

''(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

''(f) DENIAL OF DOUBLE BENEFIT.—No deduction or credit under any other provision of this chapter shall be allowed with respect to qualified employee health insurance expenses taken into account under subsection (a).''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credit) is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', plus'', and by adding at the end the following:

''(31) the employee health insurance expenses credit determined under section 45N.''.

(c) CONFORMING AMENDMENT.—Section 6211(b)(4)(A) of the Internal Revenue Code of 1986 is amended by striking ''and 34'' and inserting ''34, and 45N(e)''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''Sec. 45N. Employee health insurance expenses.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2006.

---

**SA 3873.** Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. MEDICAL MALPRACTICE INSURANCE ANTITRUST PROVISIONS.**

(a) SHORT TITLE.—This section may be cited as the ''Medical Malpractice Insurance Antitrust Act of 2005''.

(b) PROHIBITION ON ANTI-COMPETITIVE ACTIVITIES.—Notwithstanding any other provision of law, nothing in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., commonly known as the ''McCarran-Ferguson Act'') shall be construed to permit commercial insurers to engage in any form of price fixing, bid rigging, or market allocations in connection with the conduct of the business of providing medical malpractice insurance.

(c) APPLICATION TO ACTIVITIES OF STATE COMMISSIONS OF INSURANCE AND OTHER STATE INSURANCE REGULATORY BODIES.—This section does not apply to the information gathering and rate setting activities of any State commissions of insurance, or any other State regulatory body with authority to set insurance rates.

---

## AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AVIATION

Mr. ENZI. Mr. President. I ask unanimous consent that the Senate Committee on Commerce Science and Transportation's Subcommittee on Aviation be authorized to meet on Tuesday, May 9, 2006, at 2:30 p.m. on the Department of Transportation's Notice of Proposed Rulemaking.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. ENZI. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Employment and Workplace Safety, be authorized to hold a hearing during the session of the Senate on Tuesday, May 9, 2006 at 10 a.m. in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet to conduct a hearing on ''Judicial Nominations'' on Tuesday, May 9, 2006, at 2 p.m. in Room 226 of the Dirksen Senate Office Building. The witness list will be provided when it becomes available.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet to conduct a hearing on ''An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization'' on Tuesday, May 9, 2006, at 9:30 a.m. in Room 226 of the Dirksen Senate Office Building.

*Witness List:*

Panel I: Chandler Davidson, Radoslav Tsanoff Professor Emeritus and Research Professor, Rice University, Houston, TX; Ted Shaw, Director-Counsel and President, NAACP Legal Defense and Educational Fund, Inc. (LDF), New York City, NY; Richard L. Hasen, William H. Hannon Distinguished Professor of Law, Loyola Law School, Los Angeles, CA; Laughlin McDonald, Director of the ACLU Voting Rights Project, Atlanta, GA; and Samuel Issacharoff, Reiss Professor of Constitutional Law, New York University School of Law, New York, NY.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation's Subcommittee on Surface Transportation and Merchant Marine be authorized to meet on Tuesday, May 9, 2006, at 10 a.m. on Corporate Average Fuel Economy (CAFE) Standards.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

## PRIVILEGES OF THE FLOOR

Mr. DODD. Mr. President, I ask unanimous consent that Elizabeth Hoffman, a fellow in my office, be granted the privileges of the floor for the duration of the debate on this legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Mr. President, on behalf of Senator BAUCUS, I ask unanimous consent that the following interns and fellows be granted floor privileges during consideration of S. 1955: Leona Cutler, David Schwartz, Diedra Henry-Spires, Britt Sandler, Tiffany Smith, Tom Louthan, and Christal Edwards.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent that Courtney Wilcox of my staff be granted floor privileges for the duration of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

---

## APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, after consultation with the ranking member of the Senate Committee on Finance, pursuant to Public Law 106–170, announces the appointment of the following individual to serve as a member of the Ticket to Work and Work Incentives Advisory Panel: Katie Beckett of Iowa.

The Chair, on behalf of the majority leader, in consultation with the Democratic Leader, pursuant to Public Law 68–541, as amended by Public Law 102–246, appoints John Medveckis, of Pennsylvania, as a member of the Library of Congress Trust Fund Board for a term of 5 years.

---

## NATIONAL FOSTER CARE MONTH

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 471 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 471) recognizing that, during National Foster Care Month, the leaders of the Federal, State, and local governments should provide leadership to improve the care given to children in foster care programs.

There being no objection, the Senate proceeded to consider the resolution.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the resolution

be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 471) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 471

Whereas more than 500,000 children are in foster care programs throughout the United States;

Whereas, while approximately ¼ of all children in foster care programs are available for adoption, only about 50,000 foster children are adopted each year;

Whereas many of the children in foster care programs have endured—

(1) numerous years in the foster care system; and

(2) frequent moves to and from foster homes;

Whereas approximately 50 percent of foster care children have been placed in foster care programs for longer than 1 year;

Whereas 25 percent of foster care children have been placed in foster care programs for at least 3 years;

Whereas children who spend longer amounts of time in foster care programs often experience worse outcomes than children who are placed for shorter periods of time;

Whereas children who spend time in foster care programs are more likely to—

(1) become teen parents;

(2) rely on public assistance when they become adults; and

(3) interact with the criminal justice system;

Whereas Federal, State, and local governments—

(1) share a unique relationship with foster children; and

(2) have removed children from their homes to better provide for the safety, permanency, and well-being of the children;

Whereas unfortunately, studies indicate that Federal, State, and local governments have not been entirely successful in caring for foster children;

Whereas Congress recognizes the commitment of Federal, State, and local governments to ensure the safety and permanency of children placed in foster care programs; and

Whereas every child deserves a loving family: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes—

(A) May 2006 as ''National Foster Care Month''; and

(B) that, during National Foster Care Month, the leaders of the Federal, State, and local governments should rededicate themselves to provide better care to the foster children of the United States; and

(2) resolves to provide leadership to help identify the role that Federal, State, and local governments should play to ensure that foster children receive appropriate parenting throughout their entire childhood.

## ORDERS FOR WEDNESDAY, MAY 10, 2006

Mr. VOINOVICH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, May 10. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to dare, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the majority leader or his designee and the final 30 minutes under the control of the Democratic leader or his designee; further, that the Senate then begin consideration of S. 1955, the small business health plans bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. VOINOVICH. Mr. President, today cloture was invoked on the motion to proceed to the small business health plans bill by a vote of 96 to 2. Tomorrow morning, we will begin consideration of the bill. Chairman ENZI will be here and will be available to discuss relevant amendments that Senators may want to offer during tomorrow's session. Therefore, rollcall votes are possible during Wednesday's session on the small business health plans-related amendments.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. VOINOVICH. Mr. President, if there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:31 p.m., adjourned until Wednesday, May 10, 2006, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate May 9, 2006:

DEPARTMENT OF THE TREASURY

ERIC SOLOMON, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE PAMELA F. OLSON, RESIGNED.

NATIONAL COUNCIL ON DISABILITY

VICTORIA RAY CARLSON, OF IOWA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2007, VICE JOEL KAHN, TERM EXPIRED.

CHAD COLLEY, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2007, VICE DAVID WENZEL, TERM EXPIRED.

LISA MATTHEISS, OF TENNESSEE, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2007, VICE CAROL HUGHES NOVAK, TERM EXPIRED.

JOHN R. VAUGHN, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY FOR A TERM EXPIRING SEPTEMBER 17, 2007, VICE LEX FRIEDEN, TERM EXPIRED.

UNITED STATES POSTAL SERVICE

ELLEN C. WILLIAMS, OF KENTUCKY, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 8, 2007, VICE JOHN S. GARDNER.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPT. THOMAS P. MEEK, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be read admiral (lower half)*

CAPT. JANICE M. HAMBY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPT. STEVEN R. EASTBURG, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be read admiral (lower half)*

CAPT. GREGORY J. SMITH, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPT. JOSEPH F. CAMPBELL, 0000
CAPT. THOMAS J. ECCLES, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be rear admiral (lower half)*

CAPTAIN TOWNSEND G. ALEXANDER, 0000
CAPTAIN DAVID H. BUSS, 0000
CAPTAIN KENDALL L. CARD, 0000
CAPTAIN JOHN N. CHRISTENSON, 0000
CAPTAIN MICHAEL J. CONNOR, 0000
CAPTAIN JOHN ELNITSKY II, 0000
CAPTAIN KENNETH E. FLOYD, 0000
CAPTAIN PHILIP H. GREENE, 0000
CAPTAIN BRUCE E. GROOMS, 0000
CAPTAIN JAMES C. GRUNEWALD, 0000
CAPTAIN EDWARD S. HEBNER, 0000
CAPTAIN MICHELLE J. HOWARD, 0000
CAPTAIN ARNOLD O. LOTRING, JR, 0000
CAPTAIN JAMES P. MCMANAMON, 0000
CAPTAIN JOSEPH P. MULLOY, 0000
CAPTAIN CHARLES E. SMITH, 0000
CAPTAIN SCOTT H. SWIFT, 0000
CAPTAIN DAVID M. THOMAS, 0000
CAPTAIN KURT W. TIDD, 0000
CAPTAIN MICHAEL P. TILLOTSON, 0000
CAPTAIN MARK A. VANCE, 0000
CAPTAIN GARRY R. WHITE, 0000
CAPTAIN EDWARD G. WINTERS III, 0000

# EXTENSIONS OF REMARKS

## IN RECOGNITION OF NORTHSIDE COLLEGE PREPARATORY HIGH SCHOOL

### HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. EMANUEL. Mr. Speaker, I rise today in proud recognition of Northside College Preparatory High School, recently selected by Newsweek Magazine as one of America's best high schools.

Northside College Preparatory High School, found in 1999, was the first new Chicago public school to be built in 20 years. This magnet school on the North Side of Chicago provides a well-rounded education to bring out the best in the exceptional young adults who fill its classrooms.

The school achieved the highest score in Illinois for 5 straight years from 2001–2005 on the Prairie State Achievement Exam. Last year, 415 students at Northside took 905 AP exams, with 83 percent scoring a three or better. It also has a great deal of National Merit, National Achievement, Hispanic, and Illinois state scholars. And in 2003, Northside won the division three National Academic Decathlon Championship.

Northside College Preparatory High School's exemplary academic instruction produces world-class graduates: 92 percent of the 2005 graduating class continued on to a 4-year institution. To equip students for a lifetime of success, the school partners with DePaul University, Northeastern Illinois University, North Park University; Mayer, Brown, Row & Maw; OWP&P Architects; and S&C Electric.

Mr. Speaker, Northside College Preparatory High School is a shining example of public education at its best. I am proud of the students, faculty, and families of the schools and I wish them continued success in the coming years.

## TRIBUTE TO LAQUINTA HIGH SCHOOL

### HON. MARY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mrs. BONO. Mr. Speaker, I rise today to honor an exceptional educational institution in the 45th Congressional District of California, La Quinta High School. Through the hard work and commitment of a tremendously talented faculty and staff, La Quinta High School has been named among the top 600 high schools in the nation by Newsweek magazine.

La Quinta High School holds the 583th slot on a list of 1,000 of the top high schools in the United States of America. The high school was honored for the high number of students who participate in both International Baccalaureate and Advance Placement classes.

Under the leadership of Principle Donna Salazar, La Quinta High School has established a record of success in the community by fostering an environment where students are challenged to excel and meet their academic dreams. As the highest ranked school in Riverside County, the Newsweek results are a testament to the high quality of this academic establishment.

I am impressed by the openness of La Quinta High School to students wanting the opportunity to learn and to challenge their mind. With an ethically and socio-economically diverse student body, La Quinta High School is a model for schools around the state.

Thomas Jefferson said, "Educate and inform the whole mass of the people . . . They are the only sure reliance for the preservation of our liberty." Jefferson was a powerful advocate for freedom and his message of the importance of a knowledge-based population holds great significance for continuing prosperity of our nation.

An educated public begins with our children and La Quinta High School is fulfilling our founding father's vision by fostering an educational environment that challenges today's students and tomorrow's leaders, to reach their academic potential.

Mr. Speaker, I would like once again to pay tribute to La Quinta High School for this impressive achievement. I encourage my colleagues to join me in recognizing and celebrating this exceptional high school.

## IN RECOGNITION OF BILL UTTER FORD

### HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Bill Utter Ford for his years of service to North Texas.

Mr. Bill Utter came to Denton, Texas from Amarillo in 1956 when he purchased the local Ford dealership becoming the fifth Ford dealer in Denton. Over the years, the Denton Ford dealership under Mr. Utter grew to employ over 100 people and is now in it's 4th location since 1956.

But Mr. Utter is not known simply for bringing the all-American Ford Corporation to North Texas, he has been known for his generosity to many causes and organizations throughout the community.

Bill Utter, Sr., Bill Utter, Jr. and staff have served in important leadership positions in the Denton Community, including Denton Chamber of Commerce and the United Way of Denton County. They have also provided leadership with Ford Motor Company including service on the Ford Dealer Council. Nationally, Bill Utter Ford has won numerous community awards and Ford Motor Company Awards including Ford's Highest Honor, the Fort President's Award.

The Utter men, their legacy and their dealership Bill Utter Ford, have brought quality automobiles to North Texas but more important kindness and philanthropic hearts to the community. Their recognition on the national level has brought prominence and respect to the people of Denton. May their spirit of entrepreneurship and skills as leaders be an example to us all.

## IN RECOGNITION OF LINCOLN PARK HIGH SCHOOL

### HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. EMANUEL. Mr. Speaker, I rise today in proud recognition of Lincoln Park High School, recently selected by Newsweek Magazine as one of America's best high schools.

Lincoln Park High School, formerly named Robert A. Waller High School, has served the students and families of Chicago's North Side for over 100 years. The students at Lincoln Park High School have established an impressive record of academic achievement. Eighty-seven percent of the school's 2004 graduates enrolled in a college or university. Lincoln Park High School has had the most National Merit Semi-Finalists out of all the Chicago Public Schools over the last 15 years.

In addition to its academic prowess, the school helps create well-balanced individuals through its active participation in community service through donating to schools in Mali, and working for the National Runaway Switchboard. These activities and experiences teach students the importance of academic achievement while also providing a balanced perspective on life that promotes responsibility, justice and social service.

Students at Lincoln Park High School enjoy the support of strong parent and alumni associations which take an active role in over 60 extra curricular activities and clubs. Community partnerships with institutions such as Children's Memorial Hospital and the Lincoln Park Zoo also provide learning opportunities outside of the classroom in a wide range of disciplines.

Mr. Speaker, Lincoln Park High School is a shining example of public education at its best. I am proud of the students, faculty and families of the schools and I wish them continued success in the coming years.

## TRIBUTE TO JANICE AND RICHARD OLIPHANT

### HON. MARY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mrs. BONO. Mr. Speaker, I rise today to honor the outstanding contributions of two individuals in California's 45th Congressional

District—Janice and Richard Oliphant. Jan and Dick are well-known throughout the Inland Empire for their commitment to bettering the community and their devotion to education. I am pleased to join the Indian Wells Rotary Club, which established the ''Dick Oliphant Scholarship Endowment Fund,'' in recognizing Jan and Dick for their exemplary work in our community.

Since moving to the desert in 1962, Jan and Dick Oliphant have been valued members of our community. The time and effort these two individuals have devoted to the valley is highly commendable and will have a lasting impact for years to come.

As a leader in the construction and development business, Dick's projects, including designing golf courses, retirement communities, apartment complexes, and commercial and medical centers, have earned him international recognition, including some of the highest awards one can achieve in the building industry. Among his first projects in the desert was the development and construction of Palm City, later named the Palm Desert Country Club, which was California's first retirement community and winner of 21 National Awards.

Both Jan and Dick Oliphant are firm believers in giving back to their community and are known for their philanthropic work in Southern California, especially in the area of education. Their service in numerous nonprofit organizations and community service projects has made them invaluable assets to our region. Additionally, Dick has served over two years as an Indian Wells Planning Commissioner, six years as a councilman, two years as the vice mayor and eight years as mayor. He is the founding chairman of the Coachella Valley Economic Development Conference and State of the Valley, the founder and chairman of the Coachella Valley Economic Partnership, and the founding Chairman of the Lincoln Club of the Coachella Valley.

Jan and Dick have truly enhanced our community with their support of and involvement with education. Jan has served as president and founder of several parents clubs, including the Katherine Finchy Parents Club in Palm Springs and the John F. Kennedy Parents Club in Indio. Both Jan and Dick are actively involved on countless advisory boards and committees, truly extending themselves to promote education in the Coachella Valley.

For over sixteen years, Dick has been a member of the California State University, San Bernardino Advisory Board, and he is also a co-chair in fundraising for a public/private partnership with the California State University, San Bernardino, Palm Desert Campus. He has been named a ''fellow'' by the A. Gary Anderson School of Business at the University of Riverside, where he spent a year lecturing and counseling graduate students on campus. Furthermore, nearly every city in the Coachella Valley has designated a ''Richard R. Oliphant Day'' because of his extensive work on valley-wide issues. For their outstanding contributions, in 1996, Jan and Dick were named the ''Distinguished Citizens of the Year'' by the Boy Scouts of America.

Both Jan and Dick Oliphant have graciously offered their resources and services to the benefit of our community and are well-deserving of our praise. Devoted to their family and to each other, Jan and Dick are truly exemplary citizens, and I am honored by their friendship and to serve as their representative in the 45th Congressional District of California.

Mr. Speaker and colleagues, please join me in honoring and recognizing Jan and Dick Oliphant, for their unwaveling dedication, integrity, and outstanding public service. Their energy and passion to build our community and to foster learning and education, continues to benefit Palm Desert and our entire community.

## IN RECOGNITION OF THE GIRL SCOUTS OF AMERICA CROSS TIMBERS COUNCIL

### HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. BURGESS. Mr. Speaker, I rise today to congratulate the Girl Scouts of America for their 94 years of dedication to this country.

The Girl Scouts of America are celebrating their 94th anniversary which was founded by Juliette Gordon Low in 1912 in Savannah, Georgia. Since then, they have had a long and exceptional history of instilling young girls with confidence, courage, and integrity.

More than 3.8 million current Girl Scout members and 50 million veteran members will be partaking in this momentous celebration.

Girl scouting opens all kinds of doors for a young lady's future. This organization urges these girls to strive for higher goals than they could have ever possibly imagined. Hence, these young girls are on the way to becoming women that would make this world a better place.

In addition, I am thrilled to announce that the Cross Timbers Council, which serves my North Texas district, will be opening an additional office for the Girl Scouts so that they may better serve our community.

The Girl Scouts of America, their legacy and their purpose, have brought joy to North Texas but more important kindness and philanthropic hearts to the community. The Cross Timbers Girl Scouts have brought prominence and respect to the communities they serve in my district including Denton and Cooke counties. May spirit of perseverance and honor these young ladies bring be an example to us all.

## HONORING LT. COLONEL RYAN YANTIS

### HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. EMANUEL. Mr. Speaker, I rise in recognition of Lt. Colonel Ryan Yantis of the U.S. Army for his important contributions to service members and civilians alike in his capacity as Director, U.S. Army Public Affairs, Midwest.

While Colonel Yantis has been helpful to me and my staff on countless occasions, his assistance with SPC Rene Douroux merits particular attention and gratitude.

I had the opportunity to meet SPC Rene Douroux on September 13, 2005 when he was in the middle of a 30-day leave from duties in Korea to his next assignment in Ft. Hood, Texas. Unable to go home to New Orleans in the wake of Hurricane Katrina, SPC Douroux was at an emergency facility set up in Chicago to assist those left homeless by the storm. SPC Douroux was distraught because he was unable to locate family members and had no idea whether his home was still standing. He was hoping to have some additional time to find his family, help settle them, and get his life in order.

Lt. Colonel Yantis responded compassionately, effectively and immediately to SPC Douroux's plight. Not only did Colonel Yantis arrange for SPC Douroux to have more time, but he also arranged for a compassionate reassignment to Ft. Polk, Louisiana. Colonel Yantis helped reduce the trauma facing this young man and his family as they undertake the difficult tasks of rebuilding their lives in the wake of Hurricane Katrina.

I offer my heartfelt thanks to Lt. Colonel Yantis for his service, and extend my best wishes to him in his future endeavors.

## HONORING DOLLY PARTON

### HON. MARSHA BLACKBURN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mrs. BLACKBURN. Mr. Speaker, Dolly Parton is living proof that the American Dream is alive and kicking. She worked hard, harnessed her God given talent, and touched the lives of countless millions.

Not only is Dolly a great entertainer, she's a proven businesswoman and a philanthropist. She is the embodiment of a value my mama taught me—that you always work to give back more to your community than you take. And Dolly has given back so much.

Tennessee is proud of this Smoky Mountain daughter, and that's why we join the 2006 Southern Women in Public Service Conference to honor her with the Lindy Boggs Award. As the U.S. Representative who has the lucky fortune to represent Dolly in Congress, I want to take a moment to be certain my colleagues here in the House of Representatives know just how much she has given back to all of us.

Dolly has put the same passion and leadership she used to make it to the top in business into improving child literacy. In 1996, Dolly's vision led to the creation of the Imagination Library—a program that sends children books each month to help them improve their reading skills. What began in East Tennessee now includes over 600 communities and spans 41 states. There are hundreds of thousands of children across this country whose futures have been changed for the better because of her work.

We simply cannot put a value on the positive effect Dolly has had on these kids, their communities, and this country.

The Imagination Library is just one example of Dolly's work to help raise up others. Today we honor Dolly for her passion and her determination.

## TRIBUTE TO NORTHWEST COLLEGIATE ACADEMY

### HON. PHIL ENGLISH

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. ENGLISH of Pennsylvania. Mr. Speaker, today I rise to commend the Northwest Collegiate Academy's recent success at the 25th Annual United States Academic Decathlon, USAD, in San Antonio, TX.

The USAD is a national competition in which teams of nine students, three from each recognized academic level, compete in 10 separate academic subjects, including mathematics, language and literature, social science, economics, art, music, and science. Each team member has to compete in each of the 10 subjects and their combined scores determine the overall team winner.

Once again, the Northwest Collegiate Academy made Erie and all of western Pennsylvania proud by demonstrating the scholastic excellence of its students. The Academy's team cruised through this year's local and State competitions, winning all three of the local events and the final State wide competition. Along the way, individual team members won numerous awards for excellence in all of the academic subjects and the team as a whole often took all the awards for a given subject.

However, the team's outstanding run did not end at the State level. The team scored 38,992.7 points out of a possible 60,000 during the 3-day national competition in San Antonio. This showing earned the team a well deserved silver medal in competition. Furthermore, the team members continued to show their individual brilliance by winning awards for their proficiency in specific subject areas. Matthew Faytak earned six different awards at the competition, including a gold medal in art and a gold medal for being the highest overall scorer at the honors level. Joining him on the podium was Christina Radder who won the bronze medal in music and the bronze medal for being third highest overall scorer at the honors level. Both Matthew and Christina were also recognized for high scores in economics, mathematics or science, as were four other team members, Greg Nieder, Dan Juilfs, Shane Kelley, and Alexandra Talarico.

Mr. Speaker, I hope my fellow members will rise with me at this time and commend the nine members of the Northwest Collegiate Academy team, Matthew Faytak, Christina Radder, Alexandra Talarico, Shane Kelley, Greg Nieder, Caitlyn Pierce, Dan Juilfs, William Steinbaugh, and David Zielewski. I congratulate each of these students for all of their academic achievements and wish them continued success in their future endeavors.

## HONORING DICK KAY

### HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. EMANUEL. Mr. Speaker, I rise today to recognize the long and distinguished career of my friend, Mr. Dick Kay, political editor, and host of the news show "City Desk." Mr. Kay will retire in June 2006, with the honor of having been the longest-serving reporter in the history of Chicago's WMAQ–Channel 5 TV.

With 46 years in the business, Dick Kay has unparrelled political experience, knowledge and perspective. He arrived at WMAQ–Channel 5 in 1968, initially working as a writer/producer but soon switching to reporting. He later became their political editor as well as the host of "City Desk," the Sunday morning public service program.

Over the years, Dick Kay has interviewed mayors, Governors, Congressmen, Senators, and countless other public leaders. Viewers have come to rely on his thoughtful yet fearless approach to covering politics and public policy.

Dick Kay's hard work and insightful reporting have been recognized by numerous awards over the years. Among others, Dick has received a Peabody Award—the highest honor in TV broadcasting—as well as 11 Emmys, a National Headliner award, and a Jacob Scher award for investigative reporting. In 2001, he was inducted into the Television Academy's Silver Circle Hall of Fame, which honors those who have made major contributions to Chicago broadcasting for 25 years or more.

In addition to his work as a reporter and editor, Dick was the longtime president of the local unit of the American Federation of Television and Radio Artists. In this capacity, Dick successfully persuaded Illinois legislators to ensure that on-air employees had the freedom to move to competing stations.

I am sure Dick's wife, children and grandchildren will be glad to enjoy more time with him. The rest of us will miss his hard-hitting investigative work, insightful commentary, and engaging Sunday morning discussions.

Mr. Speaker, I wish Dick and his family the best of luck during his retirement and throughout his future endeavors. Political reporting in Chicago will not be the same without Dick Kay, dean of Chicago political reporters.

## INTRODUCTION OF INDIAN HEALTH CARE IMPROVEMENT ACT REAUTHORIZATION

### HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. YOUNG of Alaska. Mr. Speaker, I am pleased today to introduce legislation to reauthorize the Indian Health Care Improvement Act Reauthorization (IHCIA) with my fellow colleagues.

The Indian Health Care Improvement Act (IHCIA) requires reauthorization. It became Public Law 94–437 in the 94th Congress (September 30, 1976), and has been amended seven times. The IHCIA provides for health care delivery to over 2 million American Indians and Alaska Natives. Congress enacted a one-year extension to extend the life of the Act through FY 2001 but efforts at further extensions were interrupted due to the events of 9/11. Appropriations for the Indian health have continued through authorization of the Snyder Act, a permanent law authorizing expenditures of funds for a variety of Indian programs, including health.

This bill responds to the changes that have occurred in the delivery of Indian Health services in the decade since the last reauthorization of the IHCIA. In this period, more than half of the tribes in the United States have exercised their rights under the Indian Self-Determination and Education Assistance Act to assume responsibility to carry out programs of the Indian Health Service (IHS) on their own behalf. This, along with improvements in the IHS direct operations, have led to hospitals being accredited by the Joint Commission on Accreditations of the Healthcare Organizations, and health delivery systems being tailored to expanded outpatient and home and community based services had become commonplace in the private sector. Medicare, Medicaid and other third party revenue were important to achieving these gains and are crucial for retaining them. Equally important is the need to reinforce the authority provided to tribal health programs under self-determination and self-governance to establish their own priorities and to determine the best way to respond to the specific needs of their tribal members.

Some highlights of the ways this bill addresses these changes:

Section 3. Declaration of Health Policy. Declares that it is the priority of the United States that the health status of American Indians and Alaska Natives should be raised by 2010 to the same level as is set for other Americans, instead of establishing lower thresholds as has previously been accepted, and establishes a policy requiring "meaningful consultations" with Indian tribes, tribal health organizations and urban Indian programs.

Section 4. Definitions. Modernizes current IHCIA definitions and makes them consistent with the Indian Self-Determination and Education Assistance Act. Definitions of "health promoting" and "disease prevention" are expanded to encompass the full scope of these activities as recommended by the World Health Organization. Includes a definition of "traditional health care practices" that reflects the value of Native health practices.

Title I, Indian Health, Human Resources, and Development. The purpose of this title is to increase, to the maximum extent feasible, the number of Indians entering the health professions and providing health services, and to assure an optimum supply of health professionals to the Indian Health programs and Urban Indian Organizations involved in the provision of health services to Indians.

Title II, Health Services. The purpose of this title is to establish programs that respond to the health needs of American Indians and Alaska Natives. For example, American Indians and Alaska Natives have a disproportionately high rate of diabetes (death rate for this disease is generally more than 300% of the rate of the U.S. population), so this title has a specific diabetes provision. It also includes the Indian Health Care Improvement Fund through which the Appropriation Act supply funds to eliminate health deficiencies and disparities in resources made available to American Indians and Alaska Native tribes and communities.

Title III, Facilities. The purpose of this title relates to the construction of health facilities including hospitals, clinics, and health stations necessary for staff quarters, and of sanitation facilities for Indian communities and homes.

Title IV, Access to Health Services. This title addresses payments to the IHS and tribes for services covered by the Social Security Act Health Care programs, and to enable Indian

health programs to access reimbursement from third party collections.

Title V, Health Services for Urban Indians. This title establishes programs in urban centers to make health services more accessible to Indians who live in urban areas rather than on reservations or Alaska Native villages.

Title VI, Organizational Improvements. This title addresses the establishment of the IHS as an agency of the PHS (Public Health Service). It also authorizes the Secretary to establish an automated management information system and authorizes appropriations to carry out this title.

Title VII, Behavioral Health Programs. This title is revised from current law (which only addresses substance abuse programs) in order to focus on behavioral health. It combines all substance abuse, mental health and social service programs in one title and integrates these programs to enhance performance and efficiency.

Title VIII, Miscellaneous. This title addresses various topics including the Secretary's reporting of the progress made in meeting the objectives of this Act to Congress. It requires the Secretary to develop IHCIA regulations, describes the eligibility of California Indians for IHS, establishes a National Bipartisan Commission on Indian Health Care, and authorizes appropriations.

I urge my esteemed colleagues to act quickly to reauthorize the IHCIA to ensure we raise the health status of American Indians and Alaska Natives.

## HONORING THE WINNERS OF THE 2006 CAPITOL HILL STOCK MARKET GAME

### HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. GORDON. Mr. Speaker, today I rise to recognize the outstanding achievements of three young men from Blackman High School in my hometown of Murfreesboro, Tennessee. Samuel Brace, Jeremy Crook, and Andy Michael beat out 433 teams from across the nation to win the 2006 Capitol Hill Stock Market Game.

I congratulate Sam, Jeremy, and Andy for their tremendous win, and I commend their accounting teacher, Ken Reed, for engaging the students in such an innovative and educational competition.

The Stock Market Game helps students learn about saving and investing by testing their skills with a hypothetical $100,000, which they invest in the U.S. stock markets. Sam, Jeremy, and Andy dominated the competition, holding on to the top spot for 8 of the 10 weeks. The students increased the value of their portfolio by an incredible 50 percent to finish the game with $150,263 and a $15,000 lead over their nearest competitor.

Today, the students and Mr. Reed are here in Washington, D.C., touring the nation's capital as their grand prize.

I congratulate all the participants from Blackman for the school's strong showing. A second group of students finished in fourth place, while a third team finished 20th overall. And again, I applaud Ken Reed, Samuel Brace, Jeremy Crook, and Andy Michael for their impressive win in this year's competition.

## HONORING LIEUTENANT GENERAL DANIEL JAMES III ON THE OCCASION OF HIS RETIREMENT

### HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. BUYER. Mr. Speaker, June marks the retirement of a great leader in our military ranks, Lieutenant General Daniel James III. General James is a distinguished graduate of the University of Arizona's Reserve Officer Training Corps program. In June 1969, General James completed Undergraduate Pilot Training and was assigned to Cam Ranh Bay Air Base, South Vietnam, as a forward air controller and O–1 pilot. A command pilot with a demonstrated career of exceptionally meritorious service, General James has over 4,000 hours in fighter and trainer aircraft, two Distinguished Flying Crosses, and more than 500 combat hours. His distinguished flying career includes the T–39, T–37, T–38, O–1E, F–5E, F–4 (C, D, E) and F–16A aircraft.

General James has excelled at every level of service including squadron flight commander in the 182nd Tactical Fighter Squadron (Aggressor Squadron) at Nellis Air Force Base, Nevada, and commander of the 149th Operations Group, Kelly Air Force Base, Texas. In November 1995, General James was appointed by Governor George W. Bush as the Adjutant General of the State of Texas. A Texas native, he served in this capacity until being named as the Director, Air National Guard in June 2002.

His exceptionally meritorious service has resulted in not only recognition within traditional military circles, but within the civilian community as well. He has received a wide range of civilian awards; including the Garvey-Woodson Award, Black United Fund of Texas (1995), Outstanding Service Award, Texas STARBASE Executive Advisory Board (1995–1996), Benjamin D. Foulois First Flight Award, Air Force Association—Texas (1997), Central Texas Combined Federal Campaign Community Service Award, Texas (1997–1998), Honored Patriot Award, Selective Service System (1998 and 1999), Commendation for Military Service, Joint Session of the Texas Legislature (1999) and the Palmetto Patriot Award, South Carolina (1999). He has served as the Chairman of the Greater Austin Quality Council and on the Board of Directors of the Greater Austin Chamber of Commerce.

General James' military service culminates with his assignment as Director, Air National Guard, and Vice Chief, National Guard Bureau, Virginia, from June 3, 2002, until June 2, 2006. General James served during one of the most challenging periods of any previous director of the Air National Guard. His outstanding achievements and dynamic leadership and initiative resulted in the development of a bold strategy for Air National Guard relevance in the 21st Century. His VANGUARD Engagement Strategy was the impetus for Air National Guard transformation, ensuring it would remain "Ready, Reliable and Relevant . . . now more than ever." During his period as the Director, Air National Guard members flew over 200,000 sorties and more than 600,000 hours in support of the Global War on Terrorism, including well over 50 percent of the fighter, tanker and airlift sorties for Operation Noble Eagle while postured for Air Sovereignty Alert at 16 of 17 sites; provided almost one-third of the fighter sorties in Operation Enduring Freedom; provided over one-third of the fighter and tanker sorties for Operation Iraqi Freedom. Air National Guard crews supported 75 percent of the tanker sorties and over 60 percent of the airlift sorties in other theaters.

This service included humanitarian, disaster relief and civil support. The Air National Guard support to Hurricane Katrina was unprecedented. Over 3,000 sorties flown, more than 11,000 passengers evacuated and in excess of 11,000 tons of cargo was moved in a 4-day period. One thousand four hundred forty-three lifesaving rescues were directly attributed to ANG personnel and General James' leadership.

General James will retire and reside in Mount Vernon, Virginia, on June 2, 2006, with his wife, Mrs. Dana Marie James, and their son, Daniel Steven James.

## CELEBRATING THE BIRTH OF MS. CHARLOTTE ALATHEA LLOYD

### HON. MIKE PENCE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. PENCE. Mr. Speaker, today I am happy to congratulate Matt and Amy Lloyd of Bowie, MD, on the birth of their daughter, Charlotte Alathea Lloyd. Charlotte was born April 26, 2006 at 6:28 a.m., weighing 9 pounds, 1 ounce, and measuring 20½ inches long. Her name has special meaning for this family. "Charlotte" is a family name on the mother's side and means "womanly" or "feminine" and "Alathea" is the Greek word that means "truth." God has blessed this child with a loving home, wonderful parents, and all the freedoms we enjoy in these United States of America.

## TRIBUTE TO SINAI TEMPLE'S CENTENNIAL

### HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. WAXMAN. Mr. Speaker, I ask my colleagues to join me in congratulating Sinai Temple of Los Angeles on celebrating its 100th year of service to the community. Established in 1906, Sinai Temple is part of the rich historic fabric of Jewish Los Angeles. First located at the corner of Valencia Street and 12th Place, it moved in 1956 to its current site at 10400 Wilshire Boulevard in Los Angeles. It is my privilege to represent Sinai Temple in Congress.

Sinai Temple is the oldest Conservative congregation west of the Mississippi. It boasts a membership of 1800 family members whose origins trace from Europe and the Middle East, making it one of the largest and most diverse congregations in the United States.

Under the leadership of its current Rabbi, David Wolpe, the synagogue has developed an impressive array of programs and services for the Jewish community in Los Angeles. One

especially popular program is Friday Night Live, a social and spiritual Sabbath service drawing hundreds in the 21 to 39 age group. The monthly event has become a model for other communities and its success has now been replicated around the country.

Over the last 100 years, Sinai Temple has become an anchor for the Jewish community, serving its religious, spiritual, and educational needs. The synagogue's vision for its next 100 years is to create Sinai: A Center for Jewish Life and Learning dedicated to the entire Jewish community through excellence in religious, educational, and social programming.

I am delighted to recognize the Congregation's remarkable accomplishments and wish them continued success in their future endeavors. I ask my colleagues to join me in congratulating Sinai Temple on its first 100 years in Los Angeles.

## ARMENIAN PLANE CRASH

### HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. PALLONE. Mr. Speaker, I rise today to express my sincere condolence to the families and friends of the passengers and crewmembers aboard Airbus Airliner A–320, which crashed last Wednesday morning off of Russia's Black Sea coast. Luckily, investigators do not suspect foul play or terrorism, stating the crash was due to stormy weather.

The plane disappeared from radar screens about four miles from shore. As it was heading for what seemed like an emergency landing at the Adler Airport near the Southern Russian resort city of Sochi at 2:15 a.m., it crashed into the sea, killing all 113 people on board, including six children. No passenger was wearing a life jacket, indicating they did not have sufficient warning to prepare for such a landing. According to Armavia airline officials, 26 Russians, one Ukrainian and one Georgian were among the passengers and crewmembers. The rest were Armenian citizens.

No human should suffer the type of pain that is brought about by this tragic loss of life. My thoughts and prayers are with the families and friends of the victims—may you find strength during these trying times.

## RECOGNIZING THE SESQUICENTENNIAL OF THE FIRST CHRISTIAN CHURCH OF MONMOUTH, OR

### HON. DARLENE HOOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Ms. HOOLEY. Mr. Speaker, I rise today to recognize the First Christian Church of Monmouth. In the past 150 years, the members of this church have proven again and again the depth of their caring and giving, not just to their community, but to all those in need.

From 1850 to 1853 pioneers like Elijah Davidson, Ira F.M. Butler and others came to the Oregon Territory from their homes in Monmouth, Illinois—the inspiration for what became Monmouth, Oregon. These settlers, members of the Disciples of Christ Church, came to create a new community and school steeped in their religion and their values, tenets that they shared with the long history of pioneers going back to the beginnings of our nation. In 1856, Monmouth University (present-day Western Oregon University) was chartered, and it became the first home for the church.

Just as the buildings that house this faith community have changed and grown over the years, so has the church's congregation. Active in the community, their good works include a teen center for local youth as well as the home for the Monmouth chapter of Meals on Wheels. This congregation represents the heart of the community and the goodness in people which we should all strive to achieve.

I want to take this opportunity to honor this church for the efforts that they have made on behalf of the residents of Monmouth and students of Western Oregon University. On this, their sesquicentennial anniversary, I acknowledge and honor the First Christian Church of Monmouth for their service and dedication to their community.

## TRIBUTE TO MS. JUDY GRUBER AND MR. ROBBIE GREENBLUM

### HON. HENRY CUELLAR

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. CUELLAR. Mr. Speaker, I rise today to honor Ms. Judy Gruber and Mr. Robbie Greenblum for their community service to their religious community. They will be honored at the Annual L' Chaim celebration on May 22, 2006.

Judy Gruber is a longtime supporter and member of Chabad Lubavitch of south Texas. She has served on the Community Relations Council of the Jewish Federation and on the San Antonio Association for Jewish Education and Rekindling Tradition committees.

Robbie Greenblum is an immigration attorney in San Antonio, TX, and has been an ardent supporter of Chabad's outreach efforts in south Texas. He has been instrumental in organizing Chabad's Torah Study Group which has been ongoing for the past decade. He was a past chair of the Community Relations Council of Jewish Education and spearheaded the Latino and Black Jewish dialog programs.

Mr. Speaker, I am honored to have had this time to recognize Ms. Judy Gruber's and Mr. Robbie Greenblum's dedication to community service.

## PAYING TRIBUTE TO JELINDO ANGELO ''J.A.'' TIBERTI

### HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. PORTER. Mr. Speaker, I rise today to honor the life of Jelindo Angelo "J.A." Tiberti, who died on Wednesday, May 3, 2006.

J.A. was a piller of the Las Vegas construction industry, patriarch of Tiberti construction and a civic leader. J.A. came to Las Vegas from California in 1941 with the U.S. Army Corps of Engineers to build the runway at what is now Nellis Air Force Base. He formed Waale, Camplan and Tiberti Construction Co. in 1947 and developed Bonanza Village on Bonanza Road, before venturing out on his own in 1950. Among his many prominent works in Las Vegas are the Las Vegas Club, Palace Station, Sunset Station, Club Bingo and the Gold Coast. He built schools, hospitals, and public buildings. Not only was he a great craftsman, he was also a benevolent member of society. J.A.'s charitable contributions include a $1 million donation to help create the UNLV College of Engineering in 1979, and he provided the funds to build Camp Potosi for the Boy Scouts Boulder Dam Area Council. He was also appointed to the Las Vegas City Planning Commission in 1953 and served six consecutive 4-year terms. J.A. received a number of professional awards as well, such as the Southern Nevada Engineer of the Year award in 1972, and the State's Most Distinguished Nevadan in 1987.

Mr. Speaker, I am proud to honor the life of Jelindo Angelo "J.A." Tiberti. His professional success and philanthropic nature should serve as an example to us all, he will surely be missed by the community.

## HONORING JUDITH POOR

### HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. RADANOVICH. Mr. Speaker, I rise to recognize posthumously Mrs. Judith Poor of Mariposa, CA, for her remarkable life and tireless dedication to her community and family. Her community gathered to celebrate her life on Sunday, April 23rd, in Mariposa.

A native of Texas, Judy was well-known in her community for her tremendous generosity and an unmistakable southern charm that was both delightful and genuine. Judy believed that her family was her top priority. As a wife, mother and grandmother, Judy led by example, showing that dedication to the family unit though participation in many family centered activities was an all-important foundation of the Poor Family.

Holding Texas close to her heart, Judy remained a devout Dallas Cowboys fan and enjoyed spending time with her husband, Rod, watching modified stock car races. In addition, she served as the circulation manager for her local newspaper for 8 years.

Judy Poor is survived by her husband, Rod; children and their families, Larry and Tisha Cullens, Diana Poor, Marty Poor, Christy Nicholson, Megan and Mandy Cullens, Larry Cullens III, Jennifer Poor, Travis and Randa Poor, Carina Stephens; siblings, Ava Jane Fisher, Jan Cromeans and David Hodnett.

Mr. Speaker, I rise to honor posthumously the life of Mrs. Judith Poor of Mariposa, CA. I urge my colleagues to join me in celebrating the life of Judy Poor.

## TRIBUTE TO U.S. ARMY LIEUTENANT COLONEL PATRICK MULVIHILL

**HON. DUNCAN HUNTER**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, May 9, 2006*

Mr. HUNTER. Mr. Speaker, I rise today to recognize California native and U.S. Army Lieutenant Colonel Patrick Mulvihill. Mr. Speaker, it is a pleasure for me to honor Colonel Mulvihill, who will soon be retiring from the Army after 25 years of distinguished service to our nation.

Colonel Mulvihill began his career with the Army in 1981 upon receiving an ROTC commission from the University of California, Davis. Since that time, he has been assigned to commands from California to Europe, serving as a Battalion S2, Assistant Brigade S2, Tactical Signals Intelligence Company Commander, Observer-Controller for the National Training Center, Instructor at Fort Huachuca, Assistant G2 in Europe, SFOR Intelligence Task Force Commander in Bosnia and the 66th MI Group S3.

In 2001, Colonel Mulvihill assumed command at the Joint Intelligence Training Activity Pacific, his current and final duty assignment. Colonel Mulvihill is known by those who have served beside him, as well as those he has commanded, as an Intelligence expert and a leader who has always put the welfare of our nation's soldiers, Marines, airmen and sailors before his own.

President Ronald Reagan once said, ''I always believed in the importance of peace through strength. And the military is the provider of that strength. So we must equip them, train them and support them. But over the years, America's military leadership has brought us to even greater heights than we ever could imagine.'' Mr. Speaker, President Reagan was referring to leaders like Colonel Mulvihill, who embody the strength of our nation and remain our military's greatest asset.

As Chairman of the House Committee on Armed Services, I extend my deepest appreciation and gratitude to Colonel Mulvihill for his 25 years of dedicated military service. Mr. Speaker, I ask that my colleagues join me in saluting this American hero and wishing him and his family continued success in their future endeavors.

# *Daily Digest*

# Senate

## *Chamber Action*

***Routine Proceedings, pages S4163–S4240***

**Measures Introduced:** Nine bills and one resolution were introduced, as follows: S. 2765–2773, and S. Res. 471. **Page S4211**

**Measures Reported:**

S. 2389, to amend the Communications Act of 1934 to prohibit the unlawful acquisition and use of confidential customer proprietary network information, with an amendment in the nature of a substitute. (S. Rept. No. 109–253)

S. 2766, to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces. (S. Rept. No. 109–254)

S. 2767, to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces.

S. 2768, to authorize appropriations for fiscal year 2007 for military construction.

S. 2769, to authorize appropriations for fiscal year 2007 for defense activities of the Department of Energy. **Page S4211**

**Measures Passed:**

***Recognizing National Foster Care Month:*** Senate agreed to S. Res. 471, recognizing that, during National Foster Care Month, the leaders of the Federal, State, and local governments should provide leadership to improve the care given to children in foster care programs. **Pages S4239–40**

**Health Insurance Marketplace Modernization and Affordability Act:** Senate resumed consideration of the motion to proceed to consideration of S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace. **Pages S4163–S4205**

During consideration of this measure today, Senate also took the following action:

By 96 yeas to 2 nays (Vote No. 117), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the motion to proceed to consideration of the bill. **Page S4165**

A unanimous-consent agreement was reached providing that at approximately 10:30 a.m., on Wednesday, May 10, 2006, Senate will begin consideration of S. 1955 (listed above). **Page S4240**

**Appointments:**

***Ticket to Work and Work Incentives Advisory Panel:*** The Chair, on behalf of the Majority Leader, after consultation with the Ranking Member of the Senate Committee on Finance, pursuant to Public Law 106–170, announced the appointment of the following individual to serve as a member of the Ticket to Work and Work Incentives Advisory Panel: Katie Beckett of Iowa. **Page S4239**

***Library of Congress Trust Fund Board:*** The Chair, on behalf of the Majority Leader, in consultation with the Democratic Leader, pursuant to Public Law 68–541, as amended by Public Law 102–246, appointed John Medveckis, of Pennsylvania, as a member of the Library of Congress Trust Fund Board for a term of five years. **Page S4239**

**Nominations Received:** Senate received the following nominations:

Eric Solomon, of New Jersey, to be an Assistant Secretary of the Treasury.

Victoria Ray Carlson, of Iowa, to be a Member of the National Council on Disability for a term expiring September 17, 2007.

Chad Colley, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2007.

Lisa Mattheiss, of Tennessee, to be a Member of the National Council on Disability for a term expiring September 17, 2007.

John R. Vaughn, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2007.

Ellen C. Williams, of Kentucky, to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 2007.

29 Navy nominations in the rank of admiral.

**Page S4240**

**Additional Cosponsors:** **Pages S4211–13**

**Statements on Introduced Bills/Resolutions:** **Pages S4213–25**

**Additional Statements:** **Pages S4209–11**

**Amendments Submitted:** **Pages S4225–39**

**Authorities for Committees to Meet:** **Page S4239**

**Privileges of the Floor:** **Page S4239**

**Record Votes:** One record vote was taken today. (Total—117) **Page S4165**

**Adjournment:** Senate convened at 9:45 a.m., and adjourned at 7:31 p.m., until 9:30 a.m., on Wednesday, May 10, 2006. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S4240.)

# *Committee Meetings*

*(Committees not listed did not meet)*

## APPROPRIATIONS: MILITARY CONSTRUCTION

*Committee on Appropriations:* Subcommittee on Military Construction and Veterans Affairs concluded a hearing to examine proposed budget estimates for fiscal year 2007 for military construction, after receiving testimony from Tina W. Jonas, Under Secretary (Comptroller), and Philip W. Grone, Deputy Under Secretary for Installations and Environment, both of the Department of Defense; Keith Eastin, Assistant Secretary of the Army for Installations and Environment; B.J. Penn, Assistant Secretary of the Navy for Installations and Environment; and William C. Anderson, Assistant Secretary of the Air Force for Installations, Environment, and Logistics.

## CAFE STANDARDS

*Committee on Commerce, Science, and Transportation:* Subcommittee on Surface Transportation and Merchant Marine concluded a hearing to examine efforts to reform corporate average fuel economy (CAFE) standards for passenger cars, focusing on oil consumption, flexible fuel, fuel cells and hybrid-electric vehicles, and hydrogen internal combustion engines, after receiving testimony from Norman Y. Mineta, Secretary, Jeffrey Rosen, General Counsel, and Jacqueline Glassman, Deputy Administrator, National Highway Traffic Safety Administration, all of the Department of Transportation; Frederick L. Webber, Alliance of Automobile Manufacturers, Philip R. Sharp, Resources for the Future, Joan Claybrook, Public Citizen, David Friedman, Union of Concerned Scientists, and Alan Reuther, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, all of Washington, D.C.; and John M. Cabaniss, Jr., Association of International Automobile Manufacturers, Arlington, Virginia.

## FOREIGN INVESTMENT IN U.S. AIR CARRIERS

*Committee on Commerce, Science, and Transportation:* Subcommittee on Aviation concluded a hearing to examine the Department of Transportation's notice of proposed rulemaking that clarifies the rules regarding foreign investments in U.S. air carriers, after receiving testimony from Representatives Mica and Oberstar; Jeffrey N. Shane, Under Secretary of Transportation for Policy; Frederick W. Smith, FedEx Corporation, Memphis, Tennessee; Jeffery A. Smisek, Continental Airlines, Houston, Texas; Michael G. Whitaker, United Airlines, Elk Grove Village, Illinois; and Duane Woerth, Air Line Pilots Association, International, Washington, D.C.

## LONGSHORE HARBOR WORKERS' COMPENSATION ACT

*Committee on Health, Education, Labor, and Pensions:* Subcommittee on Employment and Workplace Safety concluded a hearing to examine proposed reform of Longshore Harbor Workers' Compensation Act, after receiving testimony from Lawrence P. Postol, Seyfarth Shaw, LLP, Washington, D.C.; Richard A. Victor, Workers Compensation Research Institute, Cambridge, Massachusetts; Stephen Embry, Embry and Neusner, Groton, Connecticut; and Mitch White, Manson Construction, San Pedro, California, on behalf of the AGC National Marine Contractors Committee.

## VOTING RIGHTS ACT

*Committee on the Judiciary:* Committee concluded a hearing to examine an introduction to the expiring provisions of the Voting Rights Act and legal issues relating to reauthorization, after receiving testimony from Chandler Davidson, Rice University, Houston, Texas; Theodore M. Shaw, NAACP Legal Defense and Educational Fund, Inc., and Samuel Issacharoff, New York University School of Law, both of New York, New York; Richard L. Hasen, Loyola Law School, Los Angeles, California; and Laughlin McDonald, ACLU Voting Rights Project, Atlanta, Georgia.

## NOMINATION

*Committee on the Judiciary:* Committee concluded a hearing to examine the nomination of Brett M.

Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit, after the nominee, who was introduced by Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit and Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit, testified and answered questions in his own behalf.

# House of Representatives

## *Chamber Action*

**Public Bills and Resolutions Introduced:** 23 public bills, H.R. 5312–5334; 1 private bill, H.R. 5335; and 6 resolutions, H. Res. 802–804, 807–809 were introduced. **Pages H2237–38**

**Additional Cosponsors:** **Pages H2239–40**

**Reports Filed:** Reports were filed today as follows:

Conference report to accompany H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006 (H. Rept. 109–455);

H.R. 5143, to authorize the Secretary of Energy to establish monetary prizes for achievements in overcoming scientific and technical barriers associated with hydrogen energy, with an amendment (H. Rept. 109–456);

H. Res. 752, requesting the President to transmit to the House of Representatives not later than 14 days after the date of adoption of this resolution documents in the possession of the President relating to the receipt and consideration by the Executive Office of the President of any information concerning the variation between the version of S. 1932, the Deficit Reduction Act of 2005, that the House of Representatives passed on February 1, 2006, and the version of the bill that the President signed on February 8, 2006, adversely (H. Rept. 109–457);

H. Res. 805, waiving points of order against the conference report to accompany H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006 (H. Rept. 109–458); and

H. Res. 806, providing for consideration of H.R. 5122, to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2007 (H. Rept. 109–459). **Pages H2209–99, H2337**

**Speaker:** Read a letter from the Speaker wherein he appointed Representative Drake to act as Speaker pro tempore for today. **Page H2181**

**Recess:** The House recessed at 1:06 p.m. and reconvened at 2 p.m. **Page H2185**

**Investigative Subcommittee—Appointment:** The Chair read a letter from Ms. Pelosi, Minority Leader, whereby she designates the following Members to be available for service on an investigative subcommittee of the Committee on Standards of Official Conduct: Messrs. Becerra; Capuano; Chandler; Delahunt; Schiff; Scott of Virginia; Ms. Solis; Mr. Stupak; Ms. Tauscher; and Mr. Van Hollen. **Pages H2187–88**

**Message From the Clerk:** Read a letter from the Clerk notifying the House that she received a message from the President on Monday, May 8th, regarding the national emergency with respect to Syria. **Page H2188**

**Presidential Message:** Read a letter from the President wherein he transmitted notification of the continuation of a national emergency beyond the anniversary date with respect to the Government of Syria—referred to the Committee on International Relations and ordered printed (H. Doc. 109–109). **Page H2188**

**Suspensions:** The House agreed to suspend the rules and pass the following measures:

***American River Pump Station Project Transfer Act of 2005:*** H.R. 4204, amended, to direct the Secretary of the Interior to transfer ownership of the American River Pump Station Project; **Pages H2188–89**

***Establishing the Upper Housatonic Valley National Heritage Area:*** H.R. 5311, to establish the Upper Housatonic Valley National Heritage Area; **Pages H2189–91**

***Requiring the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe:*** S. 1382, to require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe—clearing the measure for the President; **Pages H2191–93**

***Providing for the concurrence by the House with an amendment in the amendment of the Senate to***

***H.R. 1499:*** H. Res. 803, to provide for the concurrence by the House with an amendment in the amendment of the Senate to H.R. 1499, by a yea-and-nay vote of 412 yeas with none voting "nay", Roll No. 128; **Pages H2193–94, H2299**

***Rural Health Care Capital Access Act of 2006:*** H.R. 4912, to amend section 242 of the National Housing Act to extend the exemption for critical access hospitals under the FHA program for mortgage insurance for hospitals; **Pages H2194–95**

***Byron Nelson Congressional Gold Medal Act:*** H.R. 4902, to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator; **Pages H2195–98**

***Congratulating Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season:*** H. Res. 627, to congratulate Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season; **Pages H2198–99**

***Respect for America's Fallen Heroes Act:*** H.R. 5037, to amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, by a yea-and-nay vote of 408 yeas to 3 nays, Roll No. 129; and **Pages H2199–H2208, H2300**

***Designating the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center:*** H.R. 3829, to designate the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center, by a yea-and-nay vote of 407 yeas with none voting "nay", Roll No. 130. **Pages H2208–09, H2300–01**

**Recess:** The House recessed at 4:26 p.m. and reconvened at 6:32 p.m. **Page H2299**

**Board of Visitors of the United States Merchant Marine Academy—Appointment:** The Chair announced the Speaker's appointment of Representative McCarthy to the Board of Visitors to the United States Merchant Marine Academy. **Page H2299**

**Senate Message:** Message received from the Senate today appears on page H2185.

**Amendments:** Amendments ordered printed pursuant to the rule appear on page H2340.

**Quorum Calls—Votes:** Three yea-and-nay votes developed during the proceedings of today and appear on pages H2299, H2300 and H2300–01. There were no quorum calls.

**Adjournment:** The House met at 12:30 p.m. and adjourned at midnight.

# *Committee Meetings*

## AGRICULTURE, RURAL DEVELOPMENT, FDA, AND RELATED AGENCIES APPROPRIATIONS; SUBALLOCATION OF BUDGET ALLOCATIONS FISCAL YEAR 2007

*Committee on Appropriations:* Ordered reported, as amended, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for Fiscal Year 2007.

The Committee also approved Suballocation of Budget Allocations for Fiscal Year 2007.

## CHILDREN'S HOSPITAL GRADUATE MEDICAL EDUCATION PROGRAM

*Committee on Energy and Commerce*: Subcommittee on Health held a hearing entitled "Examining the Children's Hospital Graduate Medical Education Program." Testimony was heard from Kerry Nesseler, R.N., Associate Administrator, Health Professions, Health Resources and Services Administration, Department of Health and Human Services; and public witnesses.

## HORSE RACING WORKFORCE WELFARE

*Committee on Energy and Commerce:* Subcommittee on Oversight and Investigations held a hearing entitled "Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury Insurance and Other Health and Welfare Issues." Testimony was heard from public witnesses.

## ANTHRAX PROTECTION

*Committee on Government Reform:* Subcommittee on National Security, Emerging Threats and International Relations held a hearing entitled "Anthrax Protection: Progress or Problems." Testimony was heard from Keith Rhodes, Chief Technologist, Center for Technology and Engineering, Applied Research and Methods, GAO; the following officials of the Department of Defense: Ellen P. Embrey, Deputy Assistant Secretary, Health Affairs, Force Health Protection and Readiness; and Jean Reed, Special Assistant to the Secretary, Chemical and Biological Defense Programs; the following officials of the Department of Health and Human Services: Gerald Parker, D.V.M., Deputy Assistant Secretary, Public Health Preparedness; and Richard Besser, M.D., Director, Office of Terrorism Preparedness and Emergency Response, Centers for Disease Control and Prevention; Susan Elizabeth George, Deputy Director, Biological Countermeasures Portfolio, Department of Homeland Security; and Dana Tulis, Deputy Director, Office of Emergency Management, EPA.

## OVERSIGHT—FEMA HOMELAND SECURITY DEPARTMENT INTEGRATION

*Committee on Homeland Security:* Held an oversight hearing on proposed legislation to strengthen the Federal Emergency Management Agency and better integrate it into the Department. Testimony was heard from William O. Jenkins, Jr., Director, Homeland Security and Justice, GAO; and public witnesses.

## CONFERENCE REPORT TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

*Committee on Rules:* Granted, by voice vote, a rule waiving all points of order against the conference report to accompany H.R. 4297, Tax Increase Prevention and Reconciliation Act of 2005, and against its consideration. The rule provides that the conference report shall be considered as read. Testimony was heard from Representative Camp.

## NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

*Committee on Rules:* Granted, by voice vote, a structured rule on H.R. 5122, National Defense Authorization Act for Fiscal Year 2007, providing one hour of general debate equally divided and controlled between the chairman and ranking minority member of the Committee on Armed Services. The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute recommended by the Committee on Armed Services.

The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. The rule provides that the amendments printed in the report accompanying the resolution 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. The rule waives all points of order against the amendments printed in the Rules Committee Report. Finally, the rule provides, that after disposition of the amendments printed in the Rules Committee 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. Testimony was heard from Chairman Hunter and Representatives Simmons, Shays, Castle, Lewis (KY), Mica, Chabot, Tom Davis (VA), Gutknecht, Dent, Gohmert, Skelton, Israel, Udall (CO), Capps, Tierney, Hoyer, Bishop (GA), Stupak, Woolsey, Jackson-Lee (TX), Schakowsky, Thompson (CA), Lynch, Schiff, Michaud.

## CORPORATE TAX REFORM

*Committee on Ways and Means:* Subcommittee on Select Revenue Measures held a hearing on Corporate Tax Reform. Testimony was heard from public witnesses.

---

## COMMITTEE MEETINGS FOR WEDNESDAY, MAY 10, 2006

*(Committee meetings are open unless otherwise indicated)*

### Senate

*Committee on Agriculture, Nutrition, and Forestry:* to hold hearings to examine the implementation of the sugar provisions of the Farm Security and Rural Investment Act of 2002, 10 a.m., SH–216.

*Committee on Appropriations:* Subcommittee on Defense, to hold hearings to examine proposed budget estimates for fiscal year 2007 for the missile defense program, 10 a.m., SD–192.

*Committee on Armed Services:* to meet in closed session to discuss the current situation in Afghanistan, 5:45 p.m., SR–222.

*Committee on Energy and Natural Resources:* business meeting to consider the nomination of Dirk Kempthorne, of Idaho, to be Secretary of the Interior, 11:30 a.m., SD–366.

Subcommittee on Public Lands and Forests, to hold hearings to examine S. 906, to promote wildland firefighter safety, S. 2003, to make permanent the authorization for watershed restoration and enhancement agreements, H.R. 585, to require Federal land managers to support, and to communicate, coordinate, and cooperate with, designated gateway communities, to improve the ability of gateway communities to participate in Federal land management planning conducted by the Forest Service and agencies of the Department of the Interior, and to respond to the impacts of the public use of the Federal lands administered by these agencies, and H.R. 3981, to authorize the Secretary of Agriculture to carry out certain land exchanges involving small parcels of National Forest System land in the Tahoe National Forest in the State of California, 2:30 p.m., SD–366.

*Committee on Finance:* to hold hearings to examine progress achieved and challenges ahead for America's child welfare system, 10 a.m., SD–215.

*Committee on Foreign Relations:* to hold hearings to examine the nominations of Earl Anthony Wayne, of Maryland, to be Ambassador to Argentina, David M. Robinson, of Connecticut, to be Ambassador to the Co-operative Republic of Guyana, and Lisa Bobbie Schreiber Hughes, of Pennsylvania, to be Ambassador to the Republic of Suriname, 9:30 a.m., SD–419.

*Committee on Indian Affairs:* to hold an oversight hearing to examine economic development, 9:30 a.m., SR–485.

*Committee on the Judiciary:* to hold hearings to examine modern enforcement of the Voting Rights Act, 9:30 a.m., SD–226.

*Select Committee on Intelligence:* closed business meeting to consider pending intelligence matters, 2:30 p.m., SH–219.

## House

*Committee on Appropriations,* to mark up the following appropriations for Fiscal Year 2007: the Military Quality of Life, and Veterans Affairs, and Related Agencies; and the Interior, Environment, and Related Agencies, 10 a.m., 2359 Rayburn.

*Committee on Education and the Workforce,* Subcommittee on Select Education, to mark up H.R. 5293, Senior Independence Act of 2006, 10:30 a.m., 2175 Rayburn.

*Committee on Energy and Commerce,* hearing entitled ''Gasoline Supply, Price and Specifications;'' 10 a.m., and to mark up a measure to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes, 1 p.m., 2123 Rayburn.

*Committee on Government Reform,* Subcommittee on Federalism and the Census, hearing entitled ''Public Housing Management: Do the Public Housing Authorities Have the Flexibility They Need To Meet the Changing Demands of the 21st Century?'' 10 a.m., 2154 Rayburn.

Subcommittee on Government Management, Finance and Accountability, hearing entitled ''After Katrina: The Role of the Department of Justice Katrina Fraud Task Force and Agency Inspectors General in Preventing Waste, Fraud, and Abuse,'' 2 p.m., 2247 Rayburn.

*Committee on Homeland Security,* Subcommittee on Intelligence, Information Sharing, and Risk Assessment, hearing entitled ''Building the Information Sharing Environment: Addressing the Challenges of Implementation,'' 2 p.m., 311 Cannon.

Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, to continue hearings entitled ''Protection of Privacy in the DHS Intelligence Enterprise,'' 4 p.m., 311 Cannon.

*Committee on International Relations,* hearing on A Resurgent China: Responsible Stakeholder or Robust Rival? 10 a.m., 2172 Rayburn.

Subcommittee on Africa, Human Rights and International Operations, hearing on Current Issues in U.S. Refugee Protection and Resettlement, 2 p.m., 2172 Rayburn.

*Committee on the Judiciary,* to mark up the following bills: H.R. 9, Fannie Lou Hamer, Rosa Parks, and Correta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006; and H.R. 4681, Palestinian Anti-Terrorism Act of 2006, 10 a.m., 2141 Rayburn.

*Committee on Resources,* Subcommittee on Fisheries and Oceans, hearing on the following bills: H.R. 4947, Cahaba River National Wildlife Refuge Expansion Act; H.R. 5094, Lake Mattamuskeet Lodge Preservation Act; and H.R. 5232, Cherry Valley National Wildlife Refuge Study Act, 10 a.m., 1334 Longworth.

Subcommittee on Water and Power, hearing on the following bills: H.R. 4588, Water Resources Research Act Amendments of 2005; H.R. 5079, North Unit Irrigation District Act of 2006; and S. 214/H.R. 469, United States-Mexico Transboundary Aquifer Assessment Act, 10 a.m., 1324 Longworth.

*Committee on Small Business,* hearing entitled ''Bridging the Equity Gap: Examining the Access to Capital for Entrepreneurs Act of 2006,'' 2 p.m., 2360 Rayburn.

*Committee on Transportation and Infrastructure,* Subcommittee on Highways, Transit and Pipelines, oversight hearing on Highway Capacity and Freight Mobility: The Current Status and Future Challenges, 10 a.m., 2167 Rayburn.

Subcommittee on Railroads, oversight hearing on Operational Experience Under the 2001 Railroad Retirement Reform Law, 2 p.m., 2167 Rayburn.

*Committee on Veterans' Affairs,* Subcommittee on Economic Opportunity, to mark up the following bills: H.R. 3082, Veteran-Owned Small Business Promotion Act of 2005; and H.R. 5220, Veterans Certification and Licensure Act of 2006, 2:30 p.m., 334 Cannon.

*Committee on Ways and Means,* to consider the draft implementing proposal of the United States-Oman Free Trade Agreement Implementation Act, 10:30 a.m., 1100 Longworth.

## Joint Meetings

*Joint Economic Committee:* to hold hearings to examine the next generation of health information tools for consumers, 10 a.m., SD–106.

*Next Meeting of the* SENATE

9:30 a.m., Wednesday, May 10

Senate Chamber

**Program for Wednesday:** After the transaction of any morning business (not to extend beyond 60 minutes), Senate will begin consideration of S. 1955, Health Insurance Marketplace Modernization and Affordability Act.

*Next Meeting of the* HOUSE OF REPRESENTATIVES

10 a.m., Wednesday, May 10

House Chamber

**Program for Wednesday:** Consideration of a suspension as follows: H. Res. 802—Encouraging all eligible Medicare beneficiaries who have not yet elected to enroll in the new Medicare Part D benefit to review the available options and to determine whether enrollment in a Medicare prescription drug plan best meets their current and future needs for prescription drug coverage. Begin consideration of H.R. 5122—National Defense Authorization Act for Fiscal Year 2007 (Subject to a Rule).

## Extensions of Remarks, as inserted in this issue

HOUSE

Blackburn, Marsha, Tenn., E756
Bono, Mary, Calif., E755, E755
Burgess, Michael C., Tex., E755, E756
Buyer, Steve, Ind., E758
Cuellar, Henry, Tex., E759
Emanuel, Rahm, Ill., E755, E755, E756, E757
English, Phil, Pa., E757
Gordon, Bart, Tenn., E758
Hooley, Darlene, Ore., E759
Hunter, Duncan, Calif., E760
Pallone, Frank, Jr., N.J., E759
Pence, Mike, Ind., E758
Porter, Jon C., Nev., E759
Radanovich, George, Calif., E759
Waxman, Henry A., Calif., E758
Young, Don, Alaska, E757

Congressional Record

The *Congressional Record* (USPS 087–390). The Periodicals postage is paid at Washington, D.C. The public proceedings of each House of Congress, as reported by the Official Reporters thereof, are printed pursuant to directions of the Joint Committee on Printing as authorized by appropriate provisions of Title 44, United States Code, and published for each day that one or both Houses are in session, excepting very infrequent instances when two or more unusually small consecutive issues are printed one time. ¶Public access to the *Congressional Record* is available online through *GPO Access*, a service of the Government Printing Office, free of charge to the user. The online database is updated each day the *Congressional Record* is published. The database includes both text and graphics from the beginning of the 103d Congress, 2d session (January 1994) forward. It is available through *GPO Access* at www.gpo.gov/gpoaccess. Customers can also access this information with WAIS client software, via telnet at swais.access.gpo.gov, or dial-in using communications software and a modem at 202–512–1661. Questions or comments regarding this database or *GPO Access* can be directed to the *GPO Access* User Support Team at: E-Mail: gpoaccess@gpo.gov; Phone 1–888–293–6498 (toll-free), 202–512–1530 (D.C. area); Fax: 202–512–1262. The Team's hours of availability are Monday through Friday, 7:00 a.m. to 5:30 p.m., Eastern Standard Time, except Federal holidays. ¶The *Congressional Record* paper and 24x microfiche edition will be furnished by mail to subscribers, free of postage, at the following prices: paper edition, $252.00 for six months, $503.00 per year, or purchased as follows: less than 200 pages, $10.50; between 200 and 400 pages, $21.00; greater than 400 pages, $31.50, payable in advance; microfiche edition, $146.00 per year, or purchased for $3.00 per issue payable in advance. The semimonthly *Congressional Record Index* may be purchased for the same per issue prices. To place an order for any of these products, visit the U.S. Government Online Bookstore at: bookstore.gpo.gov. Mail orders to: Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or phone orders to 866–512–1800 (toll free), 202–512–1800 (D.C. area), or fax to 202–512–2250. Remit check or money order, made payable to the Superintendent of Documents, or use VISA, MasterCard, Discover, American Express, or GPO Deposit Account. ¶Following each session of Congress, the daily *Congressional Record* is revised, printed, permanently bound and sold by the Superintendent of Documents in individual parts or by sets. ¶With the exception of copyrighted articles, there are no restrictions on the republication of material from the *Congressional Record*.

**POSTMASTER:** Send address changes to the Superintendent of Documents, *Congressional Record,* U.S. Government Printing Office, Washington, D.C. 20402, along with the entire mailing label from the last issue received.