

HOUSE OF REPRESENTATIVES—Tuesday, March 10, 1992

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Let us learn from one another, gracious God, and be concerned about each others' needs, remembering one another in our thoughts and prayers. We know that we live in families and communities and are dependent on others for sustenance and spiritual encouragement. In this moment of prayer we recall with honor and thanksgiving those in whose communities we have lived and by whose nourishment we have been fed with heavenly grace and peace. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New Mexico [Mr. SCHIFF] please come forward and lead the House in the Pledge of Allegiance.

Mr. SCHIFF 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 Mr. Hallen, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2324. An act to amend the Food Stamp Act of 1977 to make a technical correction relating to exclusions from income under the food stamp program, and for other purposes.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1467), "An act to designate the United States Courthouse located at 15 Lee Street in Montgomery, Alabama, as the 'Frank M. Johnson, Jr. United States Courthouse'."

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1889), "An act to designate the United States Courthouse located at 111 South Wolcott in Casper, Wyoming as the 'Ewing T. Kerr United States Courthouse'."

The message also announced that, pursuant to Public Law 102-240, the Chair, on behalf of the majority leader, appoints F. Woodman Jones of Maine and Frank Hanley of Maryland, as members of the Commission to Promote Investment in America's Infrastructure.

The message also announced that, pursuant to Public Law 102-240, the Chair, on behalf of the majority leader, appoints Leon Eplan of Georgia and Wayne Davis of Maine, as members of the Commission on Intermodal Transportation.

INTRODUCTION OF THE DEMOCRACY CORPS ACT

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

Mr. MCCURDY. Mr. Speaker, today I am introducing legislation which will offer a bold alternative to recent suggestions on how we should respond to the crisis of the post-Soviet world. This legislation, the Democracy Corps Act of 1992, has bipartisan support and poses a challenge to those who call for America to "come home" and who may cause us to fumble a once-in-a-lifetime opportunity: a chance to help reshape the political and economic future of our former adversary.

The Democracy Corps Act will send teams of professional Americans to the new republics to help democratic reformers in the Commonwealth of Independent States build the democratic and free market institutions that must serve as the foundation for lasting change in these societies. This bill is premised on the fact that free market economies in the republics of the former Soviet Union cannot be sustained without institutions that provide for civil law, property rights, education, and effective public administration.

Mr. Speaker, this legislation builds on the concept the United States employed after World War II when we successfully established some 50 "America Houses" in western Germany. These teams of Americans will work out of "Democracy Houses" and remain in the CIS for 2 years to provide expertise in the development of democratic institutions and the free market. The Democracy Corps will close down after 5 years and, therefore, not create a new Federal bureaucracy.

Mr. Speaker, it is clear that the crisis facing the new, independent repub-

lics goes beyond the need to create free market economies and overcome the shortages of food and medicine we so often read about. We have attempted to alleviate some of those humanitarian concerns. But decades of totalitarian rule have traumatized the vast peoples of these countries not only in economic terms but also in their social and political attitudes about the role of government in a free society. Unless those attitudes and values are changed, the prospects for a peaceful transition to democracy in the former Soviet Union are unlikely.

It is in our national interest to ensure that this transition is successful. This legislation is an attempt to move this process forward, and I urge my colleagues to cosponsor the Democracy Corps Act.

DEPARTMENT OF MANUFACTURING AND COMMERCE ACT OF 1992

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

Mr. HENRY. Mr. Speaker, a national strategy for maintaining and strengthening the U.S. industrial base is essential for our Nation's future economic well-being. The global economy poses challenges that are as important to meet today as were the military challenges of our past. We can only maintain our preeminence as an industrialized nation if the Federal Government and the private sector come together as never before to keep our manufacturing base competitive in the international marketplace.

There is no single cure for our dilemma. The recession has prompted a number of simplistic calls for protectionist and isolationist policies. While we must get tough with our trading partners to ensure a level playing field for all U.S. manufacturers, it is dangerous and irresponsible to suggest that foreign trade barriers are solely to blame for our economic woes.

As attractive as rhetoric bashing our trade partners is to some Members of Congress, the fact is that Washington needs to take strong policy actions on a number of fronts to ensure an America that competes, not one that retreats from the global market.

Not only must we break down those barriers that keep U.S. goods out of foreign markets; we need to press forward on reforms that will lower the cost of capital, liability, and health care for U.S. companies. We need to fa-

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ilitate technology development. More importantly, we need to formulate policies that will create an efficient means of transferring and applying new technologies from our labs and universities to the manufacturing sector.

We must develop an educational system that will enable future employees to quickly adapt to a continually changing high-technology workplace. Likewise, we need to improve our work force training systems for today's employees. These are critical areas that need to be addressed if we are truly going to improve our industrial competitiveness.

But because we have no coherent strategy or Government office speaking for U.S. manufacturers, we often lose sight of how important our industrial base is to the Nation. Manufacturing is the force that creates jobs, drives economic growth and innovation, determines our standard of living, and ensures our national security. As such, the time has come for the Congress and the administration to end the debate over whether or not we should have an industrial policy. We have one. The only question is whether or not it is coherently articulated, visionary, and comprehensive.

If we choose to open or close our doors to Japanese automobiles, for example, that is part of our industrial policy. If we create a perverse tax incentive system that penalizes savings, that is part of our industrial policy. If we maintain a liability system that forces a machine tool manufacturer to spend five times more on liability insurance than he does on research and development, that too is part of our industrial policy. Before today, though, we were failing to face up to the fact that Government action or inaction has a great impact on our industrial sector. We have lacked a disciplined strategy to ensure our economic well-being into the next century.

Regardless of whether we call it an industrial policy or simply a competitive strategy, as some people have suggested, we must now focus on how we might better coordinate our Federal policies so that they are developed and modified to the benefit of American manufacturers.

As is called for in the legislation I am introducing today, I believe our first step in this process should be to rename the Department of Commerce as the Department of Manufacturing and Commerce. This change must be more than symbolic. It must change the tone of the adversarial dialog that has long existed between Government and industry. It must also help redirect our policies and priorities toward manufacturing and foster the type of public-private partnership that will be increasingly necessary in the world marketplace of the 21st century.

A number of existing Federal programs are aimed at supporting our

manufacturing base, and others could be used to do so. But they are often disjointed, duplicative, and difficult to approach—particularly for small manufacturers. Therefore, my proposal would also set up a Manufacturing Advisory Commission to examine the Federal agencies, programs, and offices charged with overseeing manufacturing-oriented research and development, technology transfer, education, and trade policies. This Commission would make recommendations on which programs and offices that are critical to the manufacturing sector should be consolidated into a single Office of Manufacturing.

Over the past several months, I have toured a number of the manufacturing facilities in Michigan. I have listened to scores of complaints and concerns about what the Federal Government is and isn't doing to help them survive. While some manufacturers point to education reform, some to technology application, and still more to trade policy, the underlying sentiment is that it is time for governmental action that puts manufacturing into the forefront of Federal policy decisions. A Manufacturing and Commerce Department would do so.

The feeling out there is that we not only have to compete against growing foreign competition, but we must contend with a Government that's working against us. A manufacturer who recently testified before the Technology and Competitiveness Subcommittee put it this way: "There are times when most of us in manufacturing truly believe that there has been a subsurface dislike toward, and distrust of us. If the Congress and the administration can positively change the tone of the relationship—toward a partnership—it is my belief that this will go a long way toward insuring the future success of manufacturing in the United States."

A Department of Manufacturing and Commerce cannot fix all that is wrong or maintain all that is right with our industrial sector. However, it will set us on the proper course and create a foundation from which we can build a coherent economic competitiveness strategy.

PERMISSION FOR COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT TO FILE PRIVILEGED REPORT

Mr. MCHUGH. Mr. Speaker, I ask unanimous consent that the Committee on Standards of Official Conduct have until midnight tonight to file a privileged report.

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

There was no objection.

LEGISLATION TO LOWER AMERICA'S UNEMPLOYMENT RATE

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

Mr. MAZZOLI. Mr. Speaker, reports tell us that there is a 7.3 percent unemployment rate in the Nation, a totally unacceptable level of unemployment. Something has to be done.

I have two suggestions which I think are doable, and which I believe would have an effect on that rate by reducing it and putting America back to work.

One thing I would like to see happen, Mr. Speaker, is passage of a public works bill. I realize that over a period of some time people have been reluctant to support public projects because these somehow produce leaning-on-shovels kinds of jobs. Actually they are very important and very fulfilling jobs.

There is a bill sponsored by the gentleman from New Jersey [Mr. ROE] that would create many public jobs. The county of Jefferson, the city of Louisville, have 100 million dollars' worth of programs ready to go that could fit under that bill. I hope that bill passes.

I also think, Mr. Speaker, the Tax Fairness and Economic Growth bill should have in it a first-time home-buyer tax credit which I think would jump-start the housing industry and give young Americans a piece of the rock.

So certainly 7.3 percent unemployment is unacceptable. We can lower the rate, and we should win these two pieces of legislation.

JUST SAY IT: \$1.5 TRILLION

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

Mr. DELAY. Mr. Speaker, just say it, \$1.5 trillion, \$1.5 trillion. Don't you like the way it just rolls off of your lips. For some, it takes almost no effort to say \$1.5 trillion, it is painless.

Mr. Speaker, even though my colleagues on the other side of the aisle do not find it bothersome to pass a \$1.5 trillion budget agreement, the American people will. For they are the ones who pay for this obscene budget by the sweat of their brow.

I am tired of the politics-as-usual crowd robbing Peter to pay Paul. They do not seem to realize that when you take from Peter to pay Paul, Peter ends up laying off Paul. If the ill-advised budget agreement of 1990 taught us anything, it is the lesson that when you destroy growth incentives in the workplace, the workplace becomes a no-place. Instead of going to the assembly line, workers go to the unemployment line.

The Democrat tax and spend budget package uses sleight-of-hand techniques to deceive the American people.

Is that the best my colleagues on the other side of the aisle can do for those they claim to represent, the middle-class, a 2-year tax credit? Come on, the American people deserve more from their elected leaders. They deserve real incentives, real tax relief, and real opportunities, not tax credits in exchange for a \$77.5 billion tax increase. My constituents are choking to death on increased taxes. They can not stand further "Democrat" prosperity.

Mr. Speaker, we have only 10 days until the March 20 deadline. Congress has the power to make a meaningful difference in the lives of all Americans. Pass the President's economic growth package and pass out a ray of hope.

THE WRONGFUL DEPORTATION ACTION BY U.S. IMMIGRATION SERVICE

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

Mrs. SCHROEDER. Mr. Speaker, I must say my patience is really running out with the Immigration Service in Denver. On Christmas Eve they delivered a deportation notice to a new widow with a 4-year-old child who was an American citizen. Meanwhile, they have been saying any day they are going to come take her away.

It turns out that the reason she is having all these problems was a prior lawyer gave her very poor advice. There are all sorts of ways Immigration could deal with this, by giving her humanitarian parole, but they refused the pleas, they refused to answer them, and they just seem to want to go their own way.

□ 1210

I want to say that this young woman is now going to be one of the honorary members of our St. Patrick's Day parade in Denver, CO, because everyone in Denver is really incensed about how this woman is being treated.

I certainly hope the Immigration Service takes it upon themselves to review their files, understand what a humanitarian role is all about and really try and reclaim some honor in this incredible case that has gone on and on much too long.

LEGISLATION TO REPEAL SCHOLARSHIP TAX

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

Mr. LEWIS of Florida. Mr. Speaker, the 1986 Tax Reform Act contained many harmful provisions, but fortunately not all of them have been strictly enforced by the IRS. Among these is the provision which taxes college scholarship money used to cover room and board.

Unfortunately, recent newspaper reports say that the IRS is dusting off this provision and may begin enforcing it. The last thing any of us needs in the midst of this recession is a tax increase, even if it is one that was passed 6 years ago.

I'm taking the floor today to urge my colleagues to take pre-emptive action. I am asking you to cosponsor legislation I am introducing to repeal the scholarship tax.

Scholarship money used for tuition and fees, books, and supplies, is still tax-free. Scholarship funds used to pay room and board are just as necessary, and should also be tax-free.

At a time when we are so concerned about our education system and providing our students access to college, we do not need to add to our problems by taxing scholarships.

It's difficult enough for most students to scrape together the money to go to college. Once they have won a scholarship, they do not need Uncle Sam stepping in and demanding a cut.

Let us stop the IRS from enforcing a tax that should never have been passed. Cosponsor my bill to repeal the scholarship tax.

UNITED STATES RESPONSIBLE FOR OWN ECONOMIC WOES

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

Mr. APPELEGATE. Mr. Speaker, when is America going to wake up? We tend to want to bash the Japanese for bringing all their products into this country and buying this country, but it is not their fault. It is our fault. It is the Congress and the administration and we that allow all of this to happen.

If Members have ever read the cartoon, Pogo, he says, "I have seen the enemy, and he is us."

This administration had better start to address the problems that confront this country on trade, on competitiveness, on what we are going to do about research and development, on educating our kids to keep them here so that they can compete instead of inviting our industries to go overseas to take advantage of cheap labor, to allow them to restrict our productivity. Let me tell my colleagues something. The newest unemployment rate is at 7½ percent for the United States and going up. I saw a bumper sticker recently and it said, "Saddam Hussein still has his job. What about you?"

This is an election year, folks, and I think we had better start listening to the people who put us in office.

PUTTING ASIDE PARTISANSHIP TO PASS PRESIDENT'S ECONOMIC PACKAGE

(Mr. COX of California asked and was given permission to address the House

for 1 minute and to revise and extend his remarks.)

Mr. COX of California. Mr. Speaker, there are now only 10 days left before the deadline of March 20 that President Bush set for the liberals in Congress to back off of partisan politics and deliver an economic growth package to his desk.

Is it not ironic that the center pieces of the President's program have a majority in this Congress sponsoring them, and yet we cannot schedule them for a floor vote? On passive loss, over 300 Members of Congress have sponsored legislation to permit once again real estate professionals to deduct so-called passive losses. A capital gains rate reduction commands a majority in this House and in the other body. Tax-free withdrawals from IRA accounts for first-time home buyers has well over 300 sponsors. It would take us 15 minutes to schedule a vote on these items.

Let us not lard it up with all of the other \$1.5 trillion worth of spending that the liberals in Congress have included in their budget that passed last week. That budget, I should add, has a built in \$300 billion deficit.

There is not much question that the Democrats are still the tax and spend party they have always been. But there is still time, 10 days before the President's deadline, to change and join with us on the other side of the aisle. And there is certainly time between now and the election to stop being the tax and spend party and instead provide jobs and economic growth for the unemployed and other Americans.

TIME TO GET THE OMNIBUS CRIME BILL TO THE PRESIDENT'S DESK

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

Mr. SCHIFF. Mr. Speaker, because of recent events right here in the Capitol Hill area of Washington, many of my colleagues have been demanding more and more effective efforts against the crime problem. We have a device to do that. Both the House of Representatives and the other body have passed their versions of an omnibus crime bill.

Where is that bill today? It got sidetracked in a conference where the majority decided that it would only entertain their proposals and not work with the other side of the aisle, and that doomed the bill at that time to a stalemate.

Mr. Speaker, violent crime is all across the United States, and it is right outside the door of this Chamber. It is time that we set aside partisanship and do something about it, and that means to get the anticrime bill back on track and send it to the White House.

□ 1220

SPENDING THE PEACE DIVIDEND

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. DELAY] is recognized for 60 minutes.

Mr. DELAY. Mr. Speaker, I take the well of the House for my special order to discuss some things that are starting out of this House a most egregious budget that raises taxes and gives no incentives whatsoever for growth, especially if you cut taxes in one hand and take away that increase in capital by taxing Americans with the other hand. There is absolutely no growth potential there, and that is supposed to be the growth package that the Democrats are going to send to the President before the deadline of March 20 in order to stimulate growth in this country and put us into a climate of creating jobs and creating growth.

Of course, last week it was very evident that the leadership of this House does not have even their own committees well in hand because we had to vote on two options of budgets last week, a plan A and a plan B, because they could not decide on either one of them, and they passed two budgets, one based on breaking down the budget agreement of 1990 and breaking down the firewalls so that they can take the peace dividend and spend it on other programs, and what we are going to try to show today is that all that is doing is once again last week they raised taxes, and this week they want to increase spending, and here we go again, the same business as usual. The American people get the shaft.

Mr. Speaker, it is amazing to me that people really think that there is a peace dividend. The Republican Study Committee produced a paper on March 5 entitled "Spending the Peace Dividend," and I would like to start with that paper, because I think it is very well written and pretty well outlines the problem as we see it today.

In 1990 the Democrats in Congress negotiated this budget deal with President Bush. In exchange for raising taxes, Congress agreed to accept the separate spending caps on defense, international, and domestic discretionary spending through the fiscal year of 1993, and beginning in 1994, the three categories will be merged into one with a single overall cap on spending.

However, the Democrats are now calling for an early end to the separate spending caps. They hope that by breaking down the firewalls between defense and domestic programs, they will be able to spend the peace dividend. Unfortunately, the Democrats' desire to spend the "peace dividend" is based on two flawed assumptions. First, the defense cuts proposed by President Bush are a mere pittance in

the face of the extravagant Reagan defense buildup. Second, domestic spending is being starved by the austere spending caps imposed by the 1990 budget agreement.

Now, historically defense spending rises in response to a military crisis and falls when the crisis ends. The peace dividend represents the amount of money made available for other purposes by the reduction in defense spending.

In the past both the rise and the fall in defense spending occurs in a very short period of time. For example, during World War II, defense spending rose from \$75 billion in 1940 to \$871 billion in 1945. By 1949 defense spending had fallen to \$94 billion. During the Korean war, defense spending rose from \$94 billion in 1949 to a peak of \$359 billion in 1953 before dropping to \$265 billion in 1957. During the Vietnam war, defense spending increased to \$343 billion in 1968 before dropping to \$258 billion in 1972.

Unlike the three previous cycles, the Reagan defense buildup was not a direct response to armed conflict involving U.S. military forces. In fact, the Reagan buildup actually started under President Carter. Defense outlays had been on a steady decline ever since the withdrawal of United States troops from Vietnam. By 1978 defense outlays had fallen to 4.8 percent of the gross domestic product, the GDP, the lowest level since the end of World War II.

Under Carter, defense outlays rose to 5.3 percent of GDP by the time that he had left office in 1981. That represents an increase of \$37 billion.

Under President Reagan the defense outlays peaked in 1986 at 6.5 percent of GDP. In constant dollars, defense spending peaked in 1987 at \$343 billion. Measured on the same basis as the three previous defense buildups, this represents a \$52 billion increase.

In theory, the money saved from reducing defense spending can either be returned to the taxpayers in the form of lower taxes and reduced borrowing or it can be used to finance other Government spending.

Congress has shown a growing propensity to spend the peace dividend. After World War II Congress increased domestic spending by 8 cents for every dollar in defense spending. This level rose to 25 cents after the Korean war. After the Vietnam war, Congress spent \$1.09 in domestic spending for every \$1 in defense savings.

Following the Reagan buildup, Congress spent \$2.30 for every dollar in defense savings. Under President Bush's proposed budget, defense outlays will fall to 4.7 percent of GDP in 1993, which is lower than when President Carter took office.

By 1997 defense outlays are projected to decline to 3.6 percent of GDP. That represents the lowest level in defense spending since 1940.

Now, in constant dollars, defense spending will decline to \$246 billion in 1997. That represents a \$97 billion decline from its peak in 1987 and a cumulative \$512 billion decrease since 1989 when President Bush took office.

Now, President Bush has already proposed a substantial reduction in defense spending, and calls for further defense cuts are based on the claim that domestic discretionary spending is being starved by the austere spending caps imposed by the 1990 budget agreement, when, in fact, under the President's budget domestic discretionary spending is projected to increase by almost \$15 billion this year. That is the largest single-year increase since 1978.

The 1990 budget agreement left plenty of room for growth in discretionary domestic spending. By breaking down those firewalls, Congress will destroy any possibility of restraint in future years. While the projected increase in domestic discretionary spending is dramatic, the growth in total domestic spending is almost unbelievable.

Under the President's budget proposal, total domestic spending will rise to \$975 billion in 1997. That is \$256 billion higher than the amount spent in 1989, and cumulatively total domestic spending is projected to increase by \$1.3 trillion above the level when President Bush took office.

Based on the President's budget proposal, domestic spending will rise by \$2.55 for every dollar in defense cuts. Unfortunately, given the track record of the Democrats in Congress, the picture will likely get even worse.

The President routinely blames Congress for increasing Federal spending. The Democrats, in turn, point out that if the President was really interested in a balanced budget that he would submit one. However, after clearing away all of the rhetoric, one fact is clear: For the past 10 years, this Congress has routinely sent less than the President requested for defense and more than he requested for everything else.

From 1982, the first budget submitted by President Reagan, through 1991, the last year for which final numbers are available, Congress spent \$95 billion less than the President requested for defense and \$628 billion more on everything else.

So during the decade of the 1980's Congress consistently spent less than the President requested for defense while spending more than he requested on everything else.

□ 1230

Now that the President has joined together in calling for lower defense spending, the temptation to spend defense money on other programs is greater than ever. However, contrary to the public perception, Congress is already spending the peace dividend at a record pace. President Bush's budget

projects that by 1997 defense spending will decline to its lowest level since 1940, measured as a percent of GNP or as a percent of the total Federal outlays. Additional defense cuts below this level should be based on the national security need, not on a desire to fund more domestic spending.

Furthermore, any enthusiasm for a peace dividend should be tempered by Congress' track record to date. American taxpayers can hardly afford \$2.55 in domestic spending for every dollar in defense cuts.

Mr. Speaker, what I tried to show here, through the help of the Republican Study Committee, is that if we look at what happened last week, where they raised another huge amount of taxes to the tune of some \$77.5 billion and made some attempt to put some growth incentives in there, gave a piddling amount of tax cuts for the middle class—trying to buy off the middle class—and you tie that increase of taxes, taking away from the private sector and putting it into the public sector, and make suggestions of destroying the firewalls so they can take the peace dividend, which does not exist, and spend it on their domestic programs, we can see what is happening here. Indeed, they have raised taxes on one hand, and now this week they are going to have a bill on this floor that removes the spending restraints.

This is the only good thing that came out of the budget agreement of 1990. They are going to remove those spending restraints so they will have an excuse to increase their domestic spending. In fact, this morning, just earlier today, I had group after group coming into my office and salivating over their prospects of getting even more of an increase in their spending budgets than they originally thought would happen this year. They are all over this Hill today and they will probably be all over this Hill until this matter is resolved, putting pressure on Members of Congress to spend money on these special little programs that everybody loves. But I have got to tell the American people, Mr. Speaker, that we do not have the money. There is no peace dividend. When you are running \$400 billion in deficits per year, there is no peace dividend. It was spent many years ago. All they want is an excuse to increase spending, especially in an election year, so they can buy off their constituencies to vote for them during this election year. That is the whole goal behind what we are seeing, and it is just amazing to me.

Mr. Speaker, I had to sort of borrow from that grand gentleman from Texas [Mr. ARMEY], the ranking member on the Joint Economic Committee, this material. He has just released these two charts that show what is going on. The American people are being deceived by the majority of this House. The Republican staff on the Joint Eco-

nomics Committee did a little research on the budget packages, the two growth packages that were presented last week, and I think these two pictures are indeed worth a thousand words. This is a chart that is entitled "Growth Versus Malaise," and what it shows, as the Democrats have proposed to raise taxes, is the effects that the two bills, the Republican alternative in the black and the Democrat alternative on the bottom, would have. It shows what the effect will be on the gross domestic product and what the effect of the growth in this country would be of the two proposals.

On the one hand, we see the Democrat proposal, and over the 5-year period of the two plans it shows that in the first year it loses \$3 billion. In the next year the economy loses \$8.5 billion, the next year \$14.8 billion, and in the next year it loses \$19 billion, and the next year \$16.9 billion, and then in 1997, if we adhere to this—and we have never adhered to any 5-year plan longer than 18 months—in the last year the economy will have lost \$16.3 billion.

Yet if we had passed the Republican plan, we can see above the line the marks of the increase in the economy that would happen as a result of the Republican alternative. We did not raise taxes. What we talked about was cutting capital gains, giving a first-time homebuyer credit, and those kinds of things, and the chart shows that in the first year the economy would increase by almost \$13 billion, by \$38 billion in the next year, \$67 billion in the next, and an increase of almost \$93 billion in the next, and an increase in the next of \$121 billion, and then in the last year the economy would increase \$143 billion.

What does that mean in terms of jobs? Well, it is obvious to anybody with a third grade education that if the economy is losing growth and is in a decline or is losing its increase in growth, jobs are not created at the same rate as if the economy was increasing.

In the chart on the far end entitled "Jobs Creation Versus Destruction," the two lines are compared and we can see that is the extrapolation from what happens to the economy and what happens to jobs. And what happens to jobs in this country is that we lose under the Democrat plan 21,000 jobs in 1992, 62,000 in 1993, 71,000 in 1994, 81,000 in 1995, all the way to losing 103,000 jobs in 1997, whereas if we had passed and made into law the Republican plan, we can see that we increase jobs by 84,000 in the first year, 220,000 the next year, 353,000 the next, 479,000 the next, and then in the last year we increase jobs by 593,000.

There is a real difference between the philosophies of government here, and I think the American people are going to look at the philosophies of government because we are going to make sure that

the American people understand what is happening in this Congress as a result of who controls this Congress, Mr. Speaker.

What is happening on the one hand is that we have the age-old FDR-type New Dealism philosophy. In fact, we have heard Members come down here doing "1 minutes," talking about using government to build infrastructure. Infrastructure is very important, but it is not a jobs program. Jobs are created in the short terms of those contracts, but they are not meaningful and lasting. The only way we can create jobs in this country is to allow the American people to hang onto more of their money so that consumers can purchase items when they feel driven to do so and can choose what items they want in their purchases. Then the American businessman and woman can risk their capital and invest in new companies and thereby create more new jobs.

The philosophy on our side of the aisle is that we need a growth package that actually stimulates the economy, but most importantly, in the long run what it does is create a climate in which Americans are free and have economic freedom to build a greater economy. We are shutting down and strangling the economy by raising more taxes and spending more because everyone knows the Government cannot efficiently spend money, and certainly the Government does not risk money in investments that create jobs.

□ 1240

But if you increase the scope of the government, then indeed what you have is pulling out the very lifeblood of our economy, putting it into an efficient system and you are strangling and bleeding our economic engine to the point that it cannot create jobs. That is what is happening in America today. It has nothing to do with the kinds of claims that have been made on the floor of the House where the rich got richer, the poor got poorer, which is another subject that I could get into. Suffice it to say that that is another way of deceiving the American people.

It is amazing that those who claim that the rich got richer and the poor got poorer use the timeframe from 1977, which is the Carter administration, to 1989, the end of the Reagan administration, yet they blame the Reagan administration for 8 years out of that 12 years that they use as the basis for their argument.

Well, the American people are not stupid, they can recognize a sham once they get involved in it and start reading it.

So, the reason I took this special order, Mr. Speaker, was to try to point out or at least begin to point out that, No. 1, there is no peace dividend. You cannot have a peace dividend if you have a \$400 billion deficit. It was already spent by Congress years ago.

Indeed what is happening is—what the Democrats in this Congress are proposing is that for every dollar of defense spending that we cut, they want to spend \$2.55 on their favorite domestic programs. The end result from raising taxes last week and increasing spending as a result of the tax that will be taken on the floor of the House this week, the American people once again are the losers.

So, Mr. Speaker, we are not going to lay down and roll over and allow this to happen without the American people understanding it. And I think they will speak in November.

WHO SAYS CRIME DOES NOT PAY?

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

Mr. AUCOIN. Mr. Speaker, who says crime does not pay? You know, if you are really rich and George Bush is President, it pays a lot.

Case in point: Yesterday, in an abrupt about-face, Federal banking regulators settled with the junk bond king Michael Milken. Even his own lawyers admit the settlement will leave him and his family with \$475 million; \$475 million.

Just think about it, it is living proof that the 1980's were a decade of greed, they were a decade of get your own while you can, they were a form of Robin Hood in reverse.

This settlement of \$475 million is nearly twice what we spend as a nation to prosecute the S&L fraud every year. It is almost enough to vaccinate every needy kid in this country. It is a year's worth of special classes for 31,000 disabled kids in my State of Oregon.

The Milken case is Reaganomics on parade. And this settlement is one more example of the rest of us picking up the tab for the lifestyles of the rich and famous.

When it comes to what the gentleman from Texas just talked about, about voters having a voice, to say something about these current affairs come November, I am here to say this case is going to be one of those matters in which voters are going to have a very lot to say.

SOME CONCLUSIONS AND OBSERVATIONS ON THE BUDGET DEBATE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maine [Mr. ANDREWS] is recognized for 30 minutes.

Mr. ANDREWS of Maine. Mr. Speaker, I have just completed in the last few months my first year as a Member of the Congress of the United States, and I am in the midst, along with other Members of this institution, of my second budget debate.

Mr. Speaker, I have come to some conclusions and observations as I have been through this first year and as I grapple with the budget decisions that we are now facing, and I would like to share some of them with you.

Mr. Speaker, there are moments in this body that this Congress actually sits down and does the very difficult work of analyzing issues, openly and honestly, and actually tries to grapple with those issues not in terms of partisan politics or the battle for 10-second sound bites or what advantage or disadvantage this or that may have on the next election, but there are times when Members of this body actually look into their minds and into their hearts and debate an issue on the basis of what is good for the country and what they really think is the right direction for this Nation.

We saw that spirit live very, very eloquently at this rostrum during the gulf war, when this Congress had to come to terms with probably the most serious decision that any Congress can ever make, and that is the decision to send young men and young women into harm's way.

There are times when that spirit and that focus and that clarity and that sincerity makes its way onto this floor on other issues. But too often, Mr. Speaker, that spirit does not live here and we have challenges and scapegoating and finger-pointing and blaming when we should have responsibility, analysis, openness, and a coming to terms of disagreements and analyzing seriously the issues that confront us.

I would like to take, as an illustration of that, an issue that really demands that kind of approach with our Nation's budget. Last week, for those of you who were paying attention to the debate on the budget, you saw examples of all kinds of debate tactics and strategies on this floor. I think you saw examples of some of the best and some of the worst of our congressional debate.

Some of the best actually occurred, I believe, when the Congressional Black Caucus of this Congress came forward with a proposal for a budget, outlining priorities, outlining spending cuts, and making a proposal for this Congress to take a new direction.

During that debate there were actually moments when Members of the other side who disagreed with the Congressional Black Caucus did not stand and finger-point; they asked questions, they attempted to analyze, and there was a sincere attempt to come to terms with the differences between each side and to try to reconcile differences between each side.

□ 1250

Mr. Speaker, what emerged from that debate was a very key, I think, analysis of what some of the problems are

that afflict this body and the debate that often we get engaged in. We heard from one side that, yes, that have a lot of compassion for the people who hurt in this country, and they are preparing and defending social programs that can help those people.

In fact, the gentleman from Georgia [Mr. GINGRICH] actually stood and said that he admired and respected that response to the plight of so many in this country. But he offered a challenge, and that is for my side of the aisle, the Democrat side of the aisle, and particularly the Congressional Black Caucus, to think perhaps more in terms of what he described as capitalism in the Adam Smith sense, and he criticized the approach of solving problems through government bureaucracy and, instead, proposed that we need to focus our attention more on economic productivity. If we could focus our attention on economic productivity, the issues and the concerns that were being discussed so eloquently from the Congressional Black Caucus could be resolved.

Now I think that was a very positive moment here in the U.S. House of Representatives, two sides coming to terms with two different philosophies and approaches, two sides that were sympathetic to the point of view of the other, in an attempt to truly come to terms with one another.

Mr. Speaker, the gentleman from California [Mr. DELLUMS] in particular sought to find that ground. As a matter of fact, there was an invitation by the Congressional Black Caucus to the gentleman from Georgia [Mr. GINGRICH] and others to sit down and discuss those issues further.

I would like to take up the issue of economic productivity and economic strength and propose that perhaps there is some common ground between those who believe that this country has failed to meet its basic responsibilities to its people and has failed to make critical investments in this country, and those who believe that the key to the success of this country and the resolution of so many of our problems is economic productivity. Now what do I mean?

As my colleagues know, we have a problem that is not only a problem for this body, but a problem on Pennsylvania Avenue, in fact a problem in corporate boardrooms all across the country, that too often the vision that is used to address and solve problems is extremely short term. It is in terms of what is going to happen in the next election or the next quarterly profit sheets that are going to be coming out. Too often we fail to look at the long-term economic implications of our decisions and ask the basic question: What will be the long-term implications of budget decision, both in terms of the budget of this Congress, as well as the economy is this country, and, because we fail to ask that question be-

cause we forget to frame our debate in terms of our future, we end up bogged down in meaningless debates, and we have terms that really are not going to help us to solve our budget problems.

Mr. Speaker, I think that, if we were to look at this Nation and address seriously the concerns of those who believe in economic productivity, we would look at our budget in a fundamentally different way. We would start asking the question of, if we invest in this education program, what is going to be the return on that investment, both economically and in terms of a budget, not just in this budget year. We know it is going to cost money, but down the road what is it going to generate for this country? If we ask a question about a capital investment, roads, bridges, rail systems, water and sewage treatment systems, and we ask the question, not just what is the impact of this budget decision on this budget, but the impact for this Nation and for this economy long term, we could begin to have a debate about the direction that this country is going and the direction that this country should be going. We have got to distinguish between capital investment that is going to generate a turn in productivity for this Nation in economic strength and regular operating expenses.

Now this is not a radical notion. I have spent just about every single weekend back home in Maine, and I serve on the Committee on Small Business, and I spend quite a bit of that time traveling to many of the small businesses in the State, and, as my colleagues know, it does not take long, when we start talking about what decisions have to be made in a business in order to make that business strong, to start to understand that making a distinction between long-term investment and short-term operating expenses makes a great deal of sense.

I say to my colleagues, imagine, if you will, taking over a business that used to be very profitable but is now in serious trouble. Your job is to turn that business around. What do you do? Well, I would suggest, after talking to many business people in my district, that you're going to do at least two things. No. 1, you're going to look at your expense sheet, and you're going to look at the expenses that you're incurring, and you're going to ask yourself: is this expense absolutely critical to the strength and the health of my business, and, if you find an expenditure that isn't, it may be very difficult to do, but, if you're going to survive as a company, you're going to have to make the difficult decision of stopping that spending that has no relationship to the productivity of your company. Now it may mean saying good-bye to a vendor that you've had for a very long time. It may mean some very painful layoffs. It may mean some very difficult decisions. But if you're going to

survive as a company, you're going to have to be willing to make those tough decisions.

Now you're also going to have to look, however, just as importantly, at your business in terms of where you want that business to be. It's called a business plan, and the business plan has a goal, and you look at the things you're going to have to do in terms of investment in that company in order to reach that goal. It could mean new equipment for your company. It could mean a new plant. It could mean training or retraining some of your workers. It could mean a number of different types of investments. But you know, if you're going to achieve your goal and if you're going to put your strategy to work, you're going to have to make investments.

Mr. Speaker, I ask my colleagues, why can't we in the U.S. Congress look at our budget in much the same way? Why do we have to have budget categories that don't distinguish between operating expenses that we may not be able to afford and capital investments that we're going to need if we're going to build productivity for this country? Instead we have budget categories that I believe are obsolete to the goal of getting this country's economy moving again.

Make no mistake. In my view the only way that we are going to solve the budget crisis of this Nation is through economic strength and productivity, and, in order to achieve that, we are going to have to have an economic and productivity strategy for America that involves both holding the line and cutting spending that we do not need on the operating side, as well as making investments in productivity on the capital investment side.

Now we all know, because we have heard from many economists who have testified before this session of Congress, that there is a direct relationship between productivity and private investment from our business world and public capital investment. There is a direct relationship. As my colleagues know, there are all kinds of theories that float around this place, trickle-down, and supply-side, and this tax scheme and that tax scheme.

□ 1300

But we know from experience that if you make capital investments that are going to make the ground on which business operates fertile, you are going to generate private investment. That road, that bridge, that rail system, that sewer line, that water system, that good education system, that first-class training system, those are public investments that generate investment from the private sector. You need both in order for the economy to work, and it does not work if you have the two sides pointing fingers at one another, blaming one another for the collapse of

the economy. Both sides have to work together.

This is not a radical idea. We heard in testimony by the Economic Policy Institute of Washington, DC, the testimony of the president of that economic institute, Dr. Jeff Faux, that while Japan was investing over 5 percent of its gross national product to these basic public investments, basic public capital investments, we in the United States were investing less than 1 percent in our infrastructure, our public capital infrastructure.

In my State of Maine at Bates College a professor of economics by the name of Dr. David Aschauer testified in a recent study that he did that if this Nation were to maintain its level of public capital investment at the same level that we made that public capital investment 20 years ago as a percentage of our gross national product, and we continued that public investment right through into today, this would be the result, according to his study. Productivity growth in the United States would be 50 percent higher than it is today; the average profit rate for our businesses would be 22 percent higher; and the rate of private investment would be 19 percent higher than it is today.

In other words, we are being denied the benefit of strong, robust economic growth today, because the wrong decisions about public capital investment were made yesterday.

My point to this Congress as we discuss our budget is that our children and our grandchildren are going to suffer even more tomorrow if we fail to make those critical public capital investment decisions today.

Now, we all may differ as to exactly what those capital investments would be. We all may differ as to what the key might be to economic growth and productivity. But the fact of the matter is that if we restructure our debate in terms of meeting clear goals for America, in terms of economic strength and productivity, and we are not afraid of public investment as a vehicle to get that economic strength and productivity, we could engage in that kind of open debate without the ideological blinders that so often appear on the floor of this Chamber and without the partisan political fingerpointing that oftentimes takes us away from the point of a budget debate that is directed toward the strength of this economy.

When you talk about clear goals for America, economic goals, directions of where we must go, just like that business, we need to have a business plan based upon clear goals. One of the words you hear floating around here, or terms floating around the Congress, is "industrial policy." There goes industrial policy.

We cannot have industrial policy, because industrial policy means that the

Government is deciding who the winners and who the losers are going to be in our economy. We need to have a government that is totally divorced of those kinds of decisions and totally divorced of economic activity.

Well, the reason that our major economic competitors are doing so well is because they do not spend hours and hours haranguing about the term "industrial policy." They understand that unless the Government has a clear vision and a clear goal and works cooperatively with the private sector, their nations are not going to be able to compete as effectively as they might. So they work together and they establish areas of their economy that they want to be second to none. They make investments in the infrastructure necessary to drive that economy, and they make investments in their children's education and training and retraining of their workers. Finally, they generate a direct dividend on that investment through their productivity and growth.

Now, we can stand here all we want and can point fingers at them and blame them for their productivity and their growth and competitiveness in the international marketplace, or we can stop and ask ourselves, are perhaps we framing our debate here in this country in the wrong terms? Perhaps we should not be making those gross distinctions between private and public over here, and never the twain shall meet. Perhaps we should be talking about a cooperative, focused, clear debate and discussion to make those two sides work together so that we can achieve the kind of economic competitiveness that this country so richly deserves and so desperately needs.

We know that job performance rises with education. That is not debatable. We know that. We know that in the first 2 years after training, the productivity of a worker rises four or five times faster than their rate of compensation. That is productivity. And we know that investing in smaller class sizes in our elementary schools and our secondary schools increases the reading and math scores of our children.

But we also know that the United States ended in the decade of the 1980's spending proportionately less on grades K through 12 education than our major international competitors.

We also know that for every dollar that we invest in child immunizations, we can save this Nation \$10 in medical costs down the road.

We know that for every dollar that we invest in preschool education and preparedness, such programs like Head Start, we can save \$5 to \$6 in future costs. Those are real savings, real budget savings. But they only occur when you are willing to make investments and when you are willing to look beyond the next election and into the

next few years and into the next few generations, to look for the return on investment that those kinds of spending decisions can make for this country.

We have a one-size-fits-all budget category, like domestic discretionary spending, that completely blurs the distinction between investments we need for tomorrow and budget items, operating expenses, that we just cannot afford to make during tough economic times.

Mr. Speaker, I certainly believe that if we are going to move forward in solving the budget crisis of this country and addressing the economic crisis of this country, we have got to start using budget categories in terms that make sense, in terms of turning this country around.

I would submit that domestic discretionary spending, quote/unquote, as a budget category, everything but the kitchen sink fits into that as far as domestic spending, does not do the job, does not make the distinction between those two kinds of investments, does not give us the chance to have a debate upon the kind of future that we are building for our children, the kind of capital investments we need for our economy, the kind of budget decisions we have to make in our operating side so we can save taxpayer dollars down the road.

We cannot even have that debate if we use budget categories and criteria that are obsolete to what I think should be the real business of this city and of this institution and of our economy—getting this Nation moving again.

Mr. Speaker, we are going to hear a lot of discussion and a lot of debate in the next few days and the next few weeks that is going to try to polarize this institution and Americans. We are going to hear about the public sector versus the private sector. We are going to hear government described as inherently incompetent and bad, or inherently good and able.

We are going to hear talk about the business sector, the private sector of this country, as being either greedy or self-serving, or the key to our salvation.

What we end up with when we debate our Nation's future and our congressional budget and our economy in those terms is a failure to see the forest for the trees.

□ 1310

We fail to recognize that the key to this country's future is not government and it is not business. It is people, and we need both business and government, and the private sector, to tap the tremendous resources of the people of this country and create the economic strength and security that we need.

That is going to mean, No. 1, taking off the ideological blinders. It means

that we have to recognize, all of us, the key to our budget crisis, that is, the key to solving our budget crisis, is through economic strength and economic productivity. We also have to recognize, no matter what side of the aisle we sit on, that to be productive we not only have to stop spending on things that we cannot afford. We also have to be willing to make investments in things that we critically need for our future.

In short, we need a productivity strategy for America. We need some clear goals. We need a clear strategy. We need a budget that is based upon that strategy and upon those goals. We need a process that recognizes both the need for investment and the need for savings in our operating budget size.

During the debate last week we heard several times the name of Adam Smith resounding in these Halls. In fact, there was one reference to capitalism in the Adam Smith sense. Adam Smith maintained that spending, public spending for public works and for education, is just as important a function of government as national defense and justice.

Ladies and gentlemen, we have ended the cold war era and find ourselves on the edge of a new era of history. Part of that new era of history means a fundamental redefinition of what national security is, what national strength is, and what international leadership is.

National strength and security and international leadership is not going to be based in the post-cold war era on the number of intercontinental ballistic missiles that we have in our nuclear arsenal. The strength and security of this country and the ability of this Nation to lead the world is going to be based upon the strength and the vitality of our economy and the well-being of our people. If we are going to do the right thing for this country in this post-cold war era and if we are going to do the right thing for our children, and if we are going to truly make this Nation the great Nation that it can become for future generations, then we have got to look beyond the next election in our budget debate. We have got to look beyond the next quarterly spread sheets when the private sector looks at investment decisions. We have got to look beyond the old and obsolete terminology of the budget categories in our current budget and look to a future that is based upon the economic strength and vitality that we so readily need.

Mr. Speaker, let us have a budget process that helps us to debate the issues as they really stand before this Nation. Let us have a process that helps us to make clear and responsible decisions not just for ourselves and for our constituents at home, but for our children and our children's children and generations of Americans to come.

It is time for a new era. It is time for Congress to lead that era.

AMERICA NEEDS SOUND TAX POLICY GOALS

The SPEAKER pro tempore (Mr. FLAKE). Under a previous order of the House, the gentleman from Pennsylvania [Mr. SCHULZE] is recognized for 30 minutes.

Mr. SCHULZE. Mr. Speaker, we have heard a lot lately about tax plans. Every President has his tax plan. The Democrats have a proposal. Everybody else has their ideas on what we should do with taxes. So I have asked for this time to spend a few minutes to discuss tax policy goals.

Usually when we talk about tax policy and tax policy goals people's eyes roll back in their heads, and they think that it is such an esoteric subject that "it really does not affect me." But it seems to me it is about time people started paying attention to tax policy goals.

When we look at these, we first of all I think have to look at the year 2010 and say, "What kind of United States of America do we want for our children and grandchildren in the year 2010?" When I do that, I want an America which is dynamically exporting. We must be an exporting Nation.

We have to be a manufacturing Nation. Service? Yes, we need service, and I am sure a lot of you have read "Megatrends" and "Future Shock" and these very learned books on the direction our economy is going and how we are inexorably grinding toward the service economy.

It seems to me that we must retain a manufacturing base. We could only export service and services for so long, and we can only be the serviceman of the world for so long.

So when we look at tax policy it seems to me that we must have a tax policy which would have as one of its goals a vital or revitalized manufacturing base in the United States of America.

If we are going to have that manufacturing base, these policy goals must include tax policies which would tilt the playing field towards exports. If we look at our tax structure today and compare it with our major trading partners, we would see that our tax policy is slanted more towards favoring imports than it is towards favoring exports. If we could tilt that playing field I would, but I would be satisfied just to level the playing field so that our manufacturers or our exporters would have the same opportunities to export their products and/or services to the rest of the world or to our major trading partners as our trading partners have to export goods and services into our economy.

I think that we must have as one of our policy goals to enhance exports from the United States. Should we be a total service economy? I do not think so. There are many who would say that we had no choice in the matter, that

we are moving toward a service economy and we will be the serviceman of the world. I think through the correct tax policies we can revitalize our manufacturing base.

One of our goals must be to have a simplified tax structure. I might parenthetically insert here that you can sort of divide tax policy into individual income taxes and business taxes. I am concentrating today on the business portion of our tax structure and tax policy.

We must look at simplicity. I remember seeing a photograph where one company, in sending its tax return to the IRS, had a stack of papers 7½ feet high. There have been many studies, one not too long ago, which showed that the cost to the businesses in America to send \$1 to the IRS was 56 cents. There are others which indicate that it costs more than that.

□ 1320

In 1983 there was an estimate that it was approximately 66 cents for each dollar of revenue raised, and given the increase in complexity since then, we have had DEFRA, TEFRA, OBRA, COBRA, an entire alphabet soup of tax changes since that time, so I saw another estimate that it costs as much as \$1.05 in some instances for every dollar that business sends to the IRS.

So we have to have simplicity. I would like to quote Larry Gibbs who is the former Commissioner of IRS from February 1990 when he said,

*** an incredible 153 separate amendments to the Internal Revenue Code in the last 15 years, an average of more than 10 separate changes each year for the last decade and one-half, each year's changes seemingly more voluminous than the last—ERTA, TEFRA, DEFRA, REA, TAMRA, COBRA, OBRA, and of course the 1986 act, just to mention a few.

Larry Gibbs, the former IRS Commissioner, said that in February of 1990.

Dr. Jane Gravelle of the Congressional Research Service said, the cost of economic distortions in the corporate tax and again I quote, "was 97 percent the size of the tax revenue." Ninety-seven percent. Is that simplicity? No, it is not simplicity.

Many businessmen have to figure their taxes three times. Nearly everybody has to figure their tax at least twice, and some more than three times. Some legitimately have to keep two or three separate sets of books, which used to be unheard of. So we have increased the complexity of our Tax Code.

Estimates are that we bring in somewhere between \$100 and \$110 billion a year from the corporate structure in taxes. If somewhere between that 97 percent and a 66 percent, say 80 percent were saved, think of what corporate America could do to modernize if we could make the Tax Code more efficient and allow them to use that money for other purposes. So simplic-

ity must be a goal of tax policy in the coming years.

We have one other problem. As a member of the Oversight Subcommittee of the Ways and Means Committee we have for the past couple of years been looking into a topic called transfer pricing. Transfer pricing is when a foreign corporation will set up a wholly owned subsidiary in the United States and sell products to that subsidiary which in turn sells them to the people of America. But at the end of a year, no matter how much business they do, whether it is \$100 million or \$500 million, they just do not make any money, they do not make any profit. The products are priced so that they just about break even.

This phenomenon is called transfer pricing. There are those who believe this is sort of a plot that the foreign producer prices his product high enough or so high when it comes into the United States that the wholly owned subsidiary cannot make a profit and, therefore, pays no taxes in the United States of America. It has been estimated that we lose in taxes anywhere between \$30 billion and \$50 billion a year because of transfer pricing.

I had a meeting with the judges of a tax court to discuss transfer pricing quite some time ago. They said, "Congressman, what you're asking us to do as attorneys, as lawyers, and those learned in the law, is to try to render a decision on those who are making what could be a wholly business decision. Suppose someone, for competitive reasons, wanted to lower his prices and penetrate a market. Now that is a perfectly legitimate way to price your products, and so you are asking us to crawl inside their mind and try to determine whether they are insidiously trying to avoid paying taxes in the United States of America or whether they are just trying to increase their market share by a legitimate merchandising method."

So it is very difficult to say to the judges and the IRS that we want them to stop this. In fact, the IRS now has a special group, and I am sure that it is costing us hundreds of thousands of dollars. We are having some success. Whether we will collect any money I am not sure. But we are having some success in proving in certain instances that transfer pricing was employed in order to avoid taxes in the United States of America.

But as we look at tax policy over the next 10, 15, or 20 years, we want to devise our tax structure so that it will not be easy for those who would perhaps try to use this device to avoid taxation in the United States, that it would not be easy for them to employ this device so that they could avoid paying taxes, and we would not have to spend thousands or hundreds of thousands of dollars chasing down documents, and in some instances sending

agents to foreign countries to look at minutes of meetings, having them translated, argue over translation. It is an extremely complex area. So as we develop tax policy goals for the year 2000 and beyond, I want to make sure that we keep transfer pricing in mind and that we develop a tax structure that would negate such machinations.

Another problem that we have seen in the past decade is a plethora of mergers and acquisitions, mergers and acquisitions which sometimes were designed for the tax ramifications alone. I think that we should discourage that type of merger and acquisition. But at the same time, we have to make sure we do not discourage legitimate mergers and acquisitions. If a company wants to purchase another company in order to penetrate additional markets or expand their lines or to round out their merchandising capability, and they intend to benefit from them, that is a legitimate goal and one that we should smile upon and say yes, we want you to do that, especially if it will make them more efficient and make them more profitable.

But mergers and acquisitions which are taken solely for the reason to either raid a pension fund or for tax ramifications or the tax writeoff ramifications of that acquisition should not be encouraged. We know that a fair number of businesses today are suffering under huge overhang of debt because of a foolish merger or a foolish acquisition.

□ 1330

So we should try in tax policy to discourage those nonlegitimate types of business activities.

We absolutely have to keep in mind, as a goal, reduction of the cost of capital. We want American business to enlarge. We want them to grow. We want them to become more productive, and in order for them to do that, they should have available to them relatively low-priced, low-cost capital.

Since 1981 the statistics show the cost of capital in the United States of America has increased by 80 percent. Our cost of capital in the United States of America is twice as much as it is in Japan. The cost of capital in the United States is 60 percent more than it is in Britain.

Why is cost of capital important? Most people, I think, even city dwellers, have at one time or another used a post hole digger, and it is pretty hard work for those who have not used a post hole digger. I think there are two types. There is an auger that you screw into the ground, and there is another that you spread the tines and dig the dirt out of the post hole. Well, a man working diligently for an 8- or 9-hour day can probably, with decent soil, dig maybe 20 post holes a day, but with an investment of capital, that same man, if you can buy a \$60,000 tractor with a

power takeoff and put an auger on it, that same individual can probably drill 100 post holes in a day, five times as much.

That capital investment, that purchase of that equipment, and when we talk about capital gains, maybe whoever invests that money to make that man more efficient is going to make a few dollars, amen, because it protects his job. I do not care how we get there, but what we have to keep in sight in our long term policy goals in taxation is to lower the cost of capital in the United States of America.

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

Mr. SCHULZE. I am happy to yield to the gentleman from Pennsylvania, my colleague.

Mr. GEKAS. As always, my colleague from Pennsylvania touches upon matters of fiscal policy and tax policy that are right on point, and his long tenure, of course, in the Committee on Ways and Means gives him that special brand of background that permits him to talk with more than just the average know-how.

On the question of the cost of capital, is not the great debate about all of these various tax plans that are being thrown around in the Capital these days, are we not missing the boat when we cannot make clear to the people of the United States that in order to fire up this economy we have got to incite people into a position, business people and investors, where they can invest, because that investment with a proper return to them, just like the gentleman says, let them become millionaires, but with a proper tooling of our fiscal policy to allow these people to invest?

Every time they invest, they sow the possibilities of new jobs. Is that not what it is all about? When we give capital-gains treatment, special tax treatment, toward these large investments, even though they may in the long run reap some profit, my gosh, God forbid profit, are they not in the process also of creating, again, the atmosphere for new jobs? Is that not what the gentleman is trying to get across? Is that not what we who support capital-gains formation and lower interest rates, the cost of capital, are we not interested in new jobs thereby?

Mr. SCHULZE. The gentleman is exactly right, and I thank him for his addition.

Mr. GEKAS. I thank the gentleman for allowing me to speak on the subject, and I would like to join with him in whatever initiatives the gentleman wishes to put on the books.

Mr. SCHULZE. I thank the gentleman for that. Yes, he is right, that the reduction in capital gains is one way to lower the cost of capital.

There are other methods of reducing the cost of capital. The targeted investment tax credit is probably maybe

even a more exact method of increasing capital in specific areas, or lowering the cost of capital. Some of our foreign trading partners have other methods of reducing the cost of capital that probably would not apply to us in our free society.

Some of them dictate or control the amount of interest paid on specific saving documents or instruments. The investing people in the United States of America would not stand for that type of control, but if a government wants to say the workers of America can invest in one type of saving instrument and on that type of saving instrument will be paid a 3-percent interest rate and nothing higher, you can see that would create a huge poll of low-cost money for those who wish to borrow it. There are devices like that available to other nations around the world which are not available to us in the United States of America.

As we look at our long-term tax-policy goals, I think the reduction of the cost of capital is one of them. Now, along with that, we want to encourage modernization and encourage more efficient production and productive facilities.

You might say, is that not the same as reducing the cost of capital? Well, not necessarily, because there are other ways to do that.

In the Democrat tax proposal, they expanded the dollar amount of expending for small businesses. I think that went from \$10,000 to \$25,000. Such a move would encourage, in a small way, modernization and increased productivity on a relatively small scale, but imagine the productivity increases if we developed a tax policy which would allow every business in America to expense every purchase that they made, that if a steel producer wanted to buy a new rolling mill, if they wanted to put in a new electric heating system or melting system, if they wanted to modernize a rolling mill or an integrated operation and they expense that cost immediately, write it off that year, the incentive that that would be to modernize, it would be a tremendous incentive, and as I look at tax policy for the future, we want to do everything we can to encourage modernization, because that will tie in with our other goals of being an exporting nation, of increasing our productivity, and the bottom line is, of course, to provide employment opportunities with the opportunity for upward mobility to all of our people.

Are we going to do that if we are the servicemen of the world? Well, we might if we also at the same time, and the previous speaker here this evening was talking about this, this afternoon, was talking about education, and that is a very important component of our society.

But I think we have to provide jobs for everyone in the spectrum, and we

do have to enhance education, because we are going to be in a competitive world, but we also want to provide jobs, or at least the opportunity for a job, for everyone in our society.

□ 1340

And so when we do that, that means that we have got to encourage the enhancement of productivity, we have got to encourage investments in new, modernized facilities, we have got to do it across the board.

So, what did we talk about? We have talked about a goal of a year, somewhere between 2000 and 2010, of being a dynamic manufacturing society with job opportunities for all, by being an exporting nation exporting our goods and services around the world, with markets open to us around the world.

We have talked about enhancing our service economy, yes, along with our manufacturing base. We have talked about simplification as a tax goal. We have talked about the leveling of the playing field in international trade so that our producers have the same opportunity to sell into foreign markets as foreign producers have to sell into our markets.

We have talked a little bit about transfer pricing again; that is kind of dampening the opportunity for foreign nations to game our structure, to game our systems, so that they avoid the payment of taxation.

We have talked about reducing the cost of capital, we have talked about encouraging modernization, increasing productivity. We should do all that, remember, to protect our basic programs, such as social security. We have got to enhance and protect our social security system. If we do all that, it might require something that I have called economic patriotism; we have got to stand up and say what is good for the United States of America, what is good for our children and our grandchildren, what will provide them with the same opportunities that we have had because of those who went before.

So, I would hope that all of us on both sides of the aisle would perhaps give some thought to tax policy goals, and I would hope in future weeks that I will perhaps continue this and be a little more explicit in each of those areas and see if we can work together to develop a package which would achieve those goals and perhaps increase a large degree of economic patriotism.

DEPOSIT INSURANCE REFORM ACT OF 1992

The SPEAKER pro tempore (Mr. FLAKE). Under a previous order of the House the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, I realize today that the Speaker pro tempore is performing a duty over and above

the call in that he has volunteered to preside during what we call special orders or the closing proceedings of the session of the House.

Mr. Speaker, today I rise because of the fact that I have introduced the Deposit Insurance Reform Act of 1992.

Mr. Speaker, I will append at the end of my statement the bill which is now known as H.R. 4415, to be included in the RECORD.

Mr. Speaker, the fact is that I have been a member of the Committee on Banking, Finance and Urban Affairs since I had the great honor of being elected to the U.S. House of Representatives, about 30½ years ago, when I assigned to the Banking Committee, and have remained there since then. Of course, since 1988 or 1989, officially on January 3, I have been discharging the functions of the chairman of that committee and also chairman of the Subcommittee on Housing and Community Development, of which our distinguished Speaker pro tempore is one of the most effective members, from New York, on both the subcommittee and the full committee level.

Today what I have done is introduce a reform that I have been seeking since the last Congress, which I think is the foremost need if we are going to prevent an out-and-out collapse of this unique but somewhat—in fact, very much—distorted system known as the deposit insurance fund system.

Now, it seems to me that after what we have been experiencing and what some of us, I do not use the word prophesy, because it was not a prophesy, it was a prediction based on facts, based on what we who would be interested in these statistics as members of the Banking Committee were charged with knowing. So, I have been speaking out on this subject matter for quite a number of years and also because I recall vividly as if it were today, effective in 1980, the increase in the amount to be insured in an insured depository institution from \$40,000 to \$100,000.

Through sheer accident I happened to have been on the floor that afternoon; there were no more than 10 Members present. And the reason I was here was the same reason I am here today. I was waiting to be recognized on the special order that day, when I noticed that the chairman of the subcommittee then, and the following year he was to be chairman of the full committee, but he was chairman of the subcommittee that had jurisdiction of the subject matter because that subcommittee is the Subcommittee on Financial Institutions, Supervision and Regulation. To my amazement, I was sitting right in front of where I am speaking here when I heard the gentleman, the subcommittee chairman, ask for recognition and asked that the Senate bill, I forget its number, be taken from the Speaker's desk and brought up immediately for consideration.

When I heard that it was the Senate bill that had been entertained in the Senate in obedience to one that the House had passed but which I knew the Senate was appending nongermane matter to, as they can under their rule, increasing the amount of coverage, well, I knew we had not had any hearings on it. So, I went to the then-staff director who accompanied the chairman and asked him, and he smiled. I said, "What is this all about?" He just smiled. There were no copies.

So, I had to go to the desk and obtain the copy. Well, while I was looking at it, the motion was made under a unanimous consent request to go ahead and accept the Senate amendments and proceed otherwise in accepting the Senate bill and sending it back to the Senate.

I was amazed when I was reading it to find that obviously the main thrust of that request was to increase the insured amount of deposits from \$40,000 to \$100,000. I knew we had no hearings on the matter, had no evidence or anything.

But I was particularly sensitive to that because we had had two failures that at that time were very sparse, other than in some circles received very little attention. One was a Franklin National Bank. It was a harbinger, it was a shadow of events coming in the future.

There you had the same combination that we have had since then, but except now in an endemic profusion and in an environment that is hostile to stability where we need it the most, which is in our financial structures and entities and markets.

Nevertheless, it so happened. That was the only consideration that was ever given to that jump-rise. Now, I was not interested in the amount. I knew the argument that inflation this, inflation that, and that it was about time that some increase be given.

□ 1350

When the House bill passed out, it had an increase from \$40 to \$50,000. But when the Senate appended that incremental increase, that, of course, aroused my concern.

Now the reason I was concerned, to repeat, was that these banks that had failed through a combination of things; the Franklin Bank was the biggest one at the time, and there was nobody assuring me that the same could not happen again. The thing that disturbed me was that the Federal Reserve Board, at a net cost of several billion dollars, or almost several billion, at least a billion and a half, which was really up to that time quite unheard of, actually attempted to bail that bank out, and I raised the question of why and is this the function, as I am raising the question now. Is it the function of the insurance fund to go out and hand pick which institutions it would not only

give help, in the sense of giving them a direct outlay, allowing them to stay alive, even though they are dead as a doornail, and, at the same time, for the first time—now up to now I have been able to come before my colleagues and say, "Look. Now that we have all these failures, there's no way we can get around keeping the word of the government," and that is providing the money to the funds; first, the S&L fund known as FSLIC, and now, of course, the BIF or the bank insurance fund, so it can pay out the depositors.

What the people do not know, and many of my colleagues seem to be amazed when I tell them, is that the way they have been paying out has been to pay the uninsured. That is those that have money, a hundred thousand. Well, how many of those are there around? The average deposit in our country is not even \$9,000. That is average, median average. So, where is all that payout money going?

So, we had the staff perform a study, a very valuable study, more than a year ago in which we brought out that the FDIC and the others—well, the FDIC as agent, which we made it, closing out S&L's as well, was paying out 99 percent of the depositors. Well, what does that mean? If the average deposit in our country is less than—it is around \$8,500, then who is getting that money? Well, it is the sophisticated professional agents of these bank deposits who are sharp enough to know when to pull and who are sharp enough to know that they are going to get their money even if it is over a million or \$2 million.

Mr. Speaker, that was never the intent of Congress then, or since, or now. Never have our Congresses passed a law or amended a statute saying that more than that stated amount should be paid out. But it has been done, it continues to be done, and what I want is to address that, as I have wanted for 3 years and have not succeeded.

Mr. Speaker, this is a real issue, yet that is not what the editors of the newspapers tell us is the issue, and then we have, of course, some segments of the banking industry who feel that, unless they are protected some way; that is what they call small, and in some cases the definition of "small" varies from the big ones because of the so-called doctrine of too-big-to-fail, which shortly after that 1980 act incrementally, exponentially, the amount of the covered insurance deposit happened in the shape and form of the Continental Illinois of Chicago where it collapsed in a matter of 3 days when the Japanese and the German investors pulled \$8.3 billion out of that bank in 3 days. It collapsed. That was the immediate cause.

The underlying causes were many and manifold, but it was then that Chairman Volcker, the famous Chairman of the Federal Reserve Board—I

was excoriated because I dared put in an impeachment resolution to Mr. Volcker. Well, I did it because I wanted to draw attention to what was going on. I wanted to draw attention to how there was this incestuous relationship between what was supposed to be the regulator and certain segments of the banking industry. Not all, just the top. And I pointed out incessantly that the Federal Reserve Board in its wanted independence, when it wants to, is actually not a Federal agency. It is a creature of an obedient tool, the commercial banking system of our country.

But in reality what that translates to is that it is obedient, and it is sensitive and responding to the needs of those top seven or eight big, giant, megabanks we have had, and now with the mergers this country is getting we are headed to the greatest concentration of financial and banking resources in the history of this country.

Mr. Speaker, this is the basic issue since the founding of this Nation, and we are witnessing a complete obfuscation of that sort of fear or that lack of confidence in great overweening concentrations of that kind of power without accountability, and how do the people get accountability other than through their elected agents and representatives, both in the Congress as well as in the White House? Where else can they go?

But I am sorry to say, because it is the proudest thing I can say with my membership to this great deliberative body, but it is sadness that I feel overwhelming to say that both the Congress and the President seem to have abdicated the Federal Reserve Board as visualized, the Federal Reserve as the fiscal agent of the Treasury. That is not the case.

Just look at who is printing our money. It is the Federal Reserve Board. Every dollar bill or note, every five-dollar bill or note, ten-dollar bill, twenty-dollar bill, fifty-dollar bill, hundred-dollar bill does not say Treasury note. It says Federal Reserve. That means that we are at great risk.

Mr. Speaker, it used to be called Government printing presses pulling out money like some popcorn machine spewing popcorn. Today nobody says anything, and we cannot because there is no question about it. The whole premise of the setup visualized by the 1913 Federal Reserve Act has been perverted.

The reason I introduced an impeachment resolution was very simple. It was to bring attention to the fact that there was no accountability, that the destiny and the future of the financial and banking freedom of the American people was being lost. It was losing control and has. There is no use arguing about that.

Mr. Speaker, it has reached a point where a person such as I has to come

up here vainly attempting to bring back to the prime congressional intent a reform of the deposit insurance system. It seems to me that I am on the defensive. How many allies do we have in or out of the Congress? In or out of the committee? How many editorials have come out saying—all I know is one newspaper in Florida. Why, when we tried to offer an amendment to just minimally reform this abuse, our opponents flashed and had hundreds of copies of the Washington Post editorial saying, "That's not the issue you ought to be worried with. You ought to be worried about powers. You, the Congress, will have to give the banking system powers to restore them to health."

Mr. Speaker, this is what we are still hearing, as if it were up to Congress, and, after the fiasco and the horrible dilemma that has been created by that mischievous, fallacious conclusion reflected in the 1980 financial depository institution, the regulatory act and the 1982 so-called Garn-St Germain act, it is exactly what they got.

□ 1400

That is what I said then. I was the only one in the committee who was against that. I was the only one that went to the Rules Committee to argue against what the chairman was presenting. How do you think I felt arguing before the Rules Committee and having my chairman sitting behind me cursing me underneath his breath? The only danger there was that I would lose my pink temper and turn around and knock his head off. Fortunately, I did not, and I am glad I did not.

But the proof is the dilemma we are in. It is not a question of saying, "I told you so." That has never been satisfactory to me. I feel it is incumbent upon us who are charged with knowledge to do more than just speak up, and that is to try to bring about some effective change to what is obviously leading this country and its people down the primrose path of financial and economic serfdom and slavery. We have gone pretty much that way.

Not to get into tangential issues, but as proof patent of how complacent and sleepy-headed we are, where are all these financial experts? Where are all those who wrote those editorials? Where were they in 1980 and 1982? The pitch they had, together with all the industry and the Members of Congress, was that "you've got to pass these laws and give them power so they can be saved."

I said, "You're not saving them. You are dooming them. What you are doing is opening the sluice gates to the old speculators who all through our history have been present."

Why do we have laws? Why do we have government if it is not for the fact that it is a tacit admission that we will always have creditors, we will always have wolves in human form?

We have got to regulate. We have got to watch. When we give the bankers the power to create money or credit, do you mean to tell me that we should not regulate? The banking class is the most privileged in our country. Under our fractional reserve system it has the power to create money, to create credit.

What am I asking for in this bill? Very simply, it is not even to totally protect all depositors. Its purpose is to protect the small depositors, the bulk of those who do not have the means to investigate the safety of a given investment or to diversify their risks across a variety of investments. The deposit insurance system has been distorted. Not only has it been distorted, it has been out-and-out corrupted, and it has become depleted and insolvent.

I pointed this out years ago. How can we call this an insurance fund if we have allowed over 3 trillion dollars' worth of deposits in commercial banks alone? I am not counting credit unions or S&Ls. That is just the commercial banking system. That is over 3 trillion dollars' worth of insured deposits, with a broken fund, insolvent and bankrupt. Is that an insurance fund?

I have been saying this for years. The first time I came on this floor and brought out the statistics which for the first time revealed that we had the potential for disaster was in August 1979. Who listened? Well, I will give some credit, and may his soul rest in peace. There was only one who apparently looked at the RECORD or saw that speech when it was brought to his attention. We did not have TV coverage then. I have been using what we call this great privilege of special orders since the first time after I got sworn into the Congress 30 years ago, to be exact, 30 years and 3 months to the day.

So when you have and you continue to get an expansion in the base of exposure of that fund or any fund, you do not have to be an accountant to know it is bankrupt if the extension is constant as to its exposure and liability and the other side of that ledger, that is, the amount in the fund is not protected or increased in accordance.

So I brought that out in 1979, and I brought out another fact. I brought out in August 1979 the fact that the leading banks in New York in a matter of 1½ years had gone from about \$3 billion to over \$47 billion in loans at that time to countries that I knew could not pay. Of course, it is always greed. I was then a subcommittee chairman, and I was for 10 years a chairman of the Subcommittee on International Finance. Now, many of these special interest lobbyists are powerful, and they prevailed for many years. They could not fight my election to chairman 3 years ago, but they were there. They did try to make some movement in that direction, but up until then what they

would be content with doing was saying, "How could this guy even be considered as a potential chairman? Why, he has no expertise in banking. He never sat on these subcommittees. His expertise is in housing."

Of course, they overlooked the fact that I was the progenitor and the cause of why we got the first international banking law to protect the people, at least minimally at the time, in 1978. And they forgot, except those who are the gullible or those who want to believe it or could swallow it, that if you are a member of a full committee, even though you may be assigned to a certain segment of subcommittees, you are on the full committee and the full committee has to act on every action of the subcommittees, so I would have to be sitting there with every flow of legislation coming out of the other subcommittees. But on top of that and then, of course, being malicious, they never were about to go to the RECORD and see wherein I had participated.

In any event, that is still the case. I still have to face the animosity and the malice of those who are entrenched. We are dealing now with several trillions of dollars on the table, and we know that when you have that kind of money, you are going to have a lot of things happen. The only thing up to now is that we have these powerful segments and we are in a pluralistic world, thank God, but they are so powerful and they are in such a conflicting environment that they cannot get the muscle to ram through a 100 percent in one account without the other side showing a kind of negativism or neutralizing. But what happens is that what the Congress and the committee should have been doing for more than 30 years never got done, and that is the constructing, the creation, the reshaping, and the restructuring of our outworn, contradictory, overlapping, ridiculous so-called system of regulation, regulatory control. Part of it goes back to right after the Civil War. Obviously, after 1945, and particularly after 1960, it was our duty on that committee to face the facts. It was a drastically new world. The new technological expansion of knowledge, like instantaneous electronic communication, was bound to impact on our banking system.

□ 1410

How would we handle it? What was going to be the impact on the dual system, the State and Federal banking systems?

Those are the issues, what kind of banking system do we want for America? Do we want to have one like in England, France, or Germany, where you have just three or four biggy, biggy banks? They call them all purpose banks, or full service banks.

This is what some want here. Fortunately, the bulk of our banks are not

interested. In the meanwhile, to even compound it and make it worse, the banks are complaining, and so are other depository institutions, because of what they call new capital requirements or reserve requirements.

Some of them think maybe the Congress had something to do with it. Of course not. Most of what they are complaining about now was a result of an international agreement, the so-called Basel Agreement, from Basel, Switzerland.

But what was that agreement based on? They called the meeting for the purpose of having convergence of capital standards.

Do you mean that a rookie from the Federal Reserve Board was sent over there to negotiate with the Bank of International Settlements, the BIS, the real power in this world ever since after World War I, and of which we are not a voting member?

That commission that forged the so-called agreement on convergence of capital standards was called the Cooke Commission, named after the Bank of England official.

But they snookered the United States. Did the Congress have anything to do with it? No, we did not. This is an Executive action. It was something the Federal Reserve Board, as one of the chief banking regulators, did, and, of course, also the monetary agency.

In other countries they would say it is a central bank, but it is not really. Because if we take Germany, where you have an entirely different tradition, culture, historically and everything else, the German bankers belong to what they call a private bank, like maybe the Bundesbank is a central bank, but you also have three private banks.

But those bankers are not like ours. They look upon themselves also as ex-officio policy partners of the Government.

The reason we are having all these scandals on some of these so-called foreign banks, which is what this is also about, is, that unlike our system, most of those banks are government owned.

Do we want to have that system? What is it America needs in the way of a banking system today? Do we want to be headed to this great, great concentration of banking power? What do we need?

What about the dual system? There are some Members in Congress, and some without, who say their day is gone. The day of the State-chartered banks and all of that should have been finished.

Well, is that what we want? I am just one. I am not the committee, I am just the chairman thereof, and I am not smart enough to tell you how it is. All I can tell is that those areas in which we have clear and preeminent jurisdiction, and therefore responsibility for at least trying to be knowledgeable, is not

to defend the banks. What has happened over the years is that even editors seem to think that the Congress is here at the beck and call and for the convenience and aid of the bankers.

Well, let me say we are not. At least I have never looked at it that way. We are here to look after the greatest interest of the greatest number, and in banking matters to the safety and soundness and stability of our system.

America has always had to have a stable, safe, and sound banking system.

Now we have the shock waves, of what? Puzzlement, fear. Fear is no good. Fear is borne of ignorance. But if you fear long enough, you are going to do something. That means loss of confidence.

No system, whether it is ours or the world's, or European, can stand the loss of confidence. Particularly banking. It is based on confidence.

It is just like our public service. I do not have to tell my colleagues that that very, very fine crystal known as credibility, confidence, once lost, once shattered, is impossible to regain.

We know that we can go out and tell one thousand truths. But get caught in one lie, and you have lost credibility.

The name of the game is that, confidence, credibility. If the people lose confidence and credibility in the safety and soundness of this system, what are you going to do? Work out a crisis?

I do not think we are responsible if we wait and not anticipate. I have always been a firm believer in anticipation, anticipatory preparation, so that at least you would have some pincers to handle that hot potato that you know full well is going to come.

Now, in this particular bill here, actually I just feel so pathetically ashamed, because it is minimal. Most people think of deposit insurance coverage as being limited to \$100,000. But a family of four can obtain up to \$1.4 million in insurance coverage in an unlimited number of institutions.

That is what they call disaggregation of accounts. That is the fancy word for that.

The indiscriminate bailing out of insurance coverage has allowed banks and thrifts to gamble with the taxpayers' money. In fact, they have made the deposit insurance system an entitlement program, entitlement for the banks and their well-being, rightful or wrongful.

This legislation takes one small step toward what? What is the law? Where did this doctrine of "too big to fail" come out of?

Well, in the case of Continental, where the Federal put in \$6 billion, if this had happened in another country we would have said that country had nationalized that bank.

But not us. Oh, no, it was private enterprise. We are going to keep it private.

But who? All of the biggies that have the muscle and the political influence.

What about the little ones? Yes, they have gone out.

In my State of Texas we have had more banks fail than S&L's, and that is the record throughout the country. Of course, there were many more banks. We have lost some 5,000 banks in just less than 2 years in this country.

Now, do you mean we should sit here and say, oh, well, it is going to all come out all right, if we just whistle past that cemetery, and just say to ourselves it will be all right if we just sit and wait?

It is not going to be all right. It is going to be everything but all right.

At no time has this Congress approved any amendment empowering any regulatory agency to pay out over that stated legal sum in the law. But it started in 1984, with Continental Illinois. Mr. Volcker announced that he would use every single power and resource this country had to save that bank and others. He came before the committee. I had 5 minutes. I asked him one question.

□ 1420

I said, "But, Mr. Volcker, to what extent will you go if you have a succession of big banks failing?"

He said, "I will use every single resource of this country."

This is on the record. This is in the printed hearing of that day's occasion, not what I am saying now in retrospect.

So I then tried to get the chairman to have hearings on the legality of the empowerment of a regulator to do that and pay out more than \$100,000. That deal also enabled the man or several of the men who had led that institution to its downfall to go out with golden parachutes of \$2 million a year pension. It was not until Chairman Seidman came aboard in 1987, that they put a stop or at least what they could and to the extend they could to the golden parachutes. But the Continental Illinois, look at the record. I could not prevail.

I could not prevail because then as now in some areas, marginalize him. If you ignore him, you know in our country you can have censorship more than like they do in a totalitarian country, or even in England, they have a Ministry of Information and Censorship, as we saw clearly when we had the Falklands incident. But in our country we have the first amendment.

We must remember, the mother country does not. In our country, though, if an event or an occurrence is not reported, how do people know? Is it not then a nonevent? And this is what has been happening.

In some cases, I do not blame the newspaper or the news media because in our system and particularly in the Congress, unless there is debate, unless there is the clash of opinions, it is difficult for the outsider, even a very

knowledgeable newspaper reporter, to really fathom.

I am not completely exculpating our news dissemination agencies from informing the people as they should have. I brought out the fact that when the Hunt brothers of Texas, the billionaires, tried to corner the silver market, of course they did what the Federal Reserve agents did.

They went over to England where for 500 years the silversmiths and goldsmiths in England have, I think they know what they are doing, after 400 or 500 years. And the Hunt brothers, in their naivete, thought they could corner the silver market.

In 1869, after the Civil War, Jay Gould and Jim Fiske tried to corner the gold market. And at that time the corruption was rampant, too. And they used President Grant's brother-in-law, Mrs. Grant's brother, and what happened was you had that Black Friday of 1869. They caused the depression at that time.

Well, we had not too much different except this time it was international, the Hunt brothers.

Now, the bad part was that in order to try to corner that silver market, the Hunt brothers tried over \$200 billion worth of banking resources. This is where we have gone wrong in our country. Banks used to be chartered. But since the 1950's and the merger acts, banks have been founded on our systems of banks other than through chartering.

The old charter laws used to be very basic. They would say, a bank, if needed, shall be chartered for public need and convenience, not for profit. Of course, you are going to make profit in business. Business without profit is like candy without sugar. We know that.

But what I am talking about is, they fundamentally stated the basic purpose for a bank charter, the great privilege to create money in our country. And that was for public need and convenience.

What public need and convenience? To fire and stoke the engine and furnaces of industry and manufacturing and small business. Our banks retired from that after the 1960's and their so-called transnational developments. The Japanese never have stopped investing in their own industry. Our bankers have. Our bankers went into the high leveraged buyouts.

And like the case of the Hunt brothers, they lost their shirt. And so I put the impeachment resolution after Mr. Volcker, Chairman of the Federal Reserve Board, met in what they thought would be a secret meeting in a Florida hotel with the Hunt brothers and the chairman then of the Citibank or Citicorp, the Walter Wristin, who of course was trying to protect the bank's exposure in that ill-begotten deal.

Well, the rest is history. The stock market is in the dilemma it is because

all those factors that were in the equation before 1932 were coming into place as early as the late 1970's and that is what I reported in my special order of August 1979. And then-Chairman Arthur Burns called me the next day after the RECORD was printed and invited me to have breakfast with him the next morning, and I did.

And I knew we were headed for trouble when he wrung his hands and he said, "You are right. And when I tried to tell the bankers at their convention in Honolulu, they almost ran me out of the room."

And I said, "You are chairman of the Federal Reserve Board. You can do a lot about it."

He said, "I don't know what I can do."

I said, "Yes, you can. You have section 14(b) of the Federal Reserve Board. You can demand the reserves."

And I said, "In this case where they are lending Peru," I said, "Peru, it won't even pay the interest."

And he said, "Well, I must say, I agree with you. You are right."

Well, when I walked out of there and this powerful man saying there was not anything he could do, I knew we were headed for trouble. That was August 1979.

Now, what I did was say, "Look, I have added the capitalization structure." That is, what is their capital, their assets in each of those banks? I said, the total assets of these 9 banks is less than their exposure on those foreign country loans.

I said, "Now, I am not a banker, but gosh, how can these big-shot bankers expose that way?"

The answer at that time was, "Oh, this is Arab oil money recycled." I said, "I do not care what it is. These are deposits that have been placed in these banks that you are lending out. You are not acting as an investment adviser to an Arab sheikh. He has got your deposits, and they amount to quite a considerable number of billions of dollars."

Anyway, I hope and I trust that somehow even in an election year, we can get some attention to this desperately needed act of reform that will reemphasize the fact that if the regulators usurp their power in the too-big-to-fail exertion of that doctrine through them, they did so ultra vires, that is, beyond their scope of proper authority.

I could never get my predecessor chairmen to have hearings on that, nor could I ever get the proper legal authorities of the Government. After all, where does one go to ask that question and evaluate it?

□ 1430

The Congress made much progress in limiting the scope of deposit insurance coverage and the attendant liability of the insurance funds when it enacted

the Federal Deposit Insurance Corporation Improvement Act of 1991 last November. That bill, to a certain extent, limited the too-big-to-fail policy. I say "to a certain extent." It went long way in doing that, and the only reason we were able to get it was because we had those circumstances happening last year in which the Federal Reserve Board had put in \$100 million to the failed Lincoln Savings and Loan. Can you imagine?

We got that, but we also have the least cost resolution of failed insured depository institutions, limited the availability of pass-through deposit insurance coverage for bank investment contracts and other pension plan deposits, and restricted the ability of institutions to accept broker deposits. The insurance coverage amendments contained in the Deposit Insurance Reform Act of 1992 legislation are necessary, this is this bill, to further reduce the liabilities facing the Federal Deposit Insurance Fund and the American taxpayer, and to restore the congressional intent.

Mr. Speaker, I will include at the end of the remarks the Deposit Insurance Reform Act of 1992, a section-by-section analysis, and H.R. 4415, for the benefit of my colleagues who will find it in the RECORD tomorrow.

H.R. 4415—DEPOSIT INSURANCE REFORM ACT OF 1992, SECTION-BY-SECTION ANALYSIS
SECTION 1. SHORT TITLE

"Deposit Insurance Reform Act of 1992"

SECTION 2. AGGREGATION OF DEPOSITS

This section limits Federal deposit insurance to \$100,000 per individual per insured depository institution. Specifically, the section amends section 11(a)(1) of the Federal Deposit Insurance Act to require the Federal Deposit Insurance Corporation (FDIC) aggregate all deposits registered under the same taxpayer or employer identification number for purposes of determining the \$100,000 limit.

Joint accounts must be attributed equally, unless otherwise specified in account records. Revocable trust accounts must be attributed to the grantor of the account. Deposits maintained by an agent, custodian or person in a similar capacity on behalf of a principal must be attributed to the principal.

New section 11(a)(1)(C)(v) permits the FDIC to issue regulations to make other attributions consistent with the insurance purposes of the Federal Deposit Insurance Act.

The Act requires all deposits to be registered under the taxpayer identification number or employer identification number of each depositor.

The effective date of the amendment is January 1, 1995.

Note that section 11(a)(3) of the Federal Deposit Insurance Act, providing separate insurance coverage for certain pension and profit-sharing plan deposits and IRA's, is not amended by this Act.

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 "Deposit Insurance Reform Act of 1992".

SEC. 2. AGGREGATION OF DEPOSITS.

(a) IN GENERAL.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(1) in subparagraph (B), by striking "(C) and (D)" and inserting "(C), (D), and (E)";

(2) by redesignating subparagraph (D) as subparagraph (E); and

(3) by striking subparagraph (C) and inserting the following new subparagraphs:

"(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor or by others for the benefit of the depositor, as follows:

"(i) Deposits registered under the same taxpayer identification number or employer identification number of one depositor shall be attributed to that depositor.

"(ii) Deposits registered under the taxpayer identification number or employer identification number of more than one depositor shall be attributed equally, unless otherwise specified in the deposit account records, among those depositors.

"(iii) Deposits consisting of a revocable trust or similar account shall be attributed to the settlor or grantor of the deposit account.

"(iv) Deposits maintained by an individual or entity (including an insured depository institution) acting as an agent, custodian, nominee, conservator or in a similar capacity on behalf of a principal (other than an insured depository institution) shall be attributed to such principal.

"(v) Such other attribution to a depositor as the Board of Directors determines by regulation not to be unduly burdensome and costly to calculate; provided that the depositor has control over the deposit account and that such attribution would be consistent with the insurance purposes of this Act.

"(D) DEPOSITOR IDENTIFICATION.—

"(i) IDENTIFICATION NUMBER.—All deposits shall be registered under the taxpayer identification number or employer identification number of each depositor.

"(ii) CONSIDERATION OF ADDITIONAL INFORMATION.—For the purpose of aggregating and attributing deposits under this paragraph, the Corporation may consider additional information contained in the records of the insured depository institution or made available by the depositor."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1995.

INCREASING DANGER IN THE NAGORNO-KARABAGH STRUGGLE

The SPEAKER pro tempore (Mr. FLAKE). Under a previous order of the House, the gentleman from Utah [Mr. OWENS] is recognized for 5 minutes.

Mr. OWENS of Utah. Mr. Speaker, I do not often presume upon the time of the House, but my return last evening from Armenia has led me to take this time to discuss what is a very grave and serious situation.

I just returned last evening from a 48-hour visit to Armenia, and conversations with ranking public officials, including President Levon Ter-Petrosian, Prime Minister Gagik Haratunian, and several members of the Armenian Cabinet. In addition I have spoken with a

great many other officials and dozens of residents of that beleaguered country. I tried without success for 2 days to visit the enclave of Nagorno-Karabagh by helicopter, but weather and military action combined to make that impossible, to my great regret. Just before I arrived, Azeri forces shot a helicopter evacuating wounded Armenian women and children.

My assignment as a member of the Foreign Affairs Committee Subcommittee on Europe and the Middle East was to ascertain relevant facts and information about conditions there. But my first humanitarian concern was the well-being of the people of that country, more than 3½ million people, who have been victimized for many years by a cruel blockade of most of their food, fuel and other essential resources by the Azerbaijani Government in complete derogation of international law and the charter of the United Nations. It is an irresponsible, reprehensible attempt to bring improper pressure on behalf of their own military action by raising dramatically the level of human suffering among Armenians in both Armenia and Nagorno Karabagh.

Stories of a fierce battle in and around the Azerbaijani town of Khojaly in Nagorno-Karabagh, said to have occurred on or about February 26, were beginning to circulate in the world's press just before my departure from Washington on March 4. Gruesome pictures and reports of the alleged killing of Azeri women and children by troops of the Nagorno-Karabagh Armenian army and irregulars were being publicized. This became an important issue for me to explore while in Armenia.

I conducted many interviews and held many conversations while in Armenia about the grave charges being made, surveyed and read much of the world's press and spoke at length with several newspaper and television correspondents who had actually visited the town of Khojaly shortly after February 26, and interviewed military wounded who had been in the area.

As a result of that inquiry, I have come to believe that a serious breach of human rights did in fact occur at that time, that innocent Azeri women and children were killed, apparently by Nagorno Karabagh Armenians on or about February 26. The number killed has been grossly exaggerated; still, virtually all objective observers place the number of dead at approximately 125 to 200, with at least two-thirds being Azeri regular and irregular army troops.

But whatever the number of dead and wounded, a great tragedy has occurred in what is a continuing sorry and pitiful litany of outrageous incidents of cruelty in that struggle for control of that small mountainous area in Azerbaijan populated by Armenian ethnics.

We must all condemn the gross departure from universally accepted standards of war: that the lives of innocent nonbelligerent men, women and children are to be protected. There is little enough of military warfare which bears any resemblance to civility. That practice, above all others, must be respected and departures from it must be condemned.

For those of you who are not familiar with recent events in Khojaly, you should know that just as Baroness Cox of the House of Lords warned us, the Azeris began launching hundreds of GRAD missiles from Khojaly into Stepanakert, the capital. This shelling leveled approximately 50 percent of that capital city, population 80,000. The shelling destroyed hospitals, homes and the Parliament building and killed unknown numbers of its Armenian residents.

If the killings were perpetrated by Armenians, as it appears, they were undisciplined troops from among the Nagorno Karabagh Armenians, acting contrary to usual standards and practices for military engagements which otherwise have been scrupulously adhered to by the Armenian soldiers of Nagorno Karabagh. I deeply regret those killings and condemn the events which culminated in that deplorable travesty.

But the facts are not clear. The American press has relied on Azeri and Turkish accounts to claim that Armenians massacred 1,000 innocent civilians. Yet French, Russians, British, and other independent eyewitness journalists have categorically refuted these reports. They place the total death toll at no more than 200—including military and civilian personnel—and they refute charges that Armenians massacred or mutilated any of the dead. Florence David of French television Canal Linq has described "how the myth of a massacre was concocted by the Azeris."

I have today dispatched a letter to Artur Mkrtichian, president of Nagorno Karabagh, calling upon him and other responsible officials to appoint a commission of impartial and objective individuals of international reputation to conduct an inquiry and report the results thereof to him and to the public. Second, I have suggested to him that he pledge that guilty personnel, if the inquiry finds that in fact such a breach of human rights took place, will be arrested, charged and brought before an appropriate military tribunal. The Armenians, in sharp contrast to the Azeris, have consistently investigated, tried, and punished individuals who, even under the pressures of war, have committed crimes. Only after such an investigation in this case can the world be reassured that the Armenians of Nagorno Karabagh will act with responsibility in their struggle for self determination and independence.

I was chairman of the delegation of congressional observers at the Armenian independence referendum last September. I am also the prime sponsor of legislation to preclude further American diplomatic recognition of Azerbaijan, economic assistance or favorable trade with the United States until the blockade of Armenia and Nagorno Karabagh is lifted and human rights restored. This legislation currently has 43 co-sponsors. That blockade of Armenia is an on-going gross breach of human rights, it is contrary to international law and the United Nations Charter, is considered an act of war and is causing widespread life threatening suffering.

The United States Department has chosen to ignore those violations, in complete derogation of the preconditions for human rights which Secretary Baker earlier assured us must be adhered to before any of the former Soviet Republics would be diplomatically recognized by this country. The Secretary of State is so anxious to build a counter force against Iran from among the Muslim republics and Turkey that he has forgotten the lessons from Iraq.

When America ignores serious human rights violations in pursuit of political purposes, as the administration did in dealing with Saddam Hussein prior to the Kuwait invasion, we lose. That is what is being done in Azerbaijan and Armenia today by the U.S. State Department. I deplore our refusal to insist that Azerbaijan drop its blockade of Armenia and Nagorno Karabagh before we grant Azerbaijan full diplomatic recognition and American economic assistance.

I also wish to point out that no one has charged that the Armenian Government of President Levon Ter-Petrosian was involved in the tragic events at Khojaly.

There is increasing danger that the struggles and battles in the enclave of Nagorno Karabagh could bring the two countries of Armenia and Azerbaijan into direct conflict. There is also a more remote likelihood that other countries in the region, most likely Turkey, could enter such an engagement against Armenia. Above all else, we must hope that negotiations can begin immediately to contain this ancient dispute. It is to be hoped that Russian President Boris Yeltsin, who represents the only effective arbitration force in the area will continue his efforts. We all pray that those involved will be successful in averting the full scale blood bath which otherwise looms for that area.

THE REPUBLICAN PARTY IS MAINSTREAM AMERICA

THE SPEAKER pro tempore (Mr. FLAKE). Under a previous order of the House, the gentleman from Oklahoma

[Mr. INHOFE] is recognized for 10 minutes.

Mr. Speaker, in light of the chain of events of the past few weeks, I feel compelled to share with you some conclusions that I have come to concerning the voting behavior of the Democrat and Republican Parties. Because a majority of the media is liberal and not sensitive to conservative causes, there is a distorted message going around America. That message somehow wants to erroneously convey that the Democrat Party is the party of the people.

Interestingly enough, just the reverse is true. It has just occurred to me over the last few months that virtually everything that mainstream America is enthusiastic about is something that has been consistent with the Republican philosophy and not the Democrat philosophy.

What I am saying, and not in a smug way, is that clearly the Republican Party espouses the principles that are agreed to by mainstream America. The Democrat Party, which has been in power in Congress and has run the show for five decades, is no longer understanding of or sympathetic to the feelings and the needs and the desires of mainstream America.

Mainstream America wants a strong national defense, wants voluntary prayer in school, wants tough penalties for crime, and wants a constitutional balanced-budget amendment. Mainstream America does not want federally subsidized abortions, flag desecration, and bureaucratic harassing over-regulation of our lives and our businesses.

How do we know that mainstream America has these desires? We know because polling data is very clear. Specifically, according to a January 1992 CBS News-New York Times poll, 67 percent of Americans say it is still important for the United States to maintain a strong military. According to an October 1991 Times-CNN poll, 78 percent of Americans favor allowing children to say prayers in public school. According to an August 1988 CBS News-New York Times poll, 78 percent of Americans favor a constitutional amendment requiring the Federal Government to balance its budget.

According to the Los Angeles Times in a November 1987 survey, federally subsidized abortions are opposed by 64 percent of the people. In a March 1990 CBS News-New York Times poll, flag desecration was opposed by 83 percent of those surveyed. According to a March 1991 National Victim's Center poll, 80 percent of all Americans favor expediting the appeals process for death penalty cases. And, according to a February 1992 Times-Mirror poll, 65 percent of Americans agree that government is involved too much in their lives.

With that overwhelming message being sent by the American people

through these national polls, wouldn't it be reasonable to assume that Congress would listen and act in accordance with these desires? Well, at least one party does—the Republican Party. In every case, without exception, when these issues are brought to a vote in Congress, the desires of the American people are overwhelmingly supported by the Republicans and are rejected by the Democrats.

But, don't take my word for it. Let's look at the record. I will present documentation that shows when each of these seven subjects has been brought up, an overwhelming majority of Republicans have supported mainstream America, while a confusingly high number of Democrats have voted in direct opposition to what most Americans want. On page H 3400 of the May 22, 1991 CONGRESSIONAL RECORD, we find a vote before Congress on an amendment for a strong national defense. The vote failed by a margin of 161 to 265, right down party lines. The Democrats voted to weaken our defense system and the Republicans voted to strengthen it.

On May 9, 1989, there was an amendment that passed in the 101st Congress favoring prayer in school and less than half of the House Democrats supported it. In this Congress, on June 5, 1991, there was a vote that dealt specifically with reducing Federal spending thereby balancing the budget, and that failed 171 to 255, right down party lines. An amendment that provided use of Federal military hospitals for abortions passed the House by a margin of 220 to 208 on May 22, 1991, right down party lines. Back in the 101st Congress, a measure to constitutionally protect the U.S. flag failed by a vote of 254-177 on June 21, 1990, right down party lines. Ninety percent of the House Republicans voted in favor of the measure. On November 13, 1991, by a margin of 253 to 177, the Democrats voted to place further governmental regulation on our lives and businesses. On a vote of 208 for and 218 against, a measure to stiffen criminal penalties failed on October 17, 1991. All but nine of the soft-on-crime votes were Democrats. And finally, during last year's defense authorization debate on May 22, 1991, Democrats in Congress voted by a margin of 268 to 161 to make irresponsible cuts in this Nation's defense systems. These are but a few of a multitude of votes that could be used to demonstrate the relative voting behavior of the Democrat and Republican Party philosophies that occur on a weekly basis.

It is unfortunate that the liberal Democrat majority, that has had absolute control of Congress over the past few decades has developed ingenious deceptive mechanisms in the institution to hide their votes. This enables them to make the people at home believe that they are supporting their po-

sition while opposing it in Congress. It is an attitude that the leadership of Congress seems to know more about the needs and desires of the people than the people themselves know.

A good example is the method used to hide their votes from the people concerning a balanced budget amendment to our Constitution. Shortly after it was discovered in a USA Today poll in 1987 that over 80 percent of the people in America want a balanced-budget amendment to the Constitution, House Joint Resolution 268 was introduced. House Joint Resolution 268 immediately gained 246 coauthors from over the Nation. I can just envision, at the town hall meetings back home, a liberal Democrat standing up and holding House Joint Resolution 268 in his hand saying, "See here, ladies and gentlemen. This is my name as cosponsor of House Joint Resolution 268." What the Congressman didn't tell these people is that he has no intentions of allowing House Joint Resolution 268 to come up for a vote. How does this Congressman, who is trying to make the people back home believe that he is supporting a budget-balancing amendment to the Constitution, keep from having to vote on it?

It is very simple, the Speaker merely puts it in a committee and then makes a deal with the committee chairman not to bring it up for consideration. The only way that it can be brought up for consideration is for a discharge petition to be signed by 218 Members of Congress. The discharge petition is in the Speaker's desk and must be signed during the course of a legislative day. However, the names of those individuals who sign a discharge petition are kept secret and if a Member discloses the names of other Members who sign the discharge petition, he can be disciplined to the extent of expulsion from membership of the House of Representatives. So House Joint Resolution 268 had 240 cosponsors, but only 140 Members were willing to sign the discharge petition.

Pretty cozy, huh? The Congressman can falsely represent his position to the people at home and never have to vote on the issue. I might add that there is a happy ending to that House Joint Resolution 268 story. Several of us contacted a national publication. While the publication knew we couldn't divulge the names of those who signed the discharge petition, they agreed to print the names of the individuals who coauthored House Joint Resolution 268, but did not sign the discharge petition. We found a loophole in the corrupt institutional system that protects Congressmen from their electorate and as a result of that, we were able to immediately force it out onto the floor and we missed passing a balanced-budget amendment to the Constitution by only seven votes.

These corrupt institutional arrangements have been put in place by the

liberal Democratic leadership over the past few decades and it's time that they be stopped.

So, mainstream America, we know that you want a strong national defense, tough crime laws, voluntary prayer in school, and a constitutional balanced-budget amendment and we know that you do not want federally subsidized abortions, flag desecration, and more overregulation of your lives and businesses. We Republicans hear you loud and clear and we are solidly behind you with our voices and our votes.

It is time for America to wake up and understand who is in support of mainstream America and all that it stands for—it is the Republican Party. The Republican Party is mainstream America.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

□ 1450

RESCISSIONS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 102-201)

The SPEAKER pro tempore (Mr. FLAKE) 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 Appropriations and ordered to be printed:

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report 30 rescission proposals, totaling \$2.1 billion in budgetary resources.

The proposed rescissions affect the Department of Commerce, Defense, Health and Human Services, Housing and Urban Development, the Interior, and Transportation. The details of these rescission proposals are contained in the attached report.

GEORGE BUSH.

THE WHITE HOUSE, March 10, 1992.

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 Mr. SCHIFF) to revise and extend their remarks and include extraneous material:)

Mr. DELAY, for 60 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

(The following Member (at the request of Mr. GONZALEZ) to revise and

extend his remarks and include extraneous material:)

Mr. OWENS of Utah, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. SCHIFF) and to include extraneous matter:)

Mr. DICKINSON.

Mr. GALLEGLY in three instances.

Mr. GEKAS.

Ms. SNOWE.

Mr. GILMAN in two instances.

Mr. EMERSON.

Mr. BONIOR.

Mr. FALCOMAVAEGA in five instances.

Mr. PEASE.

Mr. FASCELL in two instances.

Mr. CONYERS.

Mr. HOYER.

ADJOURNMENT

Mr. INHOFE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 51 minutes p.m.), the House adjourned until tomorrow, Wednesday, March 11, 1992, at 2 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

3041. A letter from the Secretary of Agriculture, transmitting a report on the Rural Housing Demonstration Housing Program, pursuant to 42 U.S.C. 1476(b); to the Committee on Banking, Finance and Urban Affairs.

3042. A letter from the Secretary of Housing and Urban Development, transmitting a draft of proposed legislation to amend the United States Housing Act of 1937; to the Committee on Banking, Finance and Urban Affairs.

3043. A letter from the Auditor, District of Columbia, transmitting a copy of a report entitled "Follow-up Review of the Department of Housing and Community Development's Property Management Administration Systems of Maintenance Practices and Financial Controls: FY 1983-FY 1985," pursuant to D.C. Code, section 47-117(d); to the Committee on the District of Columbia.

3044. A letter from the White House Conference on Indian Education, Director, transmitting the report of the White House Conference on Indian Education and statement thereon, pursuant to 25 U.S.C. 2001 note; to the Committee on Education and Labor.

3045. A letter from the Secretary of Education, transmitting notice of final priorities for fiscal year 1992—special projects and demonstrations for providing supported employment services to individuals with handicaps, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

3046. A letter from the Secretary of Education, transmitting notice of final priorities

for fiscal year 1992—projects with industry, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

3047. A letter from the Secretary of Education, transmitting notice of final priorities for fiscal year 1992—vocational rehabilitation service projects for American Indians with handicaps, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

3048. A letter from the Secretary of Education, transmitting notice of final priorities for fiscal year 1992—vocational rehabilitation service projects program for migratory agricultural and seasonal farmworkers with handicaps, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

3049. A letter from the Secretary of Education, transmitting notice of final priorities for fiscal year 1992—rehabilitation long-term training, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

3050. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting its quarterly report concerning human rights activities in Ethiopia, covering the period July 15 through October 14, 1991 and the period October 15, 1991 through January 14, 1992, pursuant to Public Law 100-456, section 1310(c) (102 Stat. 2065); to the Committee on Foreign Affairs.

3051. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment sold commercially to Kuwait (transmittal No. MC-8-92), pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

3052. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 92-16 concerning Angola, pursuant to 22 U.S.C. 2364(a)(1); to the Committee on Foreign Affairs.

3053. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the semiannual reports for the period April 1991 to September 1991 listing voluntary contributions made by the U.S. Government to international organizations, pursuant to 22 U.S.C. 2226(b)(1); to the Committee on Foreign Affairs.

3054. A communication from the President of the United States, transmitting his determination that continued nuclear cooperation with the European Atomic Energy Community [EURATOM] is needed in order to achieve U.S. nonproliferation objectives and to protect our common defense and security, pursuant to 42 U.S.C. 2155(a)(2) (H. Doc. No. 102-200); to the Committee on Foreign Affairs and ordered to be printed.

3055. A letter from the Comptroller General, General Accounting Office, transmitting the list of all reports issued or released in January 1991, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

3056. A letter from the Committee for Purchase From the Blind and Other Severely Handicapped, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(e); to the Committee on Government Operations.

3057. A letter from the Chairman, Commodity Futures Trading Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

3058. A letter from the Chairman, Consumer Product Safety Commission, transmitting a report of activities under the

Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(e); to the Committee on Government Operations.

3059. A letter from the Equal Employment Opportunity Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552; to the Committee on Government Operations.

3060. A letter from the Executive Director, Federal Energy Regulatory Commission, transmitting notice of proposed changes to an existing system of records, pursuant to 5 U.S.C. 552a(r); to the Committee on Government Operations.

3061. A letter from the Executive Director, Federal Retirement Thrift Investment Board, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(e); to the Committee on Government Operations.

3062. A letter from the National Archives, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

3063. A letter from the Director, National Science Foundation, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

3064. A letter from the Executive Director, Pension Benefit Guaranty Corporation, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

3065. A letter from the Chairman, Securities and Exchange Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(b); to the Committee on Government Operations.

3066. A letter from the Director, Selective Service, transmitting a report of activities under the Freedom of Information Act for calendar year 1991, pursuant to 5 U.S.C. 552(b); to the Committee on Government Operations.

3067. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

3068. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

3069. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notice of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

3070. A letter from the Secretary, Department of Transportation, transmitting recommendations for implementing vessel traffic service systems, pursuant to Public Law 101-380, section 4107(b)(2) (104 Stat. 514); to the Committee on Merchant Marine and Fisheries.

3071. A letter from the Chairman, Merit Systems Protection Board, transmitting the Board's report entitled "Federal First-Line Supervisors: How Good Are They?"; to the Committee on Post Office and Civil Service.

3072. A letter from the Department of the Army, transmitting copies of the report of the Secretary of the Army on civil work activities for fiscal year 1991, Department of Army Corps of Engineers extract report of the Walla Walla district; to the Committee on Public Works and Transportation.

3073. A letter from the Secretaries of Defense and Veterans Affairs, Departments of Defense and Veterans Affairs, transmitting a report on the implementation of the health resources sharing portion of the Department of Veterans Affairs and Department of Defense Health Resources Sharing and Emergency Operations Act for fiscal year 1991, pursuant to 38 U.S.C. 8111; jointly, to the Committees on Armed Services and Veterans' Affairs.

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. MCHUGH: Committee on Standards of Official Conduct. House Resolution 393. Resolution instructing the Committee on Standards of Official Conduct to disclose the names and pertinent account information of those Members and former Members of the House of Representatives who the committee finds abused the privileges of the House Bank, and to provide to other Members information regarding their House Bank accounts. (Rept. 102-452). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5, of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. SWIFT (for himself, Mr. RITTER, Mr. MANTON, Mr. RICHARDSON, Mr. SLATTERY, Mr. PEASE, and Mr. ANDREWS of Maine):

H.R. 4414. A bill to establish an Intercity Rail Passenger Capital Improvement Trust Fund, and for other purposes; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. GONZALES:

H.R. 4415. A bill to amend the Federal Deposit Insurance Act to establish a measure for determining deposit insurance coverage that is fair to depositors and taxpayers, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. WHITTEN (for himself, Mr. MURTHA, Mr. SMITH of Iowa, Mr. YATES, Mr. BEVILL, Mr. ALEXANDER, Mr. TRAXLER, Mr. LEHMAN of Florida, Mr. DIXON, Mr. FAZIO, Mr. HEFNER, Mr. AUCOIN, Mr. COLEMAN of Texas, Mr. MOLLOHAN, Ms. PELOSI, Mr. GONZALEZ, Mr. BROWN, Mr. MILLER of California, Mr. CONYERS, Mr. DELUMS, Mr. NOWAK, Mr. KILDEE, Mr. FRANK of Massachusetts, Mr. KOPETSKI, Mr. KANJORSKI, Mr. TORRES, Mr. FORD of Tennessee, Mr. DEFAZIO, Mrs. UNSOELD, and Mr. MARTINEZ):

H.R. 4416. A bill making dire emergency appropriations to create essential productive jobs, to strengthen short-term economic recovery, to boost long-run economic expansion, and to provide assistance to those who have been adversely affected by the eco-

omic downturn for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

By Mr. HENRY (for himself, Mr. VALENTINE, Mr. LEWIS of Florida, and Mrs. JOHNSON of Connecticut):

H.R. 4417. A bill to rename the Department of Commerce as the Department of Manufacturing and Commerce, and for other purposes; jointly, to the Committees on Energy and Commerce, Science, Space, and Technology, Education and Labor, and Ways and Means.

By Mr. LEWIS of Florida:

H.R. 4418. A bill to amend the Internal Revenue Code of 1986 to restore the prior law exclusion for scholarships and fellowships; to the Committee on Ways and Means.

By Mr. MCCURDY (for himself, Mr. GEPHARDT, Mr. HYDE, Mr. SOLARZ, Mr. HOYER, Mr. GILMAN, Mr. BEREUTER, and Mr. JONES of Georgia):

H.R. 4419. A bill to provide for a Democracy Corps to mobilize and coordinate the expertise and resources of United States citizens in providing targeted assistance to support the development of democratic institutions and free market economies in the former Soviet republics and the Baltic States; to the Committee on Foreign Affairs.

By Mr. OWENS of Utah:

H.R. 4420. A bill to improve budgetary information by requiring that the unified budget presented by the President contain an operating budget and a capital budget, distinguish between general funds, trust funds, and enterprise funds, and for other purposes; jointly, to the Committees on Government Operations and Rules.

By Ms. SNOWE:

H.R. 4421. A bill to establish a comprehensive recovery program for communities, businesses, and workers adversely affected by the closure or realignment of military installations; jointly, to the Committees on Armed Services, Energy and Commerce, Ways and Means, Government Operations, Banking, Finance and Urban Affairs, Education and Labor, and Public Works and Transportation.

By Mr. SYNAR (for himself, Mr. MOODY, Mr. KLECZKA, Mr. ASPIN, Mr. PETRI, and Mr. GUNDERSON):

H.R. 4422. A bill to establish a Federal facilities energy efficiency bank to improve energy efficiency in federally owned and leased facilities, and for other purposes; jointly, to the Committees on Energy and Commerce and Government Operations.

By Mr. CONYERS:

H.J. Res. 435. Joint resolution to provide for the issuance of a commemorative postage stamp in honor of Louis "Satchmo" Armstrong; to the Committee on Post Office and Civil Service.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

340. By the SPEAKER: Memorial of the House of Representatives of the State of Michigan, relative to the Little Traverse Bay Bands of Odawa Indians; to the Committee on Interior and Insular Affairs.

341. Also memorial of the Senate of the State of New York, relative to the 200th anniversary of the U.S. Bill of Rights; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

- H.R. 78: Mr. JOHNSON of Texas.
- H.R. 371: Mr. SANTORUM.
- H.R. 608: Mr. HOCHBRUECKNER and Mr. BENNETT.
- H.R. 609: Mr. FRANK of Massachusetts and Mr. PETERSON of Minnesota.
- H.R. 639: Mrs. VUCANOVICH.
- H.R. 905: Mr. TRAFICANT.
- H.R. 1004: Mr. FRANKS of Connecticut and Mr. SUNDQUIST.
- H.R. 1124: Mr. SISISKY.
- H.R. 1251: Mr. HYDE, Mrs. BENTLEY, and Mr. McMILLEN of Maryland.
- H.R. 1252: Mrs. BENTLEY and Mr. McMILLEN of Maryland.
- H.R. 1253: Mr. HYDE and Mr. McMILLEN of Maryland.
- H.R. 1473: Mr. STAGGERS and Mr. BOEHNER.
- H.R. 1774: Mr. JEFFERSON.
- H.R. 2083: Mr. MILLER of Washington and Mr. GORDON.
- H.R. 2200: Mr. TAYLOR of North Carolina.
- H.R. 2214: Mr. IRELAND.
- H.R. 2452: Mr. BACCHUS.
- H.R. 2832: Mr. REED.
- H.R. 2872: Mr. GALLEGLY and Mr. JONES of North Carolina.
- H.R. 2966: Mr. MILLER of California and Mr. LEWIS of Georgia.
- H.R. 3026: Mr. MILLER of California, Ms. PELOSI, Mr. MAVROULES, Mr. KENNEDY, and Mr. COX of Illinois.
- H.R. 3173: Mr. DERRICK.
- H.R. 3330: Mr. BEREUTER.
- H.R. 3475: Ms. WATERS, Mr. TOWNS, Mr. AU COIN, and Mr. OWENS of Utah.
- H.R. 3476: Ms. WATERS, Mr. LEHMAN of Florida, Mr. TOWNS, Mr. RAMSTAD, Mrs. LLOYD, Mr. LAFALCE, Mr. KLUG, and Mr. OWENS of Utah.
- H.R. 3887: Mr. JONTZ.
- H.R. 3952: Mr. SPRATT and Mr. CLINGER.

- H.R. 3986: Mr. JOHNSON of South Dakota, Mr. McMILLAN of North Carolina, and Mr. GUARINI.
- H.R. 4013: Mr. KANJORSKI.
- H.R. 4051: Mr. McNULTY, Ms. LONG, and Mrs. UNSOELD.
- H.R. 4109: Mr. MARKEY, Mr. ATKINS, Mr. JOHNSON of South Dakota, Mr. ROE, Mr. LIVINGSTON, and Ms. NORTON.
- H.R. 4190: Mr. STENHOLM, Mr. CRANE, Mr. SYNAR, and Mr. CHAPMAN.
- H.R. 4198: Mr. FIELDS, Mr. HUGHES, Mr. MANTON, and Mr. SMITH of Florida.
- H.R. 4228: Mr. MILLER of Ohio, Mr. JEFFERSON, Mr. HOCHBRUECKNER, Mr. DWYER of New Jersey, Mr. KOLTER, and Mrs. ROUKEMA.
- H.R. 4234: Mr. JEFFERSON and Mr. RIGGS.
- H.R. 4243: Mr. KOPETSKI, Mr. FROST, Mr. VOLKMER, and Mr. GEPHARDT.
- H.R. 4351: Mr. JEFFERSON, Mr. HERGER, Mr. KANJORSKI, and Mr. HYDE.
- H.J. Res. 371: Mr. ALEXANDER, Mr. BARNARD, Mr. BILIRAKIS, Mr. BROWN, Mr. DOOLITTLE, Mr. DUNCAN, Mr. EVANS, Mr. GONZALEZ, Mr. LEVIN of Michigan, Mr. LEWIS of California, Mr. LOWERY of California, Mr. ROWLAND, Mr. SABO, Mr. BENNETT, Mr. CALLAHAN, Mr. CARR, Mr. CLEMENT, Mr. LEHMAN of Florida, Mr. SAWYER, Mr. SCHEUER, and Mr. WEISS.
- H.J. Res. 388: Mr. SABO, Mr. McNULTY, Mr. FAZIO, Mr. ARCHER, Mr. JOHNSON of South Dakota, Mr. ATKINS, and Mr. CRAMER.
- H.J. Res. 410: Mr. SYNAR, Mr. PANETTA, Mr. ANDREWS of Texas, Mr. ORTON, Mr. COX of Illinois, Mr. BALLENGER, Mr. FAWELL, Mr. HENRY, Ms. HORN, Mrs. UNSOELD, and Mr. YOUNG of Florida.
- H.J. Res. 424: Mr. LANTOS, Mr. OWENS of New York, Mr. LAGOMARSINO, Mr. DYMALLY, Mr. MONTGOMERY, Mr. LAFALCE, Mr. MILLER of California, Mr. MCDADE, Mr. HUGHES, Mr. McMILLEN of Maryland, Mr. GUARINI, Ms. PELOSI, Mr. LANCASTER, Ms. NORTON, Mr. OWENS of Utah, Mr. QUILLEN, Mr. RAVENEL, and Mr. STAGGERS.
- H.J. Res. 430: Mr. MARTIN, Mr. MRAZEK, Mr. MURPHY, Mr. STARK, Mr. ANDREWS of New

Jersey, Ms. HORN, Mr. OWENS of Utah, Mr. PERKINS, Mr. PICKETT, Mr. APPLGATE, Mr. RIGGS, Mr. RAVENEL, Mr. ANDREWS of Maine, Mr. McNULTY, Mr. JOHNSON of South Dakota, Mr. EDWARDS of Texas, Mr. SCHUMER, Mr. MILLER of California, Mr. SOLOMON, Mr. STOKES, Mr. RANGEL, Mr. ROE, Mr. BROWDER, Mr. FALEOMAVEGA, Mr. FEIGHAN, Mr. TRAXLER, Mr. VOLKMER, Mr. WALSH, Mr. LEHMAN of Florida, Mr. SERRANO, and Mr. TOWNS.

- H. Con. Res. 89: Mr. SWETT and Mr. McMILLEN of Maryland.
- H. Con. Res. 192: Mr. MAZZOLI, Mrs. MINK, Mr. MAVROULES, Mr. FISH, Mr. NOWAK, Mr. GUARINI, Mr. ANDERSON, Mrs. BOXER, Mr. JONTZ, Mr. NEAL of Massachusetts, Mr. MOODY, Mr. NEAL of North Carolina, Mr. MYERS of Indiana, Mr. VISCLOSKEY, Mr. TAYLOR of Mississippi, Mr. BERMAN, Mr. GLICKMAN, and Mr. ENGLISH.
- H. Con. Res. 224: Ms. ROS-LEHTINEN and Mr. LEACH.
- H. Con. Res. 276: Mr. SAWYER, Mrs. BENTLEY, Mr. COLEMAN of Texas, Mr. TOWNS, Mr. ANDREWS of New Jersey, Mr. CLEMENT, Mr. BREWSTER, Mr. BEVILL, Mr. BROWDER, Mr. LENT, Mr. POSHARD, Mr. GUARINI, Mr. BUSTAMANTE, Mr. CALLAHAN, Mr. DONNELLY, Mr. DOOLITTLE, Mr. FROST, Mr. MONTGOMERY, Mr. FEIGHAN, Mr. HOYER, Mr. ESPY, Mr. ANNUNZIO, Mr. DORNAN of California, Mr. DOWNEY, Mr. GUNDERSON, Mr. HEFNER, Mr. RITTER, Mr. HORTON, Mr. WILSON, Mr. ROE, Mr. LAGOMARSINO, Mr. SMITH of Florida, Mr. FASCELL, Mr. BATEMAN, Mr. MCDADE, Mr. McMILLEN of Maryland, Mr. HUGHES, Mr. LANCASTER, Ms. NORTON, Mr. OWENS of Utah, Mr. SOLOMON, Mr. HALL of Texas, Mr. LAFALCE, Mr. QUILLEN, Mr. RAVENEL, Mr. RIGGS, Mr. ROSTENKOWSKI, Mr. ERDREICH, and Mr. STAGGERS.
- H. Res. 376: Mr. CRANE, Mr. KLUG, Mr. FAWELL, Mr. JACOBS, Mr. McMILLAN of North Carolina, and Mr. SOLOMON.
- H. Res. 391: Mr. MOAKLEY.

SENATE—Tuesday, March 10, 1992

(Legislative day of Thursday, January 30, 1992)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Chaplain, the Reverend Dr. Richard C. Halverson.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.—Genesis 2:24.

God of creation, we need constantly to be reminded that marriage is God's idea, not the invention of a clever sociologist who decided that it would be a good way to organize society. History teaches us that as the family disintegrates, society disintegrates. Help us all, Lord, to take our families seriously. Forgive us for making our career a mistress, causing us to neglect spouses and children. Help the Senators, as national leaders, to be examples of what God intended marriage and family to be.

Father in heaven, bless our families. Help us to take time, make time, for them. Intervene in our family relationships, that there may be healing and reconciliation. Teach us, Lord, that spouse and children deserve priority over everything else in life, except God Himself.

We pray in the name of Jesus, the Heavenly Bridegroom. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal of the proceedings has been approved to date?

The PRESIDENT pro tempore. The Senator is correct.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning, the period for morning business will extend until 10 o'clock a.m., during which time Senators will be permitted to speak for up to 5 minutes each. Once morning business closes at 10, the Senate will proceed to the consideration of S. 792, the radon control bill. This measure will be considered

under a unanimous-consent agreement reached last week and printed in the RECORD.

The agreement provides that only four first-degree amendments are in order to the bill with two of those subject to relevant second-degree amendments. I am advised by staff that all of the amendments have been worked out on this measure, and that the Senate could complete action on it in an expeditious manner. Any votes which may occur on the bill will not occur prior to 2:15 p.m. today.

The Senate will recess today from 12:30 p.m. until 2:15 p.m. in order to accommodate the respective party conferences. Upon reconvening at 2:15, the Senate will complete action on the radon bill, if any action is necessary at that time, and then proceed to the consideration of H.R. 4210, a bill to provide tax relief for American families. Consideration of this bill today will be for debate only, as provided under the unanimous-consent agreement to which I previously referred.

On tomorrow, Wednesday morning, when the tax bill comes before the Senate at 10 a.m., Senator PRYOR will be recognized to offer an amendment. Therefore, Mr. President, during today's session, the Senate will consider the radon bill, and I hope and expect that action will be completed on that measure promptly today. Any votes which may occur with respect to that bill will occur after 2:15 p.m. Following that, there will be debate only on H.R. 4210, with amendments in order, beginning at 10 o'clock tomorrow morning.

As a reminder to Senators of the Senate schedule for the remainder of the week, as I have just indicated, amendments are in order to the tax bill beginning at 10 a.m. on Wednesday, and I anticipate that other amendments will be offered. The Senate will be in session late during every evening this week in our effort to conclude action on the bill this week. There will be debate only today, and Senators who wish to speak on the measure are urged to do so today, once the Senate takes up the bill. We will remain in session this evening for as long as any Senator wishes to address the Senate on that subject. Tomorrow and Thursday, I expect there to be lengthy sessions, depending, of course, on the number of amendments offered.

When the Senate completes action on H.R. 4210, the Senate will then vote immediately on the motion to invoke cloture on the conference report accompanying H.R. 3371, the omnibus crime bill.

So with the exception of today, during which time there will be no rollcall votes prior to 2:15 p.m., rollcall votes may occur at any time during the remainder of the week. Senators are alerted to expect lengthy sessions.

AUTHORIZING TESTIMONY BY A SENATE EMPLOYEE

Mr. MITCHELL. Mr. President, on behalf of myself and the distinguished Republican leader, Senator DOLE, I send to the desk a resolution on authorization for testimony by a Senate employee and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 267) to authorize testimony by an employee of the Senate in United States versus Alan Roy Mountain.

The PRESIDENT pro tempore. Is there objection to the immediate consideration of the resolution.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, a Senate employee who works on my staff has been subpoenaed to testify as a witness at a criminal proceeding concerning threats to members of my staff. The following resolution would authorize the employee's testimony in this matter.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 267) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 267

Whereas, in the case of United States v. Alan Roy Mountain, No. Cr. No. 91-00006, pending in the United States District Court for the District of Maine, the United States has caused to be issued a subpoena for the testimony of Mary Leblanc, an employee of the Senate on the staff of Senator Mitchell;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Mary Leblanc is authorized to testify in United States v. Alan Roy

Mountain, except concerning matters for which a privilege should be asserted.

Mr. MITCHELL. Mr. President, I yield the floor.

Mr. CRANSTON addressed the Chair. The PRESIDENT pro tempore. The Senator from California is recognized for not to exceed 5 minutes.

PENTAGON PLAN WOULD MAKE UNITED STATES WORLD POLICE

Mr. CRANSTON. Mr. President, the Pentagon has secretly drafted a detailed 46-page plan that would make our country the world's only real policeman. This Pentagon plan would keep military spending sky high, costing American taxpayers more than \$1 trillion over the next 5 years.

Huge military spending would go on and on under this plan, despite our victory in the cold war, despite the collapse of the Warsaw Pact and the Soviet Union—our principal perceived enemy over 70 years—and despite the Soviet Union's replacement by 15 republics that are friendly to us and struggling to establish free societies and free economies.

Huge military spending would go on and on under the secret Pentagon plan, despite the deficit that is crippling our society and undermining our economy; and despite the crying need to restrain excessive military spending so we can begin to invest what we so desperately need in health care, education, protecting the environment and other neglected and underfunded needs here at home; and perhaps most of all, the sickness of our economy that presently devastates the living standards of so many, many Americans.

This Pentagon plan was classified but it has just been leaked apparently by an unknown official who thought the American people should be aware of it and the Congress aware of it before the Bush administration makes it the official doctrine of the United States.

The plan is designed to make sure that everyone in the world understands that the United States intends to remain the world's No. 1 military power, the one, the only main honcho on the world block, the global big enchilada.

The plan insists that the United States "will retain the preeminent responsibility" for dealing directly with such problems and dangers as "access to vital raw materials, primarily Persian Gulf oil; proliferation of weapons of mass destruction and ballistic missiles; threats to U.S. citizens from terrorism or regional or local conflict, and threats to U.S. society from narcotic trafficking."

That includes the use of military force where the United States alone, if necessary, deems it called for.

Cooperative responsibility for coping with such threats with friends and allies and the United Nations? I say, yes. But "preeminent responsibility" by the

United States alone, I say, no. What kind of "collective security," and what kind of "new world order" is that?

And where should the United States exert its "preeminent responsibility" according to the Pentagon plan? Among the places it mentions are Western Europe, Eastern Europe, the Middle East, East Asia, Southwest Asia, and Latin America. What is left in the world?

The only places they have not included in our police beat are Africa, the Arctic, and the Antarctic.

I agree wholeheartedly, of course, that the United States must protect our vital interests, that we must work with our friends, allies, and the democracies of the world to ensure our mutual security, but we must not act alone, in the Pentagonese language of the defense plan, as a hegemony. Frankly I had to look up that word in the dictionary. It refers to one possessing hegemony, preponderant influence or authority. I did not even know how to exactly pronounce the word.

The Pentagon warns us to beware that some other nation may have ambitions to become a hegemony. Fair enough. But to fair paraphrase Pogo, we should be sure that the enemy we are so worried about is not us.

The United Nations has been doing very well of late in its new and important peacekeeping role. We should encourage it. We should strengthen it.

Before we spend more than \$1 trillion to exert our "preeminent responsibility" all over the globe, it would be a good deal smarter simply to pay up the \$407 million we owe the United Nations in past dues and peacekeeping assessments. By withholding that money we owe the United Nations, we are undermining its capacity to cope with threats to the peace. Paying the United Nations what we owe it could be one of the best investments we have ever made.

And, finally, I agree with Mikhail Gorbachev and Richard Nixon who have both warned in recent days that if we do not do more to aid the new republics of the former Soviet Union we may witness a disastrous failure of freedom over there. That could lead to the tragic emergence of a new totalitarianism in the form of the former U.S.S.R., a totalitarianism that could pose new and costly threats to world peace.

We spend trillions of dollars on defense during the long long cold war. The investment of relatively small sums to advance the cause of freedom over there now could prevent the rise of a new dictatorship that could force us to spend more over here in the future to cope with the renewed threats that such a new dictatorship could impose on us and our friends and allies.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

Mr. CRANSTON. Mr. President, I ask unanimous consent that the remainder of the majority leader's time be reserved and all of the Republican leader's time be reserved.

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

The Senator from Missouri is recognized for not to exceed 5 minutes.

ROBERT HYLAND

Mr. DANFORTH. Mr. President, Robert Hyland died at his home last Thursday night after a battle with cancer. He was a great man. He was a person of greatness in many different ways, and by anyone's definition. To know him was to know an amazing human being.

At the conclusion of my remarks, I will ask that Bob Hyland's biography appear in the RECORD. I encourage my colleagues to examine his life and work and to reflect on how much a person can accomplish.

Bob Hyland was a towering presence in the broadcasting industry. He was an inexhaustible source of civic and community leadership in St. Louis. He was dedicated to his family and church. He was committed to doing good works.

Accomplishment was the hallmark of Bob Hyland. He got things done.

He was a visionary. But he was not content with setting noble goals. He insisted on bringing visions to life.

He was an individual of the highest personal and ethical values. But he was not content with being good. He insisted on doing good.

He was a brilliant motivator of people and used this gift with generosity and daring. He motivated those around him to do great things. People who spent time around Bob Hyland got involved in things that mattered. He motivated countless individuals in many different ways—to make St. Louis a better place for all its people; to create in KMOX Radio a standard of excellence that is legendary in the industry and recognized nationally and internationally; to do good work in daily life; to get involved in opportunities for service to others.

I cannot remember being with Bob Hyland when he was not involved in a major project, formulating a new challenge, or working with his singular intensity on something important to KMOX, his family or his church, or a dear friend, or good works in the community, or economic development.

He was a dynamo. A person who came to work long before dawn, who left such a wonderful legacy to his beloved St. Louis, had to be a dynamo. Bob Hyland was a treasure to his family and his many friends, to his community, and to his profession. He cannot be replaced. But he will be remembered for many, many years to come. I feel certain that the force of his personal-

ity and the magnitude of his accomplishments will motivate countless people to push themselves to make the world a better place.

Mr. President, I ask unanimous consent that Mr. Hyland's résumé be printed in the RECORD.

There being no objection, the résumé was ordered to be printed in the RECORD, as follows:

ROBERT HYLAND, SENIOR VICE PRESIDENT,
CBS RADIO

Robert Hyland could be characterized as both Mr. St. Louis and Mr. Broadcasting. Senior Vice President of CBS Radio, he is a man noted for many contributions—both to broadcasting and his community. He is active in numerous professional, civic, cultural, educational and social organizations, and he is prominently involved in many activities devoted to the St. Louis area—its people, its growth and its service. He is regarded as one of the nation's leading examples of a civic-minded business executive.

CIVIC AND COMMUNITY ACCOMPLISHMENTS

His efforts cover a broad range of industry and community interests. In 1990, he was named to the Missouri-St. Louis Metropolitan Airport Authority by Governor John Ashcroft, where he was named Chairman. He is Chairman of the Board of Lindenwood College, Chairman of the Board of Regional Medical Center; President of the St. Louis Zoological Commission; and a member of Civic Progress. He is Chairman of the Board of St. Anthony's Medical Center, a long-established hospital in St. Louis which moved, through his efforts, to a new facility in south St. Louis County. He also founded the Hyland Center and the Hyland Adolescent Center for the treatment of alcohol and drug abuse within the St. Anthony's medical complex. He also serves as a board member of the St. Patrick Center in St. Louis, the St. Louis Chapter of the NAACP and the St. Louis Urban League. He is past Chairman of the St. Louis Regional Commerce and Growth Association (Chamber of Commerce); past Chairman of Downtown St. Louis, Inc.; Past President of the Missouri Broadcasters Association.

Mr. Hyland is active in a large number of cultural and civic activities. For several years, he served as Chairman of the Municipal Theater Association and he headed its Fiftieth Anniversary Committee. Prior to the Board Chairmanship, he was elected to the Presidency for an unprecedented four-year term, and he was instrumental in developing the current format for the theater's season, featuring productions direct from Broadway. He is a member of the Board of Directors of the St. Louis Symphony Society, and has served as Chairman of the County Pops Concert Series. He is a member of the Commission on the Arts for the State of Missouri. He is a member of the Board of Directors of Operation Food Search; Pride, Inc.; Kilo Diabetes and Vascular Research Foundation; Mother of Good Counsel Nursing Home and is on the Advisory Board for the Good Samaritan Network.

Mr. Hyland has played a prominent role in many important governmental and community projects. In October, 1969, he was named to the 10th Annual Class of the Missouri Academy of Squires by Governor Warren E. Hearnes for accomplishments in the community. He was a founding member of the Jefferson National Expansion Memorial Association, the committee responsible for the development of the "Gateway to the West"

Arch, the 630-foot stainless steel monument on the St. Louis riverfront. He was appointed Chairman of the Board of the Jefferson National Expansion Memorial Association in 1988. In 1986, he was appointed to the Bi-State Panel on Bridges by Missouri Governor John Ashcroft and Illinois Governor Jim Thompson.

He has been a member of the Board of Directors of the Major Case Squad of Greater St. Louis since 1985. In 1973, he was appointed to the Missouri Energy Council by Governor Christopher S. Bond; and 1975, to the Committee for the Missouri Action Plan for Public Safety. He served as Chairman of Old Newsboys Day in 1976, as well as Chairman of the Midwest Boy Scout/Girl Scout Bicentennial Celebration and continues to serve as Executive Vice President of the St. Louis Area Council, Boy Scouts of America. Since 1977, he has served as Chairman of the Steering Committee for the Annual Mayor's Prayer Breakfast.

Mr. Hyland is a leader in a variety of civic and social organizations. He is past President and Founder of the Media Club of St. Louis and was instrumental in the development of the design of the new quarters for the club atop the Laclede Gas Building. He is President of the Knights of the Cauliflower Ear, a group of prominent business and professional men; past President of the Advertising Club of St. Louis; past President and Founder of the Stadium Club; past President of the St. Louis Sports Hall of Fame. He is a member of the Knights of Malta. He serves as a member of the Board of Directors of Boatmen's Bancshares and Wetterau Inc.

HONORS AND AWARDS

During his tenure, KMOX Radio has received many national honors: Golden Bell Awards and Gabriel Awards as the nation's outstanding radio station from the Catholic Broadcasters Association; three Headliner Awards; Ohio State Awards; George Foster Peabody Awards; the United States Conference of Mayors' Award for Outstanding Community Service; Gavel Awards from the American Bar Association; the Janus Award from the Mortgage Bankers Association of America; Association of Trial Lawyers of America Awards; the Associated Press Broadcasters National Award; the Edward R. Murrow Award from the National Radio and Television News Directors Association; the Robert F. Kennedy Journalism Award; the first Medical Journalism Award; the University of Missouri Honor Award for distinguished service to journalism; and one of the first National Association of Broadcasters' Crystal Awards for public service.

In recognition of his personal efforts in the industry and the community, Robert Hyland has received numerous commendations including the 1990 National Association of Broadcasters (NAB) Service Award in recognition of his lifetime of continuous service to radio; 1990 Media Person of the Year Award presented by the St. Louis Metropolitan Press Club; Magistral Knight of the Sovereign Military Order of Malta by Pope Paul IV; the 1988 St. Louis Man of the Year Award; he was awarded an honorary Doctor of Law Degree from Lindenwood College in 1965; an honorary Doctor of Law Degree from the University of Missouri-St. Louis, 1985; and an honorary Doctor of Public Service Degree from his alma mater, St. Louis University in 1987; the Right Arm of St. Louis Award from the St. Louis Regional Commerce and Growth Association (Chamber of Commerce) in 1986; the Henry Shaw Award from the Missouri Botanical Garden, 1983; the San Francisco State University Broad-

casting Preceptor Award for leadership and creativity in the industry, 1977; Abe Lincoln Award from the Southern Baptist Radio and Television Commission for outstanding service to the industry and to the community; the St. Louis Award for outstanding contributions to the St. Louis community, 1975; Excellence in Governance Award from the Missouri Hospital Association, 1985; the B'nai B'rith Brotherhood Through Sports Award; the Community Service Award for his "contribution toward betterment of the black community and mankind" by the Negro History Week Awards Committee; and the "Outstanding Young Man of St. Louis" Award from the Junior Chamber of Commerce of Metropolitan St. Louis. In 1980, he was named Churchman of the Year by the Religious Heritage of America for "contributions to the religious life of our country;" and was also awarded Business Leader of the Year by the Harvard Business School Club for "achieving outstanding business success." He was named the Sales Executive of the Year in 1979 by the Sales and Marketing Executives of Greater St. Louis and was awarded the Silver Beaver Award for distinguished service to youth by the Boy Scouts of America in 1976.

He has received numerous commendations from such organizations as the St. Louis Metropolitan Police Department; the American Law Enforcement Officers Association; the International Society for General Semantics; Morality in Media; Urban League of St. Louis; NAACP, St. Louis Branch; Veterans of Foreign Wars of the United States; Muscular Dystrophy Association; Lions International; United States Coast Guard; American Cancer Society; United States Navy; National Youth Development Foundation; Human Development Corporation; United Way of Greater St. Louis; Department of Public Safety; Missouri Department of Natural Resources; St. Louis Ambassadors; St. Louis Opportunities Industrialization Center.

ACHIEVEMENTS IN BROADCASTING

Mr. Hyland was named Regional Vice President, CBS Radio, in 1973, the first such designation in the CBS Organization. This appointment followed 14 years as Vice President of CBS Radio and General Manager of KMOX and KMOX/FM. In 1987, he was appointed to Senior Vice President, CBS Radio, as well as General Manager of KMOX and KHTR which later changed its call letters to KLOU. Under his leadership, KMOX became one of the most outstanding and most respected radio stations in the United States. It is a station consistently looked up to in the broadcasting industry as a leader in responsible and innovative programming.

There are many industry "firsts" to Hyland's credit. In February 1960, he inaugurated AT YOUR SERVICE, KMOX Radio's trend to "Talk-broadcasting." Throughout the broadcasting industry—in this country and internationally—KMOX Radio's dialogue format has been adopted by an estimated 2,000 other stations in such countries as Japan, Australia, Canada, West Germany and Mexico.

KMOX is known for its innovations. KMOX Radio was the first CBS-owned radio or television station to editorialize, and the first to endorse a candidate. It was the first station in the nation to use the Conelrad warning system for severe weather conditions, a plan later adopted nationally by the United States Weather Bureau. KMOX was one of the first radio stations in the country to establish and sponsor "Call For Action," an off-the-air volunteer service program which

began in 1975, offering much-needed assistance to individuals throughout the St. Louis area. KMOX was the first commercial station in the nation to broadcast a college course, and the first station to broadcast from both houses of the Missouri legislature.

Son of the late beloved "Surgeon-General of Baseball," Dr. Robert Hyland, Sr., Hyland has long been associated with the greats of baseball and the entire world of sports, and he has carried through his interest in sports as a broadcasting executive. Under his leadership, KMOX Radio has become the nation's leading sports station, offering play-by-play broadcasts of the Football Cardinals, both in St. Louis and after they moved to Phoenix; St. Louis Cardinal Baseball; the St. Louis Blues Hockey and the University of Missouri football and basketball. KMOX was the first radio station to broadcast complete professional baseball and football games from outside the continental limits of the United States (Baseball Cardinals vs Far Eastern All Stars, and Football Cardinals vs San Diego Chargers). Mr. Hyland has assembled at KMOX Radio one of the most talented and highly acclaimed sports staffs in the nation, and in addition to its extensive regularly-scheduled sports coverage, KMOX presents numerous live sports specials from throughout the country.

Mr. DANFORTH. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The point of no quorum having been made, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Idaho is recognized for not to exceed 5 minutes.

Mr. SYMMS. I thank the Chair.

(The remarks of Mr. SYMMS pertaining to the introduction of S. 2326 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MASSACHUSETTS ATHLETES IN THE 1992 WINTER OLYMPICS

Mr. KENNEDY. Mr. President, the people of Massachusetts take pride in the fact that our State contributed one of the largest contingents of athletes of the U.S. winter Olympic team.

All of these athletes deserve great credit for their achievements. Somerville's Paul Wylie and Stoneham's Nancy Kerrigan dazzled everyone in winning their silver and bronze medals in the figure skating competition. And Andover's Sharon Petzold won a bronze medal in ballet skiing, which was a demonstration sport at Albertville.

In addition, we were all inspired by the play of the ice hockey team—half of whom are from Massachusetts. Especially outstanding was the brilliant goal-tending of Fitchburg's Ray LeBlanc.

The other athletes from Massachusetts who represented the United

States in the 1992 winter Olympic games also performed with great skill and dedication, and I commend them all:

Alpine skiing: Krista Schmidinger of Lee and Heidi Voelker of Pittsfield.

Figure skating: Todd Eldredge of Chatham.

Ice dancing: Rachel Mayer of Wellesley and Peter Breen of Brockton.

Speedskating: Eric Flaim of Pembroke and Chris Shelley of Waltham.

Luge: Tim Wiley of Lexington.

Ice hockey: Greg Brown of Southborough, Ted Donato of Dedham, Scott Gordon of Easton, Steven Heinze of North Andover, Shawn McEachern of Waltham, Marty McInnis of Hingham, Joe Sacco of Medford, Tim Sweeney of Boston, Keith Tkachuk of Medford, C.J. Young of Waban, and Scott Young of Clinton.

DISTRICT COURT DECISION MIS-INTERPRETS LEGISLATIVE INTENT

Mr. GARN. Mr. President, in my years of public service, I have been continuously troubled by court decisions that have ignored legislative intent, and that reverse the policies that we in the legislative branch have sought to establish. This happens over and over again, and each time the results are undesirable. Judges are appointed to interpret the law, not to create it. Until that principle becomes a reality we will be forced to spend our time revisiting issues that should have been settled long ago.

Last month, the Federal district court in Utah reached a decision that represents an egregious example of what I am complaining about. In this case the court's opinion directly conflicted with a statute that was passed only a few months prior. As a result of this ruling, literally millions of Americans will be denied the opportunity to significantly lower their interest expenses, and unfair practices will be protected.

The case involves an amendment to the Federal Deposit Insurance Corporation Improvement Act that I authored, and that was adopted by the Senate Banking Committee without objection on August 2, 1991.

The amendment in question states that:

No person obligated to provide services to an insured deposit institution at the time the RTC is appointed conservator or receiver for the institution shall fail to provide those services to any person to whom the right to receive those services was transferred by the RTC after August 9, 1989, unless the refusal is based on the transferee's failure to comply with any material term or condition of the original obligation.

The amendment was discussed in the Senate Banking Committee's report that was issued on October 1, 1991, in which it was made clear that the amendment applied retroactively, and

that it covered "membership rights in associations"; that is, credit card membership rights. The amendment was later adopted by the full Senate on November 21, 1991. During the House-Senate conference, I made the proposal that the conference committee adopt this provision, a proposal that was eventually accepted after considerable debate by members of the conference.

The genesis for this amendment was well known to all of the members on the conference committee. In 1990, Sears, Roebuck & Co. acquired a failed savings and loan association in the State of Utah from the RTC. One of the assets acquired in this transaction was the savings and loan association's membership rights in Visa. Sears intended to use these membership rights to offer millions of consumers a new, low interest, no annual fee, Visa card to be called Prime Option. However, when Visa learned of Sears' plan, they refused to issue the cards, and protracted antitrust litigation ensued. Pending the outcome of this antitrust litigation, millions of consumers are being denied the benefits of low interest credit cards. It was for this reason that the Bankcard Holders of America, a consumer organization that focuses on credit card issues, endorsed my amendment and urged that it not be weakened in any manner.

Of greater concern, the attempt by Visa to refuse to honor its agreement with the savings and loan association, just because the association was acquired by Sears, sets a very deleterious precedent for the RTC. The membership agreement with Visa was an asset of the failed thrift association. When the RTC sells a thrift to another company, it can receive more for the thrift if the acquiring party has some assurance that all of the assets it purchases will retain their value after the sale. Thus, the ability of Visa or any other credit card issuer to unilaterally cut off services to an acquiring institution creates market uncertainty for the thrift, thereby lowering the eventual recovery to the U.S. taxpayer from the resolution.

The significance of this factor cannot be overstated. The RTC holds billions of dollars of assets of all types and description. It is absolutely critical that the RTC have the ability to sell assets without undue hindrance, and without clouds being placed on the value or continued validity of the asset after it is sold. The amendment was intended to protect acquirors of RTC property, especially when the property purchased is in nontangible form, such as the right to issue a credit card, the right to receive computer services, or the right to maintain relationships with particular vendors. The importance of this amendment to the RTC was clearly recognized, and that agency strongly supported my amendment.

Obviously, the only way to legislatively provide this protection, and to

add certainty to the marketplace, is to establish in law the rule that vendors and other contractors cannot unfairly terminate contractual rights with an acquiring company, and to make this right enforceable by that successor company. If the right to require continued performance was only enforceable by the RTC, the acquiring company would have no assurance that its rights would be adequately protected after the sale, and therefore the legislative remedy would be almost meaningless.

There was no question in my mind, or in any other Member's mind, that this amendment would apply to the Sears-Visa dispute, and to resolve the issue other than the antitrust issues in favor of the consumer. This is why, and that is the only logical reason why, the amendment was made retroactive to August 9, 1989.

This is why I stated during the conference committee deliberations that the amendment "will prohibit Visa or anyone else in a similar position from acting unilaterally to strip an asset sold by the RTC of its value * * * it does involve Sears and both of us have been very open about that * * *."

This is why Congressman SCHUMER explained during conference committee deliberations:

Visa is excluding this little bank from its network on a technicality at the behest of all the other large banks so that they can't issue their low interest rate credit cards. And what the legislation attempts to do is undo that situation.

This is why Senator D'AMATO stated during the conference committee meeting that with respect to the Sears-Visa litigation, the amendment will "in essence, say that this sale must be consummated and that you don't have a right to cut a person off."

Finally, this is why Chairman GONZALEZ, in opposing the amendment, stated repeatedly that he can't accept the amendment because "it involves litigation, it would impact ongoing litigation."

Despite these clear statements of congressional intent and basis upon which the conference committee acted, the district court in Utah ruled that this amendment was not intended to provide a legal right that could be enforced by the litigants in the dispute between Sears and Visa.

Mr. President, I realize that other Members of Congress made conflicting statements about the intent of this amendment on the floor of their respective bodies following completion of the conference committee deliberations. Many of these statements were made by Members who were not part of the conference committee. Many of these statements were made after the conference committee report had been accepted by the legislative body in which they sit. Other Members were concerned that the amendment not

interfere with the prosecution of the antitrust litigation. Most of these statements were not even actually given on the floor, but were simply written documents inserted in the CONGRESSIONAL RECORD. But the fact remains that I authored this amendment and it was adopted without change.

To disregard my views in favor of the belated statements of other Members, including some who were not even on the conference committee is not a sound basis on which to make a decision. It violates well established principles of statutory construction that the views of the author of an amendment should be given substantial weight, and are more authoritative than statements of other Members. (See, for example, *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982).) The decision also ignores the Supreme Court's instruction that the statements of opponents of a legislative measure that is enacted are "not the most reliable indications of congressional intent." (*Bryant v. Yellen*, 448 U.S. 911 (1980).)

The district court's decision was wrong. It ignores the intent of the Congress. It invites those opposed to the majority view to find a Member, any Member, to attempt to subvert the will of the entire Congress. And in this case, it led to a result that this is harmful to consumers, to the RTC and to the U.S. taxpayer.

REFORMING HEALTH INSURANCE

Mr. DURENBERGER. Mr. President, I rise today to express my total frustration with the failings of the private health insurance industry.

Mr. President, there are many plans for health care reform now pending before Congress. Despite their differences, there is a strong consensus on one issue—reform of insurance in the small group market.

Not long ago, most health insurance was community rated. That meant that everyone in the community paid the same premium regardless of health status or other demographic factors. However, in the late seventies and early eighties, as commercial insurers began to increase their share of the health insurance market, a clear trend began to emerge. Community rating has largely disappeared and been replaced by experience rating where the cost of a health insurance premium relates directly to a person's health status.

As a result of this rating change, commercial insurers have designed insurance packages for young, healthy individuals and have screened out most people with prior health conditions. Many commercial operators have seen a chance for a quick buck and sold policies in this manner. These aggressive underwriting tactics have led to excessive rate increases, policy cancella-

tions, and limited coverage. This has been called the spiral of exclusion and it has disfigured the marketplace.

Mr. President, I have introduced several small group health insurance market reform bills. Most recently I joined the distinguished chairman of the Finance Committee, Senator BENTSEN, in introducing S. 1872, the Bentsen-Durenberger Better Access to Affordable Health Care Act. This is a bipartisan effort with 24 Senate cosponsors. The Finance Committee reported that bill last week as part of the tax bill. Although that tax bill will never become law, I believe that before this year S. 1872 will be signed into law.

However, Mr. President, it is not just the small group market that is broken. The entire health insurance market is failing. A front page article in the March 4, New York Times entitled "New Insurance Practice: Dividing the Sick From Well" spells out the problem that is pervading the entire market.

The article describes how the unacceptable rating practices that have infected the small group market are spreading to group networks. Dividing the sick from the well, Mr. President, is experience rating pure and simple.

The article describes the traumas of a young family in California whose insurance premiums have jumped to \$16,000 a year because one of their children has a kidney problem. And this family was part of a large group policy network. As the article points out: "When it comes to coverage, there is no longer safety in numbers."

Mr. President, no one in this country should be asked to pay \$16,000 for a health insurance policy. But since the industry refuses to change its rating practices, I will soon be introducing legislation that will extend the small group reforms in 1872 and S. 700 to all commercial insurance.

Mr. President, I ask unanimous consent that the New York Times article I referred to be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 4, 1992]

NEW INSURANCE PRACTICE: DIVIDING SICK FROM WELL

(By Gina Kolata)

In a new practice, some health insurance companies are starting to divide the sick from the well, even in large groups that were once a bastion of security in a tumultuous industry.

Families in large groups had always felt that if they had been part of the group for at least six months or a year, their medical costs would be covered and their premiums would remain stable. But now, some insurance companies are dramatically raising rates for sick people, and even for people they think may become sick.

The result, said Dr. Norman Daniels, an ethicist at Tufts University who is an expert on health insurance, is that "no one in this country with private health insurance coverage who is in any kind of group plan is free

from the kind of uncertainty that competition is producing."

He added, "We are beginning to see that people who have the greatest access to health care in this country are at risk."

\$16,000 ANNUAL PREMIUM

No one knows how common it is for insurance companies to raise the rates for the sick in large groups, which usually consist of employees at big corporations or members of special-interest organizations. But the experience of Kathleen Renshaw of Leucadia, Calif., and others shows that the problem, once thought to be limited to small groups, is spreading to large groups as well.

Ms. Renshaw finally admitted defeat in her struggle to keep group health insurance for her family when the annual premium reached \$16,000 a year. Her problem is her 8-year-old daughter, Marisa, an exuberant child who swims on a team and takes singing lessons.

But Marisa has only one kidney, and it does not fully function. She needs regular checkups and may face kidney failure in the future. When the family's insurance company learned of the problem, which doctors discovered when Marisa was 3, it began doubling the family's health insurance premiums each year, the maximum increase allowed by California law.

WHO IS AT RISK?

Finally, the family could no longer pay. And no other company would insure them. Along with Marisa, Ms. Renshaw, her husband, William Harvey, and their 4-year-old daughter, Kirsten, who has no medical problems, were out in the cold even though they had been part of a large group with health insurance.

Ms. Renshaw and Mr. Harvey never thought they would be without health insurance. They both have jobs, they bought group health insurance through the alumni association at the University of California at San Diego, and they always paid their premiums.

"I thought that when you pay insurance, the insurance companies will pay for you when you get sick," Ms. Renshaw said. It was a shock to learn otherwise, she said.

Dr. Donald Light, a sociologist who is professor of health policy at the University of Medicine and Dentistry of New Jersey, said the family's experience was "a tragic example of the spiral of exclusion that is spreading through the entire health care industry."

The Renshaw family fell victim to a practice that Dr. Light calls policy churning. Each year, the company would raise its rates. At the same time, it invited its members to reapply for an attractive low rate for new subscribers. But people who were sick or had a pre-existing condition were turned down for the lower rate when they reapplied, forcing them to accept whatever rate the company would impose.

Dr. Light said group insurance programs until recently covered any member who became ill. The costs for the sick people were spread over the entire group. But the new trend changes the rules so that group members who become sick or, the company suspects, may become sick, have to pay much more for their coverage.

Dr. Light said the practice began in small groups, like self-insured small businesses, in the mid- to late 1980's. While it is still most common in small groups, he said, it is spreading to larger and larger groups. The group that Ms. Renshaw and Mr. Harvey joined had thousands of families.

Dr. Daniels said practices that weed out the sick are the insurance industry's way of

remaining competitive by selling insurance at low rates to people who are well. "What's really at work are a set of economic factors," he said. Insurers realize that people who are healthy will shop around for the lowest rates they can get, so insurers have to compete with each other to attract this healthy, income-generating group. The sick-er people, however, cannot shop around because no other company will take them or will charge them rates at least as high as they are currently paying. So, Dr. Daniels said, "insurers have underwriting procedures to sort people out."

The administrator of the alumni group insurance, Association Consultants Inc. of Chicago, said that the group had offered attractive low rates to new subscribers, forcing members of the group to reapply regularly or pay much more. But, said William Richard Floyd, the vice president of Association Consultants, the group had no recourse. "The greatest fear any plan has is that new applicants will stop coming in," he said. "If you stop that flow, the plan will terminate because of poor experience."

Dr. Uwe Reinhardt, an economist at Princeton University, said the insurance problems that beset Ms. Renshaw's family were a graphic example of why he calls the American system health "unsurance" rather than health insurance. He added that these problems show why health care has become a potent issue in the current election campaign.

Donald B. White, a spokesman for the Health Insurance Association of America, which represents commercial insurance companies, said that what happened to Ms. Renshaw's family was unacceptable. And he said it was because of cases like hers that "we and everyone else are proposing reforms that would change the laws so that could not happen again."

Mr. White said most problems are with small groups, so the insurance association has proposed legislation to change that market. It wants Federal laws to guarantee that high-risk people in small groups can buy insurance at a cost that is no more than 50 percent of the average premium. Senator Lloyd Bentsen, Democrat of Texas, has introduced a bill in Congress that would prevent the exclusion of sicker individuals from health insurance coverage sold to small businesses and would prevent small groups from canceling policies of sicker people.

But these remedies do not address the situation that Ms. Renshaw and Mr. Harvey faced because they were not insured with a small group.

Ms. Renshaw said that she and her husband purchased their insurance after Marisa was born. Mr. Harvey, who is self-employed in the construction industry, had no employer to offer insurance and neither did Ms. Renshaw, who until recently worked as a photographer and is now a substitute teacher.

Marisa, however, was not a healthy baby. She failed to gain weight as she should have and no one knew why. Finally, when Marisa was 3, her doctor discovered that she had just one kidney and it had been permanently damaged by a urinary tract infection.

A year later, the family's insurance premiums started to escalate. In two increases over the course of the year, the rate soared from \$1,552 a year to \$5,080 a year. The company did say, however, that Ms. Renshaw and Mr. Bradley could reapply for insurance and, if accepted, get a lower rate. They applied and were rejected, meaning they were stuck with the soaring rates. "That was how they

separated the sick people from the well people," Ms. Renshaw said.

To reduce their premiums, Mr. Harvey dropped out of the program and went uninsured. That brought the premium to \$3,160 a year.

But the next year, in February 1989, the rate was increased again to \$4,420 a year. In February 1990, it rose to \$8,844 a year, payable quarterly. "We made two of those payments, but it was getting to the point where our health insurance was as much as our mortgage," Ms. Renshaw said. Then, she said, she got a telephone call from the company saying it was raising the rate to \$16,000 a year.

In desperation, Ms. Renshaw tried calling her alumni association but, she said, they offered no help and, "eventually they stopped returning my calls." She said she also called members of the California Assembly. "They said, 'That's too bad. You should start a grass roots petition,'" she recalled.

Ms. Renshaw and Mr. Harvey tried to find another company to insure the family, but none would. The best they could do was get minimal coverage for their daughters. They said they were told by the companies that they could get coverage for the family if Marisa's kidney was excluded, but the cost of paying for all of Marisa's sonograms and checkups for her kidney as well as the health insurance premiums would reach at least \$7,000 a year. They could not afford it, Ms. Renshaw said.

LIMITED COVERAGE NOW

Through a catastrophic health insurance plan of the California Children Services, Marisa is now covered for major problems with her kidney, but nothing else. And this coverage, Ms. Renshaw said, is available only if a family of four has an income of \$40,000 or less. But if Ms. Renshaw gets a full-time teaching job, which she has been seeking, the family would be disqualified by its income. In that case, she said, "our next option is a divorce."

Kirsten is covered by an individual Blue Cross policy with a \$1,500 deductible. But the policy excludes payments for her sinusitis, because she has had two sinus infections. And it will not cover any problems with her eyes because Ms. Renshaw once took her to an ophthalmologist, mistakenly thinking that her eyes were crossed.

Ms. Renshaw said her search for insurance has led her to get a teaching certificate, rather than one in marriage and family counseling, which she preferred, because she does not want to be self-employed. As a teacher, she reasoned, she would have a chance of getting insurance through the school system. And she is putting off having a baseline mammogram until after she gets insurance for the family, afraid that if the mammogram detects any suspicious lumps in her breast, she would fail to get insurance.

As she applies for a teaching position, Ms. Renshaw said that she is afraid to mention Marisa's kidney problem. "I might not get a job," she said.

And she and her husband live in terror of illness because medical bills could easily bankrupt them. "I'm afraid we'll lose our house," Ms. Renshaw said. "That's the only thing we have."

UNDER SECTION 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET

Mr. SASSER. Mr. President, I hereby submit revised budget authority allo-

cations to the Senate Committee on Finance and aggregates under section 9 of the concurrent resolution on the budget, House Concurrent Resolution 121.

Section 9(a) of the budget resolution states:

SEC. 9. DEFICIT-NEUTRAL RESERVE FUND FOR FAMILY AND ECONOMIC SECURITY INITIATIVES IN ACCORDANCE WITH PROVISIONS OF THE SUMMIT AGREEMENT.

(1) **INITIATIVES TO IMPROVE THE HEALTH AND NUTRITION OF CHILDREN AND TO PROVIDE FOR SERVICES TO PROTECT CHILDREN AND STRENGTHEN FAMILIES.**—

(1) **IN GENERAL.**—Budget authority and outlays may be allocated to a committee or committees for legislation that increases funding to improve the health and nutrition of children and to provide for services to protect children and strengthen families within such a committee's jurisdiction (if such a committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously passed deficit reduction) in this resolution for fiscal year 1992, and will not increase the total deficit for the period for fiscal years 1992 through 1996.

(2) **REVISED ALLOCATIONS.**—Upon the reporting of legislation pursuant to paragraph (1), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out this subsection. Such revised allocations, functional levels, and aggregates shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations, functional levels, and aggregates contained in this concurrent resolution on the budget.

(3) **REPORTING REVISED ALLOCATIONS.**—The appropriate committee may report appropriately revised allocations pursuant to sections 302(b) and 602(b) to carry out this subsection.

Subsection (c) of section 9 of the budget resolution provides:

(c) CONTINUING IMPROVEMENTS IN ONGOING HEALTH CARE PROGRAMS AND PHASING-IN OF HEALTH INSURANCE COVERAGE FOR ALL AMERICANS.—

(1) **IN GENERAL.**—Budget authority and outlays may be allocated to a committee or committees for legislation that increases funding to make continuing improvements in ongoing health care programs or to begin phasing-in health insurance coverage for all Americans within such a committee's jurisdiction (if such a committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either contemporaneous or previously passed deficit reduction) in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

(2) **REVISED ALLOCATIONS.**—Upon the reporting of legislation pursuant to paragraph (1), and again upon the submission of a conference report on such legislation (if a con-

ference report is submitted), the Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out this subsection. Such revised allocations, functional levels, and aggregates shall be considered for the purposes of the Congressional Budget Act of 1974 as allocations, functional levels, and aggregates contained in this concurrent resolution on the budget.

(3) **REPORTING REVISED ALLOCATIONS.**—The appropriate committee may report appropriately revised allocations pursuant to sections 302(b) and 602(b) to carry out this subsection.

On March 3, 1992, the Finance Committee reported S. 2325. S. 2325 includes a provision that increases the Earned Income Tax Credit for low-income families with children. This provision would "increase funding to improve the health and nutrition of children"—in the words of section 9(a) of the budget resolution—by targeting an increase in the refundable tax credit for lower income working families with children.

S. 2325 also includes extension of Medicare benefits to cover a number of preventive care services, including influenza immunizations, tetanus-diphtheria boosters, and well-child care. S. 2325 also includes provisions that create two new entities—the Coal Industry Retiree Health Benefits Corporation and the 1991 Benefit Fund—to replace two coal industry health funds that are experiencing financial difficulties. These provisions will ensure that retired coal miners, their widows, and their dependents continue to receive the health benefits for which they contracted. In the words of section 9(c) of the budget resolution, these two provisions "increase funding to make continuing improvements in ongoing health care programs."

S. 2325 also meets the other requirement of section 9 of the budget resolution that—

To the extent that the costs of such legislation are not included in this concurrent resolution on the budget, the enactment of such legislation will not increase the deficit * * * in this resolution for fiscal year 1992, and will not increase the total deficit for the period of fiscal years 1992 through 1996.

As S. 2325 complies with the conditions set forth in the budget resolution, under the authority of sections 9(a)(2) and 9(c)(2) of the resolution, I hereby file with the Senate appropriately revised budget authority allocations under sections 302(a) and 602(a) and revised functional levels and aggregates to carry out this subsection.

I ask unanimous consent that the revised budget authority allocations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REVISED BUDGET RESOLUTION AGGREGATES AND ALLOCATIONS

(In millions of dollars)

	1992	1992-96
Resolution aggregates:		
Budget authority	1,270,740	
Outlays	1,201,728	
Revenues	850,528	4,834,555
Allocations to the Committee on Finance:		
Budget authority	491,371	2,831,953
Outlays	487,464	2,809,684

**IRRESPONSIBLE CONGRESS?
HERE'S TODAY'S BOXSCORE**

Mr. HELMS. Mr. President, the Federal debt run up by Congress stood at \$3,851,877,758,136.39, as of the close of business on Friday, March 6, 1992.

As anybody familiar with the U.S. Constitution knows, no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During the past fiscal year, it cost the American taxpayers \$286,022,000,000 just to pay the interest on spending approved by Congress—over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to \$5.5 billion every week.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

TRIBUTE TO JOHN E. ALLEN, JR.

Mr. SPECTER. Mr. President, on February 25, 1992, the city of Philadelphia, my home, was diminished with the passing of John E. Allen, Jr., the founder and artistic director of Freedom Theater.

Mr. Allen, who started Freedom Theater 26 years ago, was an extraordinary human being. He was a director, an actor, a playwright, a scholar and, most of all, a humanitarian, a person who saw dignity and worth in every human being and who tried to make this statement in the many productions that he brought to the theater over the years.

Freedom Theater is more than a place where dramas are presented. Because of John Allen, it is a beacon of hope in an area suffering from the many insidious maladies that afflict the inner-city areas of our Nation's metropolises. He put on shows that inspired young African-Americans with pride and that made them aware of the possibilities of life. He did this with the gifts he possessed: talent, enthusiasm, a love of life, and a quenchless belief that good theater could make a difference in the quality of life of its community.

In anyone's life, the important question is always: Did he or she make a difference? Was living better for others in any way because of their contact with this person? In the case of John

Allen, the answer has to be a unanimous and resounding "Yes." John Allen made a tremendous difference for those fortunate enough to have known and worked with him and for those who had access to his artistry.

All of these mourn his passing. So, too, the city of Philadelphia to which he gave so much and which is now bereft of his gifts.

It is therefore fitting that the U.S. Senate take note of the many contributions of John Allen to his community and to his art with the hope that Freedom Theater will continue its important work despite this great loss.

VERMONT'S FOREST PRODUCTS INDUSTRY

Mr. LEAHY. Mr. President, my farm in Middlesex, VT, has been in the Leahy family for several decades. Like other Vermont farms, it was initially cleared of its native forests to produce crops and provide pasture. But, like many once productive farms it has reverted back to forest.

Interestingly, only 20 percent of Vermont was forested in the late 1800's while 80 percent was cleared. Today the opposite is true with nearly 80 percent of Vermont being forested and 20 percent being cleared.

With the decline in the number of farms since World War II—due to increased urbanization, development, and agricultural trends—Vermont's forest products industry has picked up the slack to the point where it now represents 12 percent of the gross State product.

As I walk the Leahy farm and look to the Green Mountains in the distance, I am always struck by the beauty our forests provide. Yet, I am also struck by history and the people who toiled to clear the forests in order to support their families and feed the region. There is a special sense of comfort in knowing that forests are renewable and with proper care our forest lands will be sustained for future generations.

A few years ago, consulting forester Jim Wilkinson and I walked the woods of my family's farm. Jim talked about the role management can play in making my forests healthier, more productive, and more supportive of wildlife. Eventually, Jim laid out a management plan to help me accomplish my goals as a forest landowner.

This experience on my own land and a recent discussion with some interested members of Vermont's forestry community got me thinking about the role our forests play in the Green Mountain State's economy.

Many do not realize the important role forest products play in our economy. Forest products are the No. 1 valued agricultural crop in the Nation. According to the American Forest Council, forest products produced \$2.9 billion in earnings and employed 18.3 thousand Americans in 1988.

In Vermont, the forest products industry ranks second only to electronics in our manufacturing sector. There are 700 logging, sawmill, and trucking firms:

Employing 3,300 people;
Providing \$48 million in payroll; and
Producing \$108 million in sales.

Forty-five percent of the timber sawed in Vermont is consumed in Vermont by some 400 secondary manufacturing firms. These manufacturers produce many products, from furniture to wooden bowls. These Vermont firms:

Employ 6,400 employees;
Provide \$128 million in payroll; and
Produce \$300 million in sales.

Moreover, economists believe each primary and secondary manufacturing job induces two more jobs through spending on local businesses such as the grocery stores, automobile sales and repairs, insurance companies, and the many other goods and services we require to maintain our quality of life. If you take this category into consideration, an estimated 30,000 people are economically linked to the forest products industry in Vermont.

Of course, we could not have an industry without a supply of timber.

There are 4.4 million forested acres in Vermont—77 percent is held by small landowners, 8 percent by corporate landowners, 9.3 percent by State and local landowners, and 6 percent by the Federal Government.

Many of the private lands are managed for timber production with assistance from various Federal and State financial and technical programs. The forest products industry's American Tree Farm System also provides assistance to landowners who want to manage their land for timber production.

Last year, Vermonters harvested over 200 million board feet from these lands—about 5 percent of this harvest came from the Green Mountain National Forest, according to the Vermont Department of Forests, Parks, and Recreation.

Herein, lies the challenge we Vermonters must meet. The national forests are owned by the public and must be managed for multiple uses. I have long supported nonintensive timber management on the Green Mountain National Forest because our public lands are the only place to concentrate benefits—such as wilderness, certain fish and wildlife habitat protection and restoration, watershed protection, and recreational opportunities—benefits that cannot be found or are not found on private lands.

The importance of timber supply must be balanced with these nonmarket uses—both need to be protected for future generations. The National Forest Management Act, Endangered Species Act, National Environmental Policy Act, and citizens rights to question Federal agency actions help achieve this balance.

However, with 94 percent of Vermont's timber supply located on non-Federal lands, there is much we can do to promote the forest products industry. These opportunities include:

Fully funding State and private forestry programs that were authorized in the forestry title of the 1990 farm bill;

Rethinking the roll of capital gains and passive loss rules as they relate to forest land management;

Assuring landowners that State, not Federal, environmental laws apply to those who receive financial forest management assistance through such programs as Stewardship Incentives and Forest Legacy.

Healthy forests and a healthy forest-based economy have been and must continue to be an important part of Vermont's future.

I know at times Vermonters argue over what are seen as conflicting forest management objectives. That is what a democracy is all about. All Vermonters are partners with a responsibility to work together to assure that public and private lands provide a healthy balance of benefits—economic and environmental—according to what each is best suited to do.

ALZHEIMER'S DISEASE

Mr. SPECTER. Mr. President, on February 3, 1992, I visited the Neurophysics Laboratory at the University of Pittsburgh's Graduate School of Public Health. During my visit, I had the opportunity to meet with Jay W. Pettegrew, M.D., director of the Alzheimer's Disease Research Center, and several relatives of people suffering from Alzheimer's. I found these individuals' perspectives to be worth consideration by Members of the Congress as we look to the appropriations bill for Labor, Health and Human Services and Education for fiscal year 1993 in our allocation of resources, including Alzheimer's disease. I ask that these individuals' statements be included in the RECORD following my remarks, because their comments give direction to the path Congress should take in dealing with this illness.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. Mr. President, currently about 4 million Americans suffer from Alzheimer's disease. This illness is severely debilitating. It kills brain cells causing gradual loss of memory and reasoning abilities and eventually leads to death. Alzheimer's strike 1 of every 10 Americans over age 65 and nearly half of those over age 85. Studies show that unless we find a way to cure or prevent Alzheimer's disease, 14 million Americans will be stricken by this devastating illness by the middle of the next century.

Alzheimer's devastates the sufferer as well as his or her family members,

both emotionally and financially. This hardship is surprisingly common—affecting one out of every three families in our country. Currently estimated at more than \$90 billion a year, the cost of Alzheimer's is skyrocketing. Thus, a major concern for such families is their ability to afford the cost of long-term care and medical treatment. It is clear to me that containing such health care costs is paramount to reform in most areas of our Nation's health care system.

I believe that if we invested more money in research for treatment and cures now, the savings down the road will be significant. Not only would we save money, but also we would alleviate the suffering of so many Americans with Alzheimer's, as well as their families. The estimates for savings is very significant. Reports show that just a 5-year delay in the onset of Alzheimer's could save \$40 billion presently spent on care. In addition, research on Alzheimer's may lead to a simple, accurate diagnostic test that would save as much as \$1 billion a year that Medicare now spends for such diagnosis. The development of effective drug treatments could also save an estimated \$76 billion over the next 25 years.

The progress that has been made thus far in Alzheimer's epidemiology is promising. In my own State of Pennsylvania, the research being done by the University of Pittsburgh Alzheimer's Disease Research Program is very promising. Dr. Pettegrew described to me the laboratory's use of a magnetic resonance spectroscopy, which can isolate the molecule responsible for contributing to Alzheimer's disease. Isolating this molecule has enabled researchers to begin developing means to shut off the production of the Alzheimer's molecule, thus preventing the activation of the disease. This investigation shows promise in our ability to stop the onset of Alzheimer's and is indicative of the effectiveness and worthiness of prioritizing Federal spending on Alzheimer's research.

Mr. President, it is clear that the treatment of and the cure for this devastating disease are both urgently needed to relieve the suffering afflicting so many lives.

EXHIBIT 1

UNIVERSITY OF PITTSBURGH,
February 19, 1992.

Senator ARLEN SPECTER,
Federal Building, Pittsburgh, PA.

DEAR SENATOR SPECTER: I want to thank you for visiting the University of Pittsburgh on February 3, 1992 and giving us the opportunity to share with you some of our thoughts, goals and research findings concerning Alzheimer's disease (AD). The research and support programs are part of our National Institute on Aging funded Alzheimer's Disease Research Center (ADRC) and Leadership and Excellence in Alzheimer's Disease (LEAD) award. I would like to reiterate several points which we discussed during your brief visit.

1) Magnitude of the AD Problem: There are an estimated 4 million AD patients at this

time in the United States; this number is expected to increase to 14 million by the year 2040. The kind of comprehensive care that is needed for advanced AD patients currently costs approximately \$200 per day. If one uses this same cost estimate of \$200 per day for the year 2040, this equals a cost of \$1.02 trillion for the health care of the projected number of AD patients in this country. The financial cost therefore will be extremely burdensome.

2) AD is generally viewed as a disease of the elderly; this is a myth. The fundamental molecular changes that culminate in the devastating symptoms of AD probably start decades before the onset of any symptoms and probably start sometime in middle age (in the 40's and 50's). By the time symptoms occur, there already is widespread and severe damage to brain cells and cellular membranes which are the vital communication centers of the brain. Because there is widespread damage prior to the onset of symptoms, therapeutic strategies aimed at treating only the symptoms will have relatively little impact on the course of the disease.

3) Approaches must be developed to identify those individuals who have the beginning molecular changes in their brains but still have no symptoms. Then research must be directed at designing drugs that can slow or completely stop these molecular changes and thereby prevent the disease.

4) We have identified a class of molecules called phosphomonoesters (PME) which are found in high abundance in the newborn developing brain and are used as building blocks for nerve cell membranes. It is the cellular membranes which are the "communication centers" of the brain and during the growth and development of the brain there is a great increase in the numbers and complexities of these communication centers. After this growth phase, the levels of the PME dramatically drop as there is no further "hard wiring" of the brain; the levels of the PME then normally remain low throughout the rest of life. In AD the production of PME is again inexplicably turned on to the high levels observed in the developing brain. While the high PME levels are normal in the developing brain, high PME levels in the mature adult brain create "mischief". At these high levels, one of these PME has now been shown to shut down the communication centers which serve short term memory and this provides an explanation for the loss of short term memory which is such an early and prominent finding in AD. As the levels of the PME continue to build, this same PME may have the potential to act indirectly as a toxin and selects certain brain cells for damage and death; it is these same nerve cells which are targeted for cellular damage and death in AD. As AD progresses there is widespread degeneration of the nerve cell membranes which results in an increase in the levels of another class of molecules (phosphodiesterases, PDE) which are the breakdown products of membranes.

5) We have demonstrated that the levels of the PME and PDE can be determined in the brains of living human subjects by the non-invasive technique of magnetic resonance spectroscopy (MRS). Using this technique, we have recently shown that the levels of the PME are high early in AD and then drop as the levels of PDE rise. In vivo MRS, therefore, has the potential to demonstrate molecular changes in the brains of asymptomatic individuals and, thereby, would be useful in identifying these individuals who could potentially benefit from drugs designed to prevent AD.

I wish to thank you for taking time from your busy schedule to visit with us and hope that our interchange was informative and useful to you.

Sincerely,

JAY W. PETTEGREW, M.D.,
Professor of Psychiatry,
Neurology and
Health Services Administration;
Director,
Neurophysics
Laboratory; Director,
Alzheimer's Disease
Research Center.

STATEMENT FOR SUBMISSION INTO THE CONGRESSIONAL RECORD

My name is Ellen Berliner. My husband, Arthur, has Alzheimer's Disease. As a participant in a research study, I was asked to contact friends and business associates who might remember times when my husband behaved in a way that they felt was inconsistent with his character. Such changes were first noted in the early 1970's, but no one knew then that they derived from an organic illness. Eventually he was unable to work and in 1979, his disease was diagnosed as Alzheimer's Disease. Care at home ultimately proved unmanageable; stress and exhaustion taking their toll on me and our children.

As a veteran, my husband had access to the Veteran's Affairs hospital system where he remained from 1986 until present. Apparently, as an austerity effort on the part of the VA, he was recently discharged to a private nursing home. The VA will only cover six months of care in the nursing home for this now totally helpless man. After that I am responsible.

The above experiences have led me to conclude that Alzheimer's Disease patients and their families are in dire need of relief. I offer the following suggestions for consideration. Firstly, real savings will occur in the future only if Federal funding remains at a high enough level to keep researchers going until they find the cause, treatment and cure of this disease so that the entire nightmare of personal suffering and ruinous costs to individuals and this nation come to a stop.

Additionally, the VA must continue to be funded at a level adequate to support the care of all veterans. Shifting the fiscal burden of care to other federal programs and/or to the family members of the patient (draining the financial savings of many families who must foot their own bill for care) discounts the very lives of those who have served America in all her wars.

STATEMENT FOR THE RECORD

The following is a statement from the daughter of a 90 year-old woman in the final stages of Alzheimer's disease. The mother is a resident of a local nursing home.

"The State requirement of 2.3 hours of nursing home care per 24-hour shift means that Alzheimer's patients, especially those in advanced stages of the disease, are not receiving the basic care they require. They sit in wheel chairs or lie unattended for hours, unable to feed themselves, call for assistance, change themselves or otherwise protect their remaining health. Family members must themselves provide care or hire others to feed, bathe, and change their family members, since the nursing home time commitment of 2.3 hours of care per patient is totally inadequate for even very basic care. There is not enough time in 2.3 hours to feed, change, turn, bathe, and move her.

For the last four years, I have been going to the nursing home twice a day to feed my

mother her breakfast and dinner since the nursing home staff do not have the time to make sure my mother receives the nourishment and fluids she needs. With personal money, I have hired a caregiver to feed lunch to my mother. My mother's food has to be cut thinly or blended, but the nursing home does not have time to do that, so I take my food processor and prepare the food myself. My mother is now dehydrated because of the problems in feeding her, but no extra help is available. My family and I have spent more than \$100,000 to provide basic care to my mother in addition to the Medicare reimbursement the nursing home has received.

Medicaid reimbursement to the nursing home is \$12 less per day than the nursing home costs. Since Medicaid does not meet the full cost, the nursing home has to absorb the difference. The nursing home manager tells me that an increase in both the state time requirement and in Medicaid reimbursement would enable the nursing home to hire more staff to make sure my mother receives the necessities of food, bathing, and movement.

My mother now has a urinary infection with skin breakdown due to wet diapers not being changed. My mother should not have to suffer from a deterioration in her condition due to poor care and from inattention because the nursing home is not receiving sufficient money to care for her better.

My mother has twice fallen flat on her face in the wheel chair because she had not been properly restrained (no leg rests and the Posey restrain around her torso and not her upper body). She suffered a broken wrist when she fell off a commode after an aide let go of her to fix a wheel chair. She suffered two strokes following the falls. I have seen obvious neglect in the care of my mother and other patients, including recently when an aide nearly gave medications to my mother that had been prescribed for her roommate.

I am completely stressed out from caring for my mother and I am outraged by the attitude that "writes off" people "warehoused" in nursing homes. Once you are elderly, especially if you can't take care of yourself as is the case with Alzheimer's disease, you're forgotten.

I have contacted various local and state government offices to urge that the 2.3 hours of care be increased and that Medicaid funding be expanded so that my mother receives the care with dignity to which she's entitled. I implore Senator Specter to reevaluate the time requirements for nursing home care and to work toward increasing the Medicaid daily reimbursement for nursing home care, especially for patients with Alzheimer's. By the way, 50% of people in nursing homes have Alzheimer's.

If more people saw what actually happens to Alzheimer's patients in nursing homes instead of reading about it, they would never forget the sights before their eyes and they would never let themselves or a loved one suffer through the circumstances—if they could help it. I hope Senator Specter can help the situation.

STATEMENT FOR INCLUSION IN THE
CONGRESSIONAL RECORD

My husband died two years ago after more than a decade of slow progressive dementia and physical deterioration. He had been bright, witty and articulate. Gradually, he lost his ability to do simple arithmetic, read, dress himself, or understand television or sports.

Eventually, he required constant supervision and care. First he attended a day care

center, then he remained at home with a health aide. I took over when I came home from work and experienced the "thirty-six hour day." He could no longer walk or feed himself by the time he had to enter a Veteran's Affairs hospital, almost three years prior to his death.

Competent and qualified neurologists and geriatricians agreed that my husband's symptoms indicated Alzheimer's Disease. No tests are available to confirm this with 100% accuracy. It was a shock therefore, to learn after autopsy, that he had actually suffered from an atypical form of Parkinson's Disease which mimicked Alzheimer's Disease.

STATEMENT

These comments regarding Alzheimer's Disease from George Boyle, 106 Briarwood Drive, Pittsburgh, PA 15235, phone 412-371-7682.

I was thrust into the role of caregiver back in 1980 when my wife, Jean, a well educated, working professional nurse started to gradually lose her memory and her ability to do the ordinary things of daily living. Her condition deteriorated over the past 12 years to a point where now she is completely incapable of any physical or mental activity and requires 24 hour personal care.

We have always carried Blue Cross and Blue Shield health coverage and now, with Jean's disability, she is covered by Medicare. None of this, however, has any provision for payment of the cost of long-term personal care that is necessary in Jean's present state and will continue as long as she lives. The cost of this personal care must be borne by me personally and is depleting my financial resources and threatens to leave no cushion for my own retirement.

A provision in Medicare for this type of long-term care would be a blessing to myself and thousands like me who are being financially depleted due to the long-term effects of Alzheimer's Disease. If Medicare is not the answer, then some form of national assistance grant for victims of catastrophic illness should be enacted. It hurts to work all your life, raise and educate six children, and then lose all you have worked for to a disease like Alzheimer's.

ALUMINUM COMPANY OF AMERICA,
Pittsburgh, PA, February 25, 1992.

Ms. LESLIE DUNN,
Alzheimer's Disease Research Center, Pittsburgh,
PA.

DEAR MS. DUNN: In response to Senator Specter's request, I am writing the following brief summary of our family's experience with my mother, Thelma Sigar.

Members of our family first began discussing possible problems with my mother's memory in 1988. It began as very simple items such as being confused about social engagements or not remembering facts relayed on a telephone conversation. As things became gradually more noticeable over a two-year period, we inquired of a family physician who recommended us to the ADRC. During the five years that she has been enrolled in the program, we have seen a gradual decline in her mental faculties. In 1987, she was living alone, working full-time in our family business, and participating in many charity and social activities. In addition, she would travel to Florida for vacation during the winter. However, each year we saw a diminishment in these capabilities. First was her inability to travel alone on an airplane. Second, a major trauma occurred in 1989 when, after several small traffic accidents, we decided that she was no longer able to drive.

This was a very difficult period for the family since my mother had been very independent as far as going to work and attending her various meetings. The ADRC was able to refer us to a professional evaluator who gave my mother tests and confirmed our decision. After this date, she continued to go to work on her own by using the ACCESS system of senior citizen public transportation. Gradually, though, we found it necessary to employ someone to pick her up from work and make sure that she was able to do her shopping and get home.

During the last year, my mother has undergone a rapid degradation of her memory and other cognitive facilities. It seems hard to remember that just one year ago she was working full-time. Today, it is necessary to have someone living with her full-time. She could no longer use any type of public transportation and, indeed, could not be left alone in a supermarket to do her own shopping. Telephone conversations have become much more difficult, and it is necessary to speak to her full-time care-giver in order to transmit any kind of information.

The family is fortunate to have the financial capabilities to handle personal care in this situation. We often talk about what would happen if this were not the case. There is no medical insurance or Medicare that pays for any of the personal care necessary for her. It certainly would take the full-time care of someone to watch her even at this medium stage of Alzheimer's Disease, and that would mean someone in this family giving up employment and spending that time period with her. In addition, the strain on a family member during that kind of an arrangement is very difficult. For our family, the worst part lies ahead as we expect another five or six years of continuing diminishment until she reaches the stage of not being able to care for herself in even the simplest physical manner. We expect that our expenditures will be \$30-\$33,000 a year over this time period for her care. In addition, there is even the greater loss of having a healthy, vibrant person "disappear" before your eyes.

During the course of our discussions with Senator Specter, we determined that even with his proposals the total amount of money spent for research per patient in the United States during 1991 was approximately \$60. It would seem that even a simple cost benefit analysis would reveal that a much larger expenditure would actually be "profitable" when compared to the necessary outlays for public assistance and lost contributions of family members who are forced to stay at home rather than work in the productive sector. I would suggest that you follow-up on the opportunity to present Alzheimer's research as a profit opportunity rather than an additional public expenditure. If I can be of any further help, please call me at 412-553-3632.

Sincerely,

KENNETH R. SIGER.

THE 75TH ANNIVERSARY OF BOYS
TOWN

Mr. EXON. Mr. President, I rise to pay special recognition to the 75th anniversary of Boys Town. Boys Town is a national treasure, founded in 1917 when a Roman Catholic priest, Father Edward Flanagan, borrowed \$90 to rent a home at 25th and Dodge Streets in Omaha, NE, for wayward boys. In the 75 years that have passed since then,

Boys Town has been unrelenting in its care for society's troubled boys and girls. To paraphrase Father Flanagan: The work continues because it is God's work.

Anyone who wasn't already familiar with Boys Town and the work it does for children instantly learned of them after MGM made a movie called "Boys Town" in 1938 starring Mickey Rooney and Spencer Tracy. Tracy won the Academy Award for his performance in the movie and later gave his Oscar to Father Flanagan. Today, the Boys Town statue of two brothers and their slogan: "He ain't heavy, Father, * * * he's my brother" earn instant recognition.

Over these past 75 years, Boys Town has directly touched the lives of 18,000 kids from all over the United States who have lived at the original Boys Town campus, spread over 1,300 acres on the western edge of Omaha. In addition, Boys Town has reached thousands of other children and families in crisis through a national crisis hotline and by opening offices, homes, shelters, or programs in nine other States and the District of Columbia, which I had the privilege of helping to announce this year. Although it still remains "Boys" Town, girls have been admitted since 1979. And in 1991, for the first time ever, a 16-year-old girl was elected mayor. Although founded by a Catholic priest, Boys Town has always been open to children of all races and religions.

I am pleased to bring the 75th anniversary of Boys Town to the attention of the U.S. Congress. I know my colleagues join me in wishing Boys Town success in their continued work on behalf of society's most innocent victims—our abused, neglected, and homeless children.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. ROBB). The period for morning business is now closed.

INDOOR RADON ABATEMENT REAUTHORIZATION ACT

The PRESIDING OFFICER. Under the previous order the Senate will take up consideration of S. 792, which the clerk will report.

The bill clerk read as follows:

A bill (S. 792) to reauthorize the Indoor Radon Abatement Act of 1988, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indoor Radon Abatement Reauthorization Act of 1991".

SEC. 2. NATIONAL GOALS.

Section 301 of the Toxic Substances Control Act (15 U.S.C. 2661) is amended—

(1) in the heading, by striking "NATIONAL GOAL" and inserting "NATIONAL GOALS";

(2) by inserting "(a) RADON LEVELS.—" before the first sentence of the section; and

(3) by adding at the end the following new subsection:

"(b) TESTING.—It is the goal of the United States that all homes, schools, and Federal buildings be tested for radon."

SEC. 3. DEFINITIONS.

Section 302 of the Toxic Substances Control Act (15 U.S.C. 2662) is amended by adding at the end the following new paragraphs:

"(5) The term 'residential dwelling' means—

"(A) a single-family dwelling or a one-family dwelling unit in a structure containing not more than four separate residential dwelling units, each such unit used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons; or

"(B) a single-family or one-family dwelling unit on the subground, ground, or first-floor-above-ground level of a multi-unit residential structure.

"(6) The term 'multi-unit residential structure' means a building containing more than four separate residential dwelling units, each such unit used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons.

"(7) The term 'contract for the sale of residential real property' means any contract or agreement whereby one party agrees to purchase from another party any interest in real property improved by one or more residential dwelling units used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons.

"(8) The term 'applicable mortgage loan' includes any loan (other than temporary financing such as a construction loan) that—

"(A) is secured by a first lien on residential real property (including individual units of condominiums and cooperatives); and

"(B) either—

"(i) is insured, guaranteed, made, or assisted by any agency of the Federal Government, including the Department of Housing and Urban Development, the Veterans Administration, and the Farmers Home Administration; or

"(ii) is intended to be sold by an originating mortgage institution to any federally chartered secondary mortgage market institution.

"(9) The term 'originating mortgage institution' means any lender that provides federally insured, guaranteed, made, or assisted mortgage loans, or sells mortgage loans to a federally chartered secondary mortgage market institution.

"(10) The term 'federally chartered secondary mortgage institution' means an institution chartered by Congress that buys mortgages from originating financial institutions and resells them to investors, including the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Association.

"(11) The term 'Administrator' means the Administrator of the United States Environmental Protection Agency.

"(12) The term 'business day' means any day other than a Saturday, a Sunday, a Federal holiday, a State holiday in the State in which the affected residential property is located, or a State holiday in the State or States in which the buyer or seller resides.

"(13) The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or an interstate body.

"(14) The term "direct Federal financial assistance" means assistance in financing a residential dwelling provided by the Federal Housing Administration, Farmers Home Administration, and the Department of Veterans Affairs.

"(15) The term "Federal building" means any building that—

"(A) is used primarily as an office building, school, hospital, or residence, and

"(B) owned, leased, or operated by any Federal agency."

SEC. 4. PRIORITY RADON AREAS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) is amended—

(1) by redesignating sections 303 through 311 as sections 304 through 312, respectively; and

(2) by inserting after section 302 the following new section:

"SEC. 303. PRIORITY RADON AREAS.

"(a) DESIGNATION OF AREAS.—The Administrator shall, designate as expeditiously as possible but no later than January 1, 1992, areas as priority radon areas, and revise, as appropriate thereafter, the designations.

"(b) STANDARD FOR DESIGNATION.—The Administrator shall designate an area as a priority radon area in any case where the Administrator determines that there is a reasonable likelihood that the average radon level in the area is likely to exceed the national average radon level by more than a de minimis amount.

"(c) FACTORS.—In designating priority radon areas, the Administrator shall consider the most current available information at the time of such designation, including—

"(1) the national assessment of radon conducted pursuant to section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note);

"(2) surveys of school buildings conducted pursuant to section 308;

"(3) surveys of Federal buildings conducted pursuant to section 310;

"(4) surveys of work places conducted pursuant to section 318; and

"(5) any other information, including other radon measurements and geological data, as the Administrator determines to be appropriate."

SEC. 5. CITIZEN'S GUIDE.

(a) SCHEDULE.—Section 304(a) of the Toxic Substances Control Act (15 U.S.C. 2663(a)) (as redesignated by section 4 of this Act) is amended by striking "June 1, 1989" and inserting "January 1, 1992".

(b) ACTION LEVELS.—Section 304(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2663(b)(1)) (as redesignated by section 4 of this Act) is amended—

(1) by inserting "(A)" after "ACTION LEVELS.—"; and

(2) by adding at the end the following new subparagraphs:

"(B) The citizen's guide shall state the national goals established in this title, and shall estimate the average national ambient outdoor radon level. The guide shall also indicate the health benefits of reducing indoor radon levels to ambient outdoor levels.

"(C) The citizen's guide shall establish a target action point indicating a level of indoor radon that is, in the judgment of the Administrator, as close to the national ambient outdoor radon level as can be achieved consistently in existing, single family homes through the application of readily available and generally affordable radon mitigation technologies and practices."

(c) INFORMATION.—Section 304(b)(2) of the Toxic Substances Control Act (15 U.S.C. 2663(b)(2)) (as redesignated by section 4 of this Act) is amended by adding at the end the following new subparagraph:

"(F) The location of priority radon areas and the likelihood of radon levels above the target

action point within and outside of priority radon areas.”

SEC. 6. MODEL CONSTRUCTION STANDARDS.

(a) **TECHNICAL AMENDMENTS.**—(1) Section 305 of the Toxic Substances Control Act (15 U.S.C. 2664) (as redesignated by section 4 of this Act) is amended—

(A) by inserting “(a) **STANDARDS.**—” before the first sentence of the section;

(B) by inserting “(b) **CONSULTATION.**—” before the second sentence of the section;

(C) by inserting “(c) **GEOGRAPHIC DIFFERENCES.**—(1)” before the fourth sentence of the section;

(D) by striking the fifth sentence of the section; and

(E) by inserting “(d) **IMPLEMENTATION.**—” before the sixth sentence of the section.

(2) Section 305 of the Toxic Substances Control Act (15 U.S.C. 2664) (as redesignated by section 4 of this Act) is amended by adding at the end the following new subsection:

“(e) **SCHEDULE.**—The Administrator shall publish final radon control standards and techniques for residential dwellings and make such techniques available to the public and the building industry not later than January 1, 1992, and for multiunit residential structures and schools by not later than January 1, 1994.”

(b) **OBJECTIVES.**—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2664) (as redesignated by section 4 of this Act) is amended by adding at the end of subsection (c) (as designated by subsection (a)(1) of this section) the following new paragraph:

“(2)(A) Model standards and techniques shall indicate a range of effective radon control measures, practices, and techniques, that apply to original construction of a wide variety of building types, locations, conditions, and circumstances, and shall indicate the general range of radon control achievable by such measures individually and in combination with other measures.

“(B) At a minimum, the Administrator shall establish minimum radon reduction measures, practices, and techniques for new construction for the purpose of determining compliance with this section. Such radon standards shall be designed to achieve indoor radon levels in homes less than the target action point established pursuant to section 304(b)(1)(C).”

(c) **FEDERALLY ASSISTED HOUSING.**—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2664) (as redesignated by section 4 of this Act, and as amended by subsection (a)(2) of this section) is amended by adding at the end the following new subsection:

“(f) **FEDERALLY ASSISTED HOUSING.**—The appropriate Federal official shall require that any residential dwelling or multiunit residential structure constructed more than two years after the date of the establishment of new construction standards pursuant to this section or the date of enactment of this section, whichever is later, in an area designated by the Administrator as a priority radon area or more than two years after the designation of an area as a priority radon area, whichever is later, shall be constructed in accordance with the radon control standards established pursuant to subsection (c)(2)(B), before providing any direct Federal financial assistance.”

(d) **DESIGN AWARDS AND CERTIFICATION.**—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2664) (as redesignated by section 4 of this Act, and as amended by subsection (c) of this section) is amended by adding at the end the following new subsection:

“(g) **DESIGN AWARDS.**—(1) The Administrator shall establish a radon design awards program.

“(2) The radon design awards program shall provide for awards for the best residential design incorporating radon control or mitigation

standards in categories of residential design to be determined by the Administrator.”

(e) **RELATIONSHIP TO STATE AND LOCAL STANDARDS.**—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2664) (as redesignated by section 4 of this Act, and as amended by subsection (d) of this section) is amended by adding at the end the following new subsection:

“(h) **RELATIONSHIP TO STATE AND LOCAL STANDARDS.**—The standards published pursuant to this section shall not preempt the use of any State or local building standard if the State or local standard is equally effective in reducing radon levels as the standards published pursuant to this section.”

SEC. 7. TECHNICAL ASSISTANCE.

(a) **ACTIVITIES.**—Section 306(a) of the Toxic Substances Control Act (15 U.S.C. 2665(a)) (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraphs:

“(9) Development of a model State program to provide radon information to renters of housing, including the dissemination to State and local tenant and other organizations.

“(10) Assistance to State agencies and other organizations concerning the assessment and mitigation of radon in public water supplies.

“(11) Assistance to State agencies and other organizations to facilitate prompt adoption and effective enforcement of new construction standards for reducing radon levels developed pursuant to section 305.

“(12) Development of testing guidelines for multiunit residential structures and multistory buildings not later than six months after the date of enactment of this paragraph and development of mitigation guidelines not later than three years after the date of enactment of this paragraph.

“(13) Issuance of guidance to States on appropriate elements of State radon measurement and mitigation certification programs.”

(b) **PROFICIENCY TESTING.**—(1) Section 306(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2665(a)(2)) (as redesignated by section 4 of this Act) is amended by striking “voluntary”.

(2) Section 306(e)(2) of the Toxic Substances Control Act (15 U.S.C. 2665(e)(2)) (as redesignated by section 4 of this Act) is amended to read as follows:

“(2) **CHARGE IMPOSED.**—To cover the operating costs of the proficiency rating program, the Administrator shall impose charges on persons applying for a proficiency rating. For fiscal years 1992, 1993, 1994, 1995 and 1996 the amount of fees collected under this paragraph shall be for the purpose of offsetting up to 50 percent of the costs of operating the program. After fiscal year 1996, the Administrator may apply such amounts to defray more than 50 percent of the program's operating costs. No charges may be imposed on State and local governments. In the case of a State with authority to implement radon device, measurement, and mitigation proficiency programs, the State may impose charges consistent with charges which would have been imposed by the Administrator. Any such funds collected by a State may be used to provide State match for Federal grants pursuant to section 307 of this title.”

SEC. 8. GRANT ASSISTANCE.

(a) **APPLICATION.**—Section 307(b) of the Toxic Substances Control Act (15 U.S.C. 2666(b)) as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraph:

“(6) A description of the State's efforts to develop a mandatory radon proficiency program consistent with sections 306(a)(2) and 314.”

(b) **ELIGIBLE ACTIVITIES.**—Section 307(c) of the Toxic Substances Control Act (15 U.S.C. 2666(c)) (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraphs:

“(11) Technical assistance to public water supply systems concerning mitigation of radon in public water supplies, and public education and information activities to assist homeowners in the assessment and mitigation of radon in private drinking water supplies.

“(12) Activities to adopt model new construction standards for reducing radon levels developed pursuant to section 305 to the State and assure the implementation of such standards in the State.

“(13) Technical and financial assistance to non-profit public interest groups to encourage radon testing and mitigation at local levels.

“(14) Targeting outreach and technical assistance activities to licensed child care facilities in priority radon areas.

“(15) Notwithstanding the limitation in subsection (i)(4), payment, in the form of grants or loans, of costs of implementing remediation measures necessary to prevent levels of radon in school buildings above the target action point identified pursuant to section 304(b)(1)(C): Provided, That such payments are made in consideration of the financial need of the applicant.

“(16) Payment of costs of conducting radon tests required pursuant to section 308(d): Provided, That such payments shall be made only in the case of a local educational agency that received assistance payment pursuant to paragraph (15).”

(c) **PREFERENCE TO CERTAIN STATES.**—Section 307(d) of the Toxic Substances Control Act (15 U.S.C. 2666(d)) (as redesignated by section 4 of this Act) is amended—

(1) by striking “1991” and inserting “1993”; and

(2) by inserting before the period “, or have adopted equally effective standards”.

(d) **FEDERAL SHARE.**—Section 307(f) of the Toxic Substances Control Act (15 U.S.C. 2666(f)) (as redesignated by section 4 of this Act) is amended by striking “in the third year” and inserting “in each succeeding year”.

(e) **ASSISTANCE TO LOCAL GOVERNMENTS.**—Section 307(g) of the Toxic Substances Control Act (15 U.S.C. 2666(g)) (as redesignated by section 4 of this Act) is amended—

(1) by striking “and (6)” and inserting “(6), (11), (12), (14), (15), and (16),”; and

(2) by inserting “(1)” after “GOVERNMENTS.—”; and

(3) by adding at the end the following new paragraph:

“(2) Any remediation plans for reducing radon in school buildings implemented pursuant to this section shall be reviewed for consistency with EPA guidance by the school officials responsible for authorizing these types of structural changes.”

(f) **INFORMATION.**—Section 307(h) of the Toxic Substances Control Act (15 U.S.C. 2666(h)) (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraph:

“(4) Any State receiving funds under this section shall investigate consumer complaints about radon services that violate the Environmental Protection Agency or State radon proficiency program. An appropriate official of the State shall advise the Administrator of any person who violates the requirements of section 314.”

(g) **AUTHORIZATION.**—Section 307(j) of the Toxic Substances Control Act (15 U.S.C. 2666(j)) (as redesignated by section 4 of this Act) is amended by striking paragraph (5).

SEC. 9. RADON IN SCHOOLS.

Section 308 of the Toxic Substances Control Act (15 U.S.C. 2667) (as redesignated by section 4 of this Act) is amended by adding at the end the following new subsections:

“(c) **GUIDELINES.**—(1) Not later than one year after the date of enactment of this subsection,

the Administrator shall publish guidelines on testing for and remediating radon in school buildings.

"(2) After the publication of guidelines pursuant to this subsection, testing and remediation carried out pursuant to this section shall be conducted in a manner consistent with such guidelines.

"(3) Any radon testing or remediation of school buildings conducted prior to the publication of guidelines pursuant to this subsection shall be considered to meet the requirements of this section if the testing or remediation is conducted consistent with any interim guidance published by the Administrator or by a State (in any case where the Administrator determines that such guidelines are substantially consistent with the guidelines published under this subsection).

"(d) **REQUIREMENT FOR RADON TESTING.**—(1) Not later than two years after the designation by the Administrator of an area as a priority radon area, each local educational agency located in whole or in part in such designated area shall conduct tests for radon in each school building owned or operated by the local educational agency.

"(2) The Administrator may extend the schedule for testing for radon pursuant to this subsection to the date two years from the date of publication of testing guidelines pursuant to subsection (c).

"(3) The results of any tests conducted pursuant to this section by a local educational agency shall be available for public review in the administrative offices of the local educational agency during normal business hours. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such results and shall send the results to the Administrator and the agency of the State that implements radon programs.

"(4) Any radon testing conducted pursuant to this section shall be supervised by a person who has received instruction pursuant to an Environmental Protection Agency or equivalent State approved program, as determined by the Administrator, and shall use radon measurement devices and methods approved by the radon proficiency program established pursuant to sections 306(a)(2) and 314."

SEC. 10. REGIONAL RADON TRAINING CENTERS.

Section 309(b) of the Toxic Substances Control Act (15 U.S.C. 2668(b)) (as redesignated by section 4 of this Act) is amended by adding at the end the following new sentence: "The regional radon training centers are authorized to provide training to State and local building code officials, contractors, and others in the building community, on the model construction standards and techniques published pursuant to section 305."

SEC. 11. FEDERAL BUILDINGS.

Section 310 of the Toxic Substances Control Act (15 U.S.C. 2669) (as redesignated by section 4 of this Act) is amended by adding at the end the following new subsection:

"(g) **RADON ASSESSMENT AND MITIGATION PLAN.**—(1) Not later than January 1, 1994, the Administrator shall submit to Congress a plan describing activities to be undertaken by appropriate Federal agencies to assess and mitigate radon in Federal buildings.

"(2) The Administrator shall consult with the heads of affected Federal agencies in the development of the plan required pursuant to this subsection.

"(3) The plan required pursuant to this subsection shall, at a minimum—

"(A) include a list of each Federal building and an indication of the results of any radon tests for such buildings conducted to date;

"(B) specify those Federal buildings for which assessment and mitigation will be undertaken

on an expedited basis based on consideration of—

"(i) the radon levels in the buildings;

"(ii) the number of people exposed to high radon levels; and

"(iii) the susceptibility of the building to mitigation.

"(C) specify the schedule for mitigation in each building in which radon levels exceed the target action level specified in section 303(b)(1)(C); and

"(D) specify the Federal agency responsible for the building, the estimated costs of mitigation, and the source of funds for assessment and mitigation actions.

"(4) At a minimum, each Federal agency that is responsible for Federal buildings shall assure that—

"(A) all schools and residences are assessed to determine radon levels by not later than January 1, 1996;

"(B) all other Federal buildings are assessed to determine radon levels by not later than January 1, 1998; and

"(C) in the case of a Federal building with radon levels above the target action point established by the Administrator pursuant to section 304(b)(1)(C), measures designed to achieve radon levels at or below the target action point are implemented by not later than two years after the applicable deadline for assessment specified in this paragraph.

"(5) In implementing radon assessment and mitigation activities, Federal agencies shall employ as contractors private firms certified by the Administrator as proficient pursuant to section 306(a)(2).

"(6) Not later than two years after the submission of the plan required pursuant to this subsection, the Administrator shall submit to Congress a report on actions taken to implement the plan."

SEC. 12. RADON INFORMATION.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 4 of this Act) is further amended by adding at the end the following new section:

"SEC. 313. RADON-RELATED INFORMATION.

"(a) **INFORMATION DOCUMENT.**—(1) Not later than 180 days following the date of enactment of this section, the Administrator, in consultation with real estate groups and real estate financial institutions, citizen groups, and other groups that the Administrator determines to be appropriate, shall develop a written document containing radon-related information.

"(2) The document shall include, at a minimum—

"(A) information indicating the health risk associated with different levels of radon exposure consistent with the health information in the citizen's guide;

"(B) information regarding the advisability of undertaking measures to mitigate dangerous levels of radon;

"(C) information regarding appropriate Federal and State agencies that can provide further information on the health risk from radon, and a list of firms or other entities approved by the Environmental Protection Agency for purposes of radon detection and mitigation; and

"(D) recommended Environmental Protection Agency radon testing procedures that will provide quality measurements in conjunction with a real estate transaction.

"(3) A copy of such document shall be provided by every originating mortgage institution to each person from whom it receives or for whom it prepares a written application for an applicable mortgage loan. Such document shall be made available not later than five business days after such application is received or prepared.

"(4) No federally chartered secondary mortgage institution may purchase any mortgage

loan originating twelve or more months after the date of enactment of this section unless such secondary mortgage institution requires, by contract or otherwise, that the originating mortgage institution shall comply with the radon information distribution requirements imposed under this section, in originating mortgages to be purchased by such secondary mortgage market institution.

"(5) For purposes of this section, a document may be printed and distributed by each originating mortgage institution if the form and content of the document meet the requirements of this section and the document is approved by the Administrator.

"(b) **VALIDITY OF CONTRACTS AND LIENS.**—Nothing in this section shall affect the validity or enforceability of any sale or contract for the sale of residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with an applicable mortgage loan.

"(c) **RELATIONSHIP TO OTHER LAWS.**—Nothing in this section shall annul, alter, affect, or exempt any person subject to this section from complying with the laws of any State with respect to the provision of radon-related information, except to the extent that the Administrator determines that any such law is inconsistent with this section, and then only to the extent of the inconsistency."

SEC. 13. MANDATORY RADON PROFICIENCY PROGRAM.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 12 of this Act) is further amended by adding at the end the following new section:

"SEC. 314. MANDATORY RADON PROFICIENCY PROGRAM.

"(a) **MANDATORY PARTICIPATION.**—Effective two years after the date of the enactment of this section, no person shall offer radon measurement devices or radon measurement or mitigation services to the public unless such person has successfully completed the Environmental Protection Agency's radon proficiency program, or appropriate portions thereof.

"(b) **STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed to apply to governmental units or nonprofit organizations that provide a radon service for their own use and do not provide that service for commercial purposes.

"(c) **DELEGATION TO STATES.**—(1) The Administrator shall administer the mandatory proficiency program consistent with the Guidance to States on Radon Certification of the Environmental Protection Agency.

"(2) The Administrator is authorized to enter into any agreement or other arrangement with any State for the purpose of delegating its radon proficiency program, including enforcement provisions, or any other part thereof, to such State, provided that a State program is consistent with the Federal program.

"(d) **PROHIBITED ACTS.**—It shall be unlawful for any person to—

"(1) fail or refuse to comply with this section, or any rule or regulation promulgated or order issued pursuant to this section; or

"(2) fail or refuse to—

"(A) establish or maintain records as required by the Administrator or by a State where the Administrator has entered into an agreement or other arrangement under subsection (c);

"(B) submit reports, notices, or other information, as required by the Administrator or by a State where the Administrator has entered into an agreement or other arrangement under subsection (c);

"(C) permit entry or inspection by the Administrator, or by a State where the Administrator has entered into an agreement or other arrangement under subsection (c); or

"(D) permit access to or copying of records by a State where the Administrator has entered into an agreement or other arrangement under subsection (c)."

SEC. 14. MEDICAL COMMUNITY OUTREACH.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 13 of this Act) is further amended by adding at the end the following new section:

"SEC. 315. MEDICAL COMMUNITY OUTREACH.

"(a) **IN GENERAL.**—The Administrator, in cooperation with the Secretary of Health and Human Services, shall develop and implement an outreach program to provide information about radon to the medical community.

"(b) **INFORMATION.**—(1) The Administrator, in consultation with the Secretary of Health and Human Services and the Surgeon General, shall develop informational material concerning radon tailored to doctors in general practice and in specialties related to lung cancer. Such information shall, at a minimum—

"(A) explain the health threats posed by exposure to radon;

"(B) explain the association of radon with smoking and other causes of lung cancer;

"(C) identify appropriate steps to take to determine exposure to radon in the home; and

"(D) identify sources of additional information.

"(2) Not later than one year after the date of enactment of this section, the Administrator shall transmit the information developed pursuant to this section to—

"(A) doctors in the United States in general practice;

"(B) doctors in specialties related to lung cancer;

"(C) all doctors employed by the Federal Government;

"(D) all hospital administrators; and

"(E) other physicians and officials determined by the Administrator to be appropriate.

"(c) **REPORT.**—Not later than two years after the date of enactment of this section, the Administrator, in consultation with the Secretary of Health and Human Services, shall report to Congress concerning the implementation of this section and recommendations for measures to improve radon information dissemination to the medical community."

SEC. 15. FEDERAL HOUSING.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 14 of this Act) is further amended by adding at the end the following new section:

"SEC. 316. FEDERALLY OWNED AND ASSISTED HOMES, SCHOOLS, AND BUILDINGS.

"(a) **FEDERALLY FUNDED CONSTRUCTION.**—Not later than six months after the publication of priority radon areas required by section 303, or the publication of model construction standards required by section 305, whichever is later, the head of each Federal agency shall adopt such procedures as may be necessary to assure that any new Federal building or that any school constructed with Federal financial assistance, in a priority radon area, shall conform to the model construction standards required by section 305.

"(b) **FEDERALLY ASSISTED HOUSING.**—The Secretary of Housing and Urban Development, in cooperation with the Administrator, shall, not later than one year after the date of enactment of this Act, disseminate in priority radon areas information on the health threats posed by radon, proper methods of testing for radon, and techniques for mitigating elevated radon levels—

"(1) public housing and Indian housing assisted under the United States Housing Act of 1937 (42 U.S.C. 1401 et seq.); and

"(2) tenants in housing units funded by housing assistance programs administered by the Secretary."

"(c) **RESEARCH.**—The Secretary of Housing and Urban Development shall undertake a program of radon research, consisting of research on—

"(1) radon distribution and mitigation within multiunit residential structures in conjunction with the Administrator;

"(2) landlord liability;

"(3) predicting radon hazards in new multi-unit residential structures on particular lands; and

"(4) such other research as both the Secretary of Housing and Urban Development and the Administrator consider appropriate.

"(d) **TESTING REQUIREMENT.**—(1) Beginning 6 months after the publication of Radon Priority Areas required by this title, any residential dwelling or multi-unit structure owned by a Federal department or agency, or any Government corporation in a Radon Priority Area shall be tested for radon before a sales contract to sell the home is signed.

"(2) Any radon testing conducted pursuant to this section shall be supervised by a person who has received instruction pursuant to an Environmental Protection Agency or equivalent State approved program, as determined by the Administrator, and use radon measurement devices and methods approved by the radon proficiency program established pursuant to section 306(a)(2).

"(3) Radon testing conducted within a 5-year period prior to acquisition by a Federal department or agency, or any Government corporation or Government controlled corporation, shall satisfy the requirements of this section if the test otherwise meets the requirements of paragraph (2).

"(4) The results of a radon test required pursuant to this section shall be made available to potential buyers of any homes described in paragraph (1) before a sales contract to sell the home is signed."

SEC. 16. NATIONAL RADON EDUCATIONAL EFFORTS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 15 of this Act) is further amended by adding at the end the following new section:

"SEC. 317. NATIONAL RADON EDUCATIONAL CAMPAIGN.

"The Administrator is authorized to establish a national educational campaign to increase public awareness about radon health risks and motivate public action to reduce radon levels, including the use of funds for the purchase and production of public educational materials."

SEC. 17. RADON IN WORK PLACES.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 16 of this Act) is further amended by adding at the end the following new section:

"SEC. 318. RADON IN WORK PLACES.

"(a) **STUDY OF RADON IN WORK PLACES.**—

"(1) **AUTHORITY.**—The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's work places.

"(2) **SURVEY.**—In conducting such study, the Administrator shall design a survey that, when completed, allows Congress to characterize the extent of radon contamination in work places. The survey shall include testing from a representative sample of work places in each priority radon area and shall include additional testing, to the extent resources are available for such testing. The survey also shall include any reliable testing data supplied by States, schools, or other parties.

"(3) **ASSISTANCE.**—The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, guidance and data detailing the risks associated with high radon levels, tech-

nical guidance and related information concerning testing for radon within work places, and methods for reducing radon levels.

"(4) **DIAGNOSTIC AND REMEDIAL EFFORTS.**—The Administrator is authorized to select from high-risk areas identified in paragraph (2), work places for purposes of enabling the Administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such work places. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any work place and the several States.

"(5) **REPORT.**—Not later than two years after the date of enactment of this Act, the Administrator shall submit a report setting forth the results of the study conducted pursuant to this section.

"(b) **AUTHORIZATION.**—For the purpose of carrying out the provisions of paragraph (a)(4), there are authorized to be appropriated such sums, not to exceed \$500,000, as may be necessary. For the purpose of carrying out this section other than paragraph (a)(4), there are authorized to be appropriated such sums, not to exceed \$2,000,000, as may be necessary."

SEC. 18. PREEMPTION.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 17 of this Act) is further amended by adding at the end the following new section:

"SEC. 319. PREEMPTION.

"(a) **CONSTRUCTION OF PROVISIONS AS NOT PREEMPTING OTHER LAWS.**—Nothing in this title shall be construed, interpreted, or applied to preempt, displace, or supplant any other Federal or State law, whether statutory or common.

"(b) **AWARD OF COSTS AND DAMAGE AWARDS.**—Nothing in this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the testing or mitigation of radon contamination, or a portion of such costs, at any time.

"(c) **CONSTRUCTION OF PROVISIONS AS NOT PROHIBITING MORE STRINGENT STATE REQUIREMENTS.**—Nothing in this title shall be construed or interpreted as preempting a State, with respect to radon within such State, from establishing any liability or more stringent requirement that is equal to or more stringent than those included in this title.

"(d) **CREATION OF CAUSE OF ACTION.**—Nothing in this title creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

"(e) **EFFECT OF PROVISIONS IN CIVIL ACTIONS FOR DAMAGES.**—It is not the intent of Congress that this subsection, or rules, regulations, or orders issued pursuant to this subsection, be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to radon. This subsection does not affect the authority of any court to make a determination in any adjudicatory proceedings under applicable State law with respect to the admission into evidence or any other use of this title or rules, regulations, or orders issued pursuant to this title."

SEC. 19. ENFORCEMENT.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 18 of this Act) is further amended by adding at the end the following new section:

"SEC. 320. ENFORCEMENT.

"(a) **CIVIL PENALTIES.**—(1) Any person violating section 313 or 314 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

"(2)(A) A civil penalty under this section shall be assessed by the Administrator by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5,

United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order and provide such person an opportunity to request, not later than 15 days after the date the notice is received by such person, a hearing on the order.

"(B) In determining the amount of a civil penalty, the Administrator may take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"(C) The Administrator may compromise, modify, remit, with or without conditions, any civil penalty that may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the firm charged.

"(3) Any person who requested a hearing under this section respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3); or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(b) COMPLIANCE ORDERS.—(1) If the Administrator finds on the basis of information made available, that any person, firm, or organization is in violation of this Act, the Administrator shall proceed under the authority under subsection (2) of this section, or notify the person, firm, or organization in which the violation occurred. If, beyond the thirtieth day after the notification of the Administrator, the State has not commenced appropriate enforcement action, the Administrator may issue an order requiring compliance or such other relief as the Administrator may find appropriate, or bring civil action in accordance with paragraph (4) of this subsection.

"(2) If the Administrator finds, on the basis of information made available, that any person, firm, or organization is in violation of requirements of the Act, the Administrator may issue an order requiring such person, firm, or organization to comply with such requirement or such other relief as the Administrator may find appropriate, or shall bring civil action in accordance with paragraph (4) of this subsection.

"(3) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days. Such orders shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

"(4) The Administrator is authorized to commence a civil action for appropriate relief, in-

cluding a permanent or temporary injunction, of any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States in the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain the violation and require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State."

SEC. 20. CITIZEN SUITS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 19 of this Act) is further amended by adding at the end the following new section:

"SEC. 321. CITIZEN SUITS.

"(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action—

"(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the 11th amendment to the Constitution) who is alleged to be in violation of this title or any rule promulgated thereunder, to restrain such violation; or

"(2) against the Administrator to compel the Administrator to perform any act or duty under this Act that is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection, process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

"(b) LIMITATION.—No civil action may be commenced—

"(1) under subsection (a)(1) to restrain a violation of this Act, or rule or order under this Act—

"(A) before the expiration of sixty days after the plaintiff has given notice of such violation—

"(i) to the Administrator; and

"(ii) to the person who is alleged to have committed such violation; or

"(B) if the Administrator has commenced and is diligently prosecuting a proceeding to require compliance with this Act or with such rule or order, or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this Act or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

"(2) under subsection (a)(2) before the expiration of sixty days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty that is the basis for such action.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

"(c) IN GENERAL.—(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

"(2) The court, in issuing any final order in any action brought pursuant to subsection (a),

may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

"(3) Nothing in this section shall restrict any right that any person (or class of persons) may have under any statute or common law to seek enforcement of this Act, or any rule or order under this Act, or to seek any other relief.

"(d) CONSOLIDATION.—When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions that is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

"(1) a district that is selected by such defendant and in which one of such actions is pending;

"(2) a district that is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending; or

"(3) a district that is selected by the court and in which one of such actions is pending. The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending."

SEC. 21. AUTHORIZATIONS OF APPROPRIATIONS.

(a) TECHNICAL ASSISTANCE.—Section 306(f) of the Toxic Substances Control Act (15 U.S.C. 2665(f)) (as redesignated by section 4 of this Act) is amended by striking "and 1991." and inserting "1991, 1992, 1993, and 1994."

(b) GRANT ASSISTANCE.—Section 307(j)(1) of the Toxic Substances Control Act (15 U.S.C. 2666(j)(1)) (as redesignated by section 4 of this Act) is amended by inserting before the period "and \$15,000,000 for each of fiscal years 1992, 1993, and 1994".

(c) SCHOOL REMEDIATION.—Section 307(j) of the Toxic Substances Control Act (15 U.S.C. 2666(j)) (as redesignated by section 4 of this Act) is amended—

(1) by striking paragraph (5); and

(2) by adding at the end the following new paragraphs:

"(5) Of funds appropriated pursuant to this subsection for fiscal years 1992, 1993, and 1994, not more than one-third shall be used to implement radon remediation measures for local educational agencies pursuant to paragraphs (15) and (16) of subsection (c).

"(6) Of funds appropriated pursuant to this subsection for fiscal years 1992, 1993, and 1994, the Administrator may reserve an amount up to 2 percent or \$200,000, whichever is the greater, for the purposes of making grants to local educational agencies for the implementation of measures to reduce radon levels: Provided, That any such local educational agency is prohibited by State law from receiving grant assistance from the State: Provided further, That the local educational agency provides not less than 50 percent of the cost of implementing such measures from non-Federal sources."

(d) REGIONAL TRAINING CENTERS.—Section 309(f) of the Toxic Substances Control Act (15 U.S.C. 2668(f)) (as redesignated by section 4 of this Act) is amended by inserting before the period "and \$1,500,000 for each of fiscal years 1992, 1993, and 1994".

SEC. 22. TECHNICAL AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. 2601 note) is amended—

(1) by redesignating the items relating to sections 303 through 311 as 304 through 312, respectively;

(2) by inserting after the item relating to section 302 the following new item:

"Sec. 303. Priority radon areas.";

and

(3) by adding at the end the following new items:

"Sec. 313. Radon-related information.

"Sec. 314. Mandatory radon proficiency program.

"Sec. 315. Medical community outreach.

"Sec. 316. Federally owned and assisted homes, schools, and buildings.

"Sec. 317. National radon educational campaign.

"Sec. 318. Radon in work places.

"Sec. 319. Preemption.

"Sec. 320. Enforcement.

"Sec. 321. Citizen suits."

(b) RADON MITIGATION DEMONSTRATION PROGRAM.—Section 118(k)(2) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note) is amended—

(1) by adding at the end of subparagraph (A) the following: "The demonstration program also shall include the development and evaluation of innovative, low-cost techniques to achieve ambient radon concentrations in existing structures with low to moderate radon levels and in new structures, and the development and demonstration of radon mitigation technology for multi-story buildings."

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

SEC. 23. REPORT TO CONGRESS ON PROMOTING RADON TESTING.

(a) EVALUATION.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Secretary of Veterans Affairs, shall evaluate existing efforts to promote radon testing in the Nation's homes and ways to increase radon testing.

(b) REPORT.—(1) The Administrator shall report to Congress by October 1, 1993, on the effectiveness of alternative strategies to promote radon testing. The strategies shall include—

(A) grants to support the development of radon testing strategies by States;

(B) financial incentives to homeowners;

(C) testing and disclosure of radon levels during real estate marketing;

(D) public education programs;

(E) distributing radon information during real estate marketing; and

(F) distributing radon information with utility bills.

(2) In preparing the report, the Administrator shall consult with concerned parties including public interest groups, health officials, radon testing industries, realtors, home builders, utilities and the States.

The PRESIDING OFFICER. Under the previous order, time for the debate on the bill and the committee substitute is limited to 30 minutes equally divided and controlled in the usual form.

Amendments in order to the committee substitute to S. 792 are: amendment by the Senator from North Dakota [Mr. BURDICK], a technical amendment in the first degree, no second-degree in order, for 5 minutes; amendment by the Senator from New Hampshire [Mr. SMITH], a first-degree on radon, no sec-

ond-degree, 10 minutes; and two amendments by the Senator from Wyoming, a first-degree amendment on public health, no time limit, and relevant second-degree amendments are in order; and a first degree on radon in public schools, no time limit, second-degree amendments are in order.

The Chair recognizes the Senator from New Jersey [Mr. LAUTENBERG].

Mr. LAUTENBERG. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized accordingly.

Mr. LAUTENBERG. Mr. President, I acknowledge the presence of my colleague from Minnesota, Senator DURENBERGER, with whom I worked very closely on many environmental issues and whose assistance here has been invaluable.

Mr. President, I rise in support of S. 792, the Indoor Radon Abatement Reauthorization Act of 1992. This bill will reauthorize and strengthen the radon testing, mitigation, and education programs we enacted in 1988.

Mr. President, radon is a known killer. It attacks us in our homes, our schools, and our work places. Radon is one of the most serious environmental health risks facing the country today.

The evidence is overwhelming. A 1990 report by the EPA Science Advisory Board, an expert panel of scientists which provides technical advice to the EPA Administrator, identified radon and other indoor air pollutants as posing relatively high risks to human health compared to other environmental threats.

At a Superfund Subcommittee hearing in 1989, Assistant Surgeon General Vernon Houk said that the evidence of the health threat posed by radon is the strongest of any environmental contaminant.

The evidence Assistant Surgeon General Houk referred to involves lung cancer deaths to miners caused by radon. A 1990 National Academy of Sciences report on radon concluded that this mine data can be used to estimate the risks in our homes and schools from radon exposure.

Based on this report, EPA has reestimated the risk posed by radon to 7,000 to 30,000 lung cancer deaths a year with a mean estimate of 14,000 cancer deaths. That makes radon the second leading cause of lung cancer behind smoking.

In 1988, EPA and the Surgeon General's Office issued a national health advisory urging people to test their homes after survey results showed that one in four homes in 17 States surveyed had elevated radon levels. And in April of 1989, EPA completed a pilot survey to measure radon levels in 130 schools across the country. This survey found that one in five classrooms had elevated radon levels and that over half of the schools tested had at least one classroom with elevated radon levels.

In New Jersey, the Department of Environmental Protection and Energy has estimated the 320 New Jerseyans will die of lung cancer each year from radon, making it by far the most serious environmental cause of cancer to State residents.

It is no wonder that the Department of Health and Human Services, in Healthy People 2000, the Nation's health strategy, identified increased radon testing as one of just three environmental health goals for the country.

Fortunately, it is relatively inexpensive to test for elevated levels of radon. Home tests cost as little as \$10 and mitigation efforts for elevated levels of radon, while not cheap, are in the reach of most homeowners. EPA estimates that the average cost to test a school is roughly \$1,000 and that the average mitigation cost is only a few thousand dollars per school.

The Congress has consistently expressed its concern about radon and has taken steps to define the scope of the health threat and to develop strategies to address that threat.

Legislation I wrote, which was included in the 1986 Superfund Amendments and Reauthorization Act, required EPA to conduct a nationwide radon survey and develop radon mitigation measures. Radon research legislation which Senator MITCHELL and I wrote also was included in that bill.

In 1988, the Congress passed the Indoor Radon Abatement Act to require EPA to establish a comprehensive radon abatement program.

Under that bill, EPA was required to provide grants to States to initiate radon programs and provide technical assistance to those programs, establish a voluntary radon testing proficiency program, update the radon citizens guide, conduct a national survey of radon in schools, establish model radon construction standards, and initiate a program to study radon in Federal buildings.

That same year, the Congress also included provisions I authored to require HUD to develop a radon testing and mitigation policy in its multistory buildings in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. This bill was developed as a result of a GAO report, "Indoor Radon: Limited Federal Response To Reduce Contamination in Housing," prepared at my request. The report showed that the Federal housing agencies were doing very little to address radon.

Mr. President, EPA has developed a good program of developing information about the threat posed by radon, and testing and mitigation methods. But the problem is that too few people are investing in a simple radon test. And this is posing a serious health threat. The principal problem here is that radon is odorless, it is tasteless, it is invisible, and people just do not take the threat seriously.

S. 792 extends the authorization for the Indoor Radon Abatement Act. And S. 792 will expand efforts to encourage testing and mitigation.

It includes provisions from S. 779 introduced by Senator MITCHELL, S. 791 introduced by Senator CHAFEE and S. 575, the Radon Testing For Safe Schools Act which I introduced.

S. 792 will increase radon information dissemination efforts. Radon information will be provided to home purchasers prior to a real estate transfer. HUD will disseminate radon information to public and Indian housing authorities. EPA will develop a model State program to provide radon information to tenant organizations.

And EPA will establish a medical community radon outreach program.

S. 792 will make mandatory the existing voluntary radon proficiency program. This will mean that no one will be able to offer radon measurement devices or radon measurement or mitigation services without successfully completing an EPA or State radon proficiency program. This will protect consumers who want to test their homes for radon or who want to undertake radon mitigation efforts.

S. 792 requires testing of schools in radon prone areas and provides Federal assistance to reduce radon levels. And it authorizes a nationwide survey of radon in work places.

It also requires the development of a Federal building radon mitigation plan.

S. 792 prohibits Federal loans assistance for new homes in radon prone areas unless the home is built to meet radon construction standards. And it requires Federal buildings and schools financed by the Federal Government to meet the model standards.

Mr. President, I want to thank Senator BURDICK, the chairman of our committee, Senator CHAFEE, the committee's ranking minority member, Senator DURENBERGER, the ranking Republican on the Superfund Subcommittee, and our majority leader, Senator MITCHELL, who has been a leader in efforts to protect human health from air pollution, for their support of this legislation.

Mr. President, this is the second bill the Senate will consider in this Congress to address the threat posed by indoor air pollutants. Last year we overwhelmingly passed S. 455, the Indoor Air Quality Act.

Today, we can pass legislation to reduce the health threat posed by radon in a cost-effective manner. I urge my colleagues to join in supporting the effort to rid our Nation of the danger posed by radon.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. I yield myself 5 minutes.

The PRESIDING OFFICER. Senator DURENBERGER is recognized for up to 5 minutes.

PRIVILEGE OF THE FLOOR

Mr. DURENBERGER. Mr. President, I ask unanimous consent that privilege of the floor be granted to Karyn L. Gimbel on a temporary basis for the pendency of this action. She is assigned to the Environment and Public Works Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I am here at the request of my colleague, Senator CHAFEE of Rhode Island who, as the chairman pointed out, is the ranking member of the subcommittee but could not be here today for the passage of this bill, of which he is an original cosponsor, and also the sponsor of a companion bill, S. 791.

Mr. President, I am pleased to join with my colleague, Senator LAUTENBERG, in presenting the Radon Reauthorization Abatement Act to the Senate this morning.

Radon, as indicated already, is a serious threat to public health in the United States. Radon is a colorless, odorless gas that is discharged from the soil into the ambient air, but also into and through the foundations of buildings. It can become concentrated inside of buildings.

Radon is a radioactive substance. As it decays it emits radioactive particles. When radon is breathed into the lungs these decay products can cause damage to the lung and the beginning of lung tumor, that is lung cancer.

The Environmental Protection Agency believes that radon is the second leading cause of lung cancer in the United States, exceeded only by smoking. EPA estimates that approximately 20,000 lung cancer cases per year are caused by radon exposure.

This is an indoor air pollution problem. The risks from radon are highest when we are inside our homes, schools, and workplaces. The threat is not spread evenly across the whole country. Some geological formations have more radioactive soil and bedrock than others and the radon risk is higher in these areas.

I happen to represent a State in which the bedrock is particularly susceptible to elevated risks of radon.

The Environmental Protection Agency has set a so-called action level for radon in homes and other buildings. It is a yellow light warning that elevated risks may be present when the action level is exceeded. EPA believes that approximately 10 percent of the homes in the United States may exceed this action level. In States with high radon soil concentrations, that percentage may double.

We can protect ourselves against the radon threat. The first step is to have your home tested for radon. Relatively inexpensive test kits are now available. They can be purchased at the grocery store or the hardware store. They are very easy to use.

But only 5 percent of American homes have been tested. Actions by the Congress, by EPA and by some of the States have given the radon problem high visibility in recent years. But only 5 percent of homes have been tested. We must do much better than that.

If a home is tested and a problem is found, if radon in a home exceeds EPA's action level, there are steps that homeowners can take to reduce the risk. This is a case where prevention to improve health is possible, if people would take the simple steps to become informed about the radon problem and have their homes tested.

Information on radon mitigation measures can be obtained from the EPA. It can be obtained from State health departments and from other sources like your community library.

The legislation that we are considering today reauthorizes a modest partnership between the Federal Government and the States to focus public attention on the problem. The bill will assure that more public schools and Federal buildings get tested for radon. It will improve the capacity of contractors to correct problems when they are discovered. It will assure better construction in high radon areas in the future and it will assure that home buyers are informed about the health consequences of radon.

But real advances in public health protection will only be realized if the American public takes action. This is a public health problem, and it depends totally on the cooperation of every person, every home owner, for its solution. People, especially those living in high radon areas, should test their homes for radon.

Mr. President, this legislation is the result of work by many Members of this body. I would like especially to call attention to the role played by my colleague, Senator JOHN CHAFEE of Rhode Island, on the bill. As I said, he cannot be with us this morning, but I did want my colleagues and others to know of his deep interest in the subject. I have already pointed out that he is the author of S. 791, which is titled the Radon Information Act, and many of the provisions of that bill are included in the legislation we are now considering.

Senators LAUTENBERG and MITCHELL should also be commended here today for the leadership that they have provided over several years on this public health problem.

Mr. President, I yield the floor.

Mr. BURDICK. Mr. President, I rise today in support of the passage of S. 792, the Indoor Radon Abatement Reauthorization Act. The Committee on Environment and Public Works has heard testimony over the course of the past 5 years documenting the serious health effects of radon and indoor air pollution.

S. 792 addresses these health effects in several ways. The bill amends the

Toxic Substances Control Act [TSCA] by extending EPA's authorization of radon information, technical assistance and training programs through 1994. The bill directs EPA to designate as priority radon areas localities in which the average radon level is likely to exceed the national average. The bill authorizes a wide range of measures to increase public information, on radon health threats, to prevent radon in new homes, and to provide financial assistance to State programs.

I comment our colleague, Senator FRANK LAUTENBERG, for crafting this vital legislation. The Senator from New Jersey has focused the attention of the Committee on Environment and Public Works on this pressing public health problem and effectively marshalled support for S. 792. I am grateful for his efforts.

I also acknowledge the work of three staff members who have aided the Senate in its consideration of this legislation. Jeff Peterson, Rick Erdheim, and Rich Innes have worked for many months in developing this important bill. I thank them for their good work.

Mr. President, my home State of North Dakota has documented elevated radon levels in several areas of the State. S. 792 will do much to address this national public health problem. I urge my colleagues to support this much-needed reauthorization.

Mr. WOFFORD. Mr. President, I am pleased that the Senate is considering S. 792, the Indoor Radon Reauthorization Act. I commend the bill's sponsor, Senator LAUTENBERG, for his leadership in bringing this important legislation to the Senate floor in a timely manner. I am proud to serve with him, Chairman BURDICK and the majority leader on the Environment and Public Works Committee and to join with them as a cosponsor of this legislation.

Unfortunately, the Bush administration again demonstrates its penny-wise and pound-foolish approach to the problems facing American families in their own homes and communities by opposing this legislation. Unlike the President, we in Pennsylvania know that we cannot bury our heads in the sand and hope that the problem of radon will go away. After all it is right there in the sand with us. And we believe that Government has the obligation to help do something about it.

The fact is that radon is an acute problem in several areas of my State, threatening our families' health and quality of life. In fact, the discovery of high levels of radon in Pennsylvania during the 1980's led to the national awareness of radon hazards. Witnesses from the Pennsylvania Department of Environmental Resources testified before the Senate Environment and Public Works Committee that over 10,000 single-family dwellings in Pennsylvania have radon screening levels in excess of 100 picocuries/liter, which is a

level well above the concentrations allowed in uranium mines. Clearly, this places our people at unnecessary risk.

Pennsylvania has developed a comprehensive program to fight the effects of radon. The State department of environmental resources has a telephone hotline that receives an average of 1,000 calls each month. The State also published a series of informational documents on radon and its potential health effects, as well as lists of individuals and firms certified by the State for radon testing or abatement.

But Pennsylvanians should not have to fight this battle alone. This legislation helps ensure that they won't have to. It expands the Federal effort to combat the hazards associated with radon exposures. The extension of the Environmental Protection Agency grant program will provide Federal matching funds to States on a 50-50 basis, helping States like Pennsylvania continue their work in identifying and abating radon hazards.

In addition, S. 792 addresses the need to identify the extent of radon in our schools. The separate authorization contained in this bill will assure that funds are available in grants and loans to schools for the purpose of reducing the radon threat. By first identifying priority radon areas, EPA can more effectively manage radon abatement funds for our Nation's schools.

Mr. President, prevention is always better, and less expensive, than solving an existing problem. This legislation, by directing EPA to issue model radon construction standards for single family homes, aims to prevent the accumulation of radon before it reaches levels that may present a health threat.

In addition to the prevention features of S. 792, the education and medical outreach provisions are beneficial to those who live in areas where radon has been discovered. Because the health threats of radon may not be known throughout the medical community, it is important for the EPA to increase awareness of its dangers and ways to combat its effects on human health.

Finally, Mr. President, this legislation demonstrates that partnerships between the Federal Government and States can lead to tangible improvements in the lives of Americans. Apparently, the administration is unwilling to fully support this kind of effective partnership. That is unfortunate, because radon does pose a threat in many areas of my State of Pennsylvania. Aggressive efforts by the State along with financial and technical assistance from the Federal Government have created a sound structure to combat these threats.

This legislation builds on the foundation laid in the Indoor Radon Abatement Act of 1988. The reauthorization contained in S. 792 will enhance our ability to protect the health of our

families and well as the value of their homes from the threats of radon. I hope that the administration will see the light and support this legislation, and I commend its passage to my colleagues.

AMENDMENT NO. 1702

(Purpose: To clarify and improve certain provisions relating to indoor radon abatement)

Mr. LAUTENBERG. Mr. President, I want to now go to the committee amendments. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] for Mr. BURDICK, proposes an amendment numbered 1702.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 11, line 5, strike "1991" and insert "1992".

On page 14, line 6, strike "Business" and insert "business".

On page 14, line 24, strike "and".

On page 15, strike line 2 and insert the following: eral agency, and

"(C) is occupied by the Library of Congress, is part of the White House, or is the residence of the Vice President, and

"(D) is included in the definition of 'Capitol Buildings' under section 16(a) of the Act entitled 'An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes', approved July 31, 1946 (40 U.S.C. 193m)."

On page 15, line 18 and 19, insert "indoor" before "radon" each place it appears.

On page 16, line 14, strike "(15 U.S.C. 2663(a))".

On page 16, strike lines 15 and 16 and insert the following:

by section 4 of this Act) is amended—

(1) by striking "June 1, 1989," and inserting "January 1, 1992,"; and

(2) by inserting "in consultation with the Director of the Centers for Disease Control of the Department of Health and Human Services," after "Administrator" in the last sentence of the subsection.

On page 17, line 13, strike "(15 U.S.C. 2663(b)(2))".

On page 17, line 21, strike "(15 U.S.C. 2664)".

On page 17, after line 24, insert the following new subparagraph:

(B) by inserting "and periodically update" after "develop";

On page 18, strike lines 1 and 2 and insert the following new subparagraph:

(C) by striking the second sentence of the section and inserting the following new subsection:

"(b) CONSULTATION.—In developing and updating standards and techniques pursuant to subsection (a), the Administrator shall consult with—

"(1) the Secretary of Housing and Urban Development;

"(2) organizations that are involved in establishing national building construction standards and techniques; and

"(3) national organizations that represent homebuilders and State and local housing

agencies (including public housing agencies).";

On page 18, line 3, strike "(C)" and insert "(E)";

On page 18, line 6, strike "(D)" and insert "(F)";

On page 18, line 8, strike "(E)" and insert "(G)";

On page 18, line 11, strike "(15 U.S.C. 2664)";

On page 18, line 17, insert "by" before "not later";

On page 18, line 21, strike "(15 U.S.C. 2664)";

On page 19, line 12, insert "require the use of reasonably available and economically achievable techniques, and to" after "be designed to";

On page 19, line 14, insert "where possible by using these techniques" after "304(b)(1)(C)";

On page 19, line 16, strike "(15 U.S.C. 2664)";

On page 20, lines 8 and 20, strike "(15 U.S.C. 2664)" each place it appears.

On page 21, line 6, strike "(15 U.S.C. 2665(a))";

On page 21, strike lines 10 through 12 and insert "disseminate radon information to State and local tenant organizations";

On page 22, line 3, strike "certification" and insert "proficiency";

On page 22, line 5, strike "(15 U.S.C. 2665(a)(2))";

On page 22, line 9, strike "(15 U.S.C. 2665(e)(2))";

Beginning on page 22, line 8, strike all through page 23, line 3, and insert the following:

(2) Section 306(e) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(A) by redesignating paragraph (2) as paragraph (2)(A); and

(B) by adding after paragraph (2)(A), as so redesignated, the following new subparagraphs:

"(B)(i) Except as otherwise provided in clause (ii), for the purposes of this paragraph, the term 'small business' means a corporation, partnership, or unincorporated business that—

"(I) has 150 or fewer employees; and

"(II) for the 3-year period preceding the date of the assessment, has an average annual gross revenue from radon measurement and mitigation activities in an amount that does not exceed \$40,000,000.

"(ii) If, after consultation with the Small Business Administration, the Administrator determines that a modification of the definition of 'small business' under clause (i) is appropriate to characterize small businesses associated with radon measurement and mitigation, the Administrator shall, by regulation, modify the definition in such manner as the Administrator determines to be appropriate.

"(C) The Administrator shall consider reductions of such charges for small businesses pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

"(D) No charges may be imposed on State and local governments. In the case of a State which is administering a radon proficiency program pursuant to section 314(c), the State may impose charges consistent with charges which would have been imposed by the Administrator. Any amounts collected by a State as charges under this paragraph may be used as part of the non-Federal share of a grant awarded pursuant to section 307 of this title."

On page 23, line 6, strike "(15 U.S.C. 2666(b))";

On page 23, line 13, strike "(15 U.S.C. 2666(c))";

On page 24, strike line 19 and insert the following: "ment pursuant to paragraph (15)."

"(17) Educational programs for members of the housing industry concerning the model construction standards and techniques published pursuant to section 305.

"(18) Financial assistance to conduct surveys to improve the precision of priority radon areas."

On page 24, beginning on line 21, strike "(15 U.S.C. 2666(d))";

On page 25, line 4, strike "(15 U.S.C. 2666(f))";

On page 25, beginning on line 8, strike "(15 U.S.C. 2666(g))";

On page 25, line 23, strike "(15 U.S.C. 2666(h))";

On page 26, line 8, strike "(15 U.S.C. 2666(j))";

On page 26, line 13, strike "(15 U.S.C. 2667)";

On page 27, line 3, insert "in a manner" before "consistent";

On page 27, line 23, strike "the availability of";

On page 28, beginning on line 9, strike "(15 U.S.C. 2668(b))";

On page 28, beginning on line 18, strike "(15 U.S.C. 2669)";

On page 31, line 6, insert "the Secretary of Housing and Urban Development, national organizations that represent State and local housing agencies (including public housing agencies)," before "real estate";

On page 32, line 1, insert "and reliable" before "measurements";

On page 34, line 4, insert "in a manner" before "consistent";

On page 35, line 23, strike "and" and insert a comma.

On page 35, line 23, insert "and the Director of the Centers for Disease Control" before "shall";

On page 38, strike lines 2 through 7 and insert the following: "mitigating elevated radon levels to public housing agencies and Indian housing authorities, as defined in paragraphs (6) and (11), respectively, of section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), and to owners and managers of other housing assisted under other provisions of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and the National Housing Act (12 U.S.C. 1701 et seq.)."

On page 38, line 19, after the period, insert an ending quotation mark and a period.

Beginning on page 38, line 20, strike all through page 39, line 19.

On page 40, line 2, strike "is authorized to" and insert "shall";

On page 40, line 3, strike "educational" and insert "education";

On page 40, line 3, insert "and is authorized to enter into cooperative agreements" before "to increase public awareness";

On page 40, line 14, insert "the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services, in consultation with the" before "Administrator";

On page 40, line 14, insert a comma after "Administrator";

On page 40, line 17, insert "the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services and" before "the Administrator";

On page 40, line 18, strike "design" and insert "be jointly responsible for designing";

Beginning on page 40, line 24, strike "The survey" and all that follows through page 41, line 17.

On page 41, line 18, strike "(5)" and insert "(3)";

On page 41, line 19, strike "the Administrator" and insert "the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services, in consultation with the Administrator";

On page 41, beginning on line 22, strike "For the purpose" and all that follows through the period on line 25.

On page 42, line 1, strike "other than paragraph (a)(4)";

On page 43, line 25, insert "or who provides false information concerning compliance with section 305(f) to an appropriate Federal official," before "shall be liable";

Beginning on page 47, strike line 23 and all that follows through page 48, line 3, and insert the following new paragraphs:

"(1) against the United States in any case where the United States is alleged to be in violation of section 305(f), 310, or 316, or any rule promulgated thereunder, to restrain such violation;

"(2) against any person who is alleged to be in violation of section 308, 313, or 314, or any rule promulgated thereunder, to restrain such violation; or

On page 48, line 4, strike "(2)" and insert "(3)";

On page 51, line 13, strike "(15 U.S.C. 2665(f))";

On page 51, lines 15 and 20, strike "and 1994" each place it appears and insert ", 1994, and 1995";

On page 51, line 22, strike "(15 U.S.C. 2666(j))";

On page 52, lines 4, 10, and 25, strike "and 1994" each place it occurs and insert ", 1994, and 1995";

On page 52, line 22, strike "(15 U.S.C. 2668(f))";

Beginning on page 53, strike line 15 and all that follows through page 54, line 2, and insert the following:

(1) in subparagraph (A)—

(A) by inserting "develop and" after "to"; and

(B) adding at the end of the subparagraph the following new sentence: "The demonstration program shall include the development and evaluation of innovative low-cost techniques to reduce radon concentrations in existing structures, including structures with low to moderate radon levels, and in new structures, and the development and demonstration of radon mitigation technology for multistory buildings."

Mr. LAUTENBERG. Mr. President, the committee amendment contains technical changes and responds to suggestions made by the Banking Committee's Housing Subcommittee, the Budget Committee, the Education Committee's Labor Subcommittee and others.

At the request of the Housing Subcommittee, we require EPA to consult with the Department of Housing and Urban Development in establishing the model radon construction standards and in developing the residential housing radon document which will be given to home buyers at the time they purchase a house.

The Budget Committee raised concerns about the budgetary impact of two provisions in the bill. One provision would have required HUD to test any houses it owns in radon priority areas and make the results of that test

available to prospective buyers before the house could be sold.

This provision responds to the concern that GAO first raised in 1988 that HUD had no radon policy. As a result of the GAO report, I included a provision in the 1988 McKinney Act amendments requiring HUD to develop a testing and mitigation policy for its multistory housing. The policy which HUD announced last year is totally inadequate. It merely called for additional radon research and no testing or mitigation at its properties. At our hearing on S. 792, both EPA and GAO testified that additional research was not necessary before HUD could begin to test and, where appropriate, mitigate elevated levels of radon at its properties. So I included language in S. 792 requiring HUD to test the properties it owned in radon priority areas for radon and to disclose the results to potential buyers of the properties.

Fortunately, HUD has reversed its policy. Secretary Kemp wrote me in January that HUD would initiate a testing and mitigation program at its properties. I ask unanimous consent that a copy of this letter be included in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. LAUTENBERG. Because of HUD's policy reversal, and concerns about the budgetary impact raised by the Budget Committee, the committee amendment deletes this requirement from the bill.

The Budget Committee also was concerned about a provision which would have reduced the fee charged to those participating in the voluntary proficiency program. This fee, which was designed to recover the full cost of the proficiency program, was imposed in the original 1988 Indoor Radon Abatement Act.

Because the radon testing and mitigation industry is made up of small businesses, the industry has raised concerns that the radon proficiency fee would drive many of its members out of the industry. S. 792 proposed to reduce the impact of the fee on the radon industry by reducing the required cost recovery by 50 percent.

The committee amendment responds to Budget Committee concerns about the budgetary impact of this provision by deleting the 50-percent cost recovery provision. Instead, the amendment requires EPA to comply with the provisions of the Regulatory Flexibility Act to attempt to reduce the impact of the fee on small businesses. The definition of small businesses is based on a definition Congress adopted in the Federal Insecticide, Fungicide, and Rodenticide Act.

At the request of the Labor Subcommittee, the committee amendment requires the National Institute for Occupational Safety and Health rather

than EPA to conduct the radon survey of workplaces. EPA would be responsible with NIOSH for designing the survey.

The committee amendment contains other provisions which were suggested by organizations which are interested in radon. It extends the authorization of appropriations for another year through fiscal year 1995. It requires EPA to consult with the Centers for Disease Control in developing the Citizen's Guide for Radon and in establishing the medical outreach program. It allows States to use State radon grant funds to conduct radon surveys to improve the precision of EPA's designation of radon priority areas. And it adopts a provision included in the Indoor Air Quality Act to extend the Federal building program to the White House, the Vice President's quarters and the Congress.

Finally, the amendment makes a number of changes to respond to concerns raised by the National Association of Home Builders. The NAHB has taken a constructive role in addressing the threat that radon poses in the Nation's houses by conducting research and developing radon mitigation techniques.

S. 792 provides that the Federal Government cannot provide a loan for a newly constructed home in a radon priority area unless the house is built consistently with the EPA radon construction standards. These standards are prescriptive and not performance based standards. To make this clear, the committee amendment requires that the standards be based on reasonably available and economically achievable techniques.

To help builders understand the construction standards, the committee amendment provides that State radon grants can be used for educational programs for the homebuilding industry. And EPA would be required to continue to work with the NAHB to improve the model construction standards.

S. 792 does not impose any liability on a home builder who chooses not to build a home consistent with the model construction standards in a radon priority area. The Federal Government simply will not provide a loan to purchase that house. The committee amendment maintains this lack of liability except if a builder provides false information regarding compliance with the radon construction standards to the Federal Government.

The committee amendment specifies that the citizen suit provisions of S. 792 can be used against the United States and other persons for violations of certain provisions of the act. Suit can be brought against the United States only for violations of the act dealing with providing loans to purchase new homes, section 305; Federal buildings, section 310; and federally owned or assisted housing, section 316. Suits can be

brought against any other person for violations of provisions regarding radon in schools, section 308; disseminating radon information to home buyers, section 313; and the mandatory proficiency program, section 314.

This provision makes clear that citizens cannot use the citizen suit provisions of this act against home builders.

States remain free to determine the effect that compliance with the EPA model radon construction standards or any State standards has on liability issues. New Jersey, which has adopted a State radon construction standard for the radon prone area of the State, provides that anyone who builds a home or school in compliance with the State standard is not liable for any damages which may result from the presence of radon in the home or school. Such a liability system might encourage greater use of the model construction standards. States remain free under S. 792 to adopt an approach similar to New Jersey. State grant assistance provided for under section 307(c)(12) of the revised Indoor Radon Abatement Act can be used by a State to develop a liability system similar to New Jersey.

Mr. President, I want to thank other committees interested in the bill for their cooperation. I also want to thank the National Association of Home Builders, the National Association of Realtors, the American Association of Radon Scientists and Technologists, the American Lung Association, the American Academy of Pediatrics, the Consumer Federation of America, the National Education Association, and the National Parent Teacher Association for their assistance in developing S. 792. And I urge Senators to support the committee amendment.

EXHIBIT 1

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,
Washington, DC, January 8, 1992.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to the Senate Committee Report on the 1992 VA-HUD-Independent Agencies Appropriation Act requesting a revised Departmental policy regarding the testing and mitigation of radon in HUD-assisted multifamily buildings.

The Senate Committee expressed concern that the Department's policy recommendations to the Congress contained in a report submitted in April 1991 did not, in the committee's view, satisfy the requirements of Section 1091 of the McKinney Homeless Assistance Amendments Act of 1988. That Act required the Department to submit a policy for research, education, testing and mitigation dealing with radon contamination in certain HUD-assisted multifamily housing.

In response to the Committee's request, the Department will initiate a program of testing and mitigation in 1992. As a first step, the Department will, as quickly as possible, test and, as necessary, mitigate all HUD-owned multifamily buildings in EPA designated "high radon" areas. All additional HUD-owned multifamily units in these high radon areas that subsequently

come into inventory will also receive priority for testing and mitigation.

Initiating a full testing and mitigation program in HUD-owned multifamily units has a number of advantages. Because these properties are under the control of HUD, the Department will be better able to refine and develop techniques for testing and mitigation prior to expanding efforts into additional segments of the assisted multifamily stock. During this initial phase, the Department will be able to develop a final testing protocol. The testing program should also provide HUD with additional information regarding intrabuilding radon distribution and will enable the Department to better target and prioritize subsequent efforts to buildings that are "at risk", i.e. to those most likely to have high radon levels in all units in the building. HUD also should be better able to estimate radon testing costs.

Effective mitigation of the balance of the assisted multifamily stock requires the Department to plan for and reserve adequate funds under a number of programs. Mitigating HUD-owned units should provide opportunity to control for many cost variables, such as adjustments that may be necessary to heating, ventilating and air conditioning systems and thereby identify accurately the costs of mitigation.

The Department expects to complete these initial efforts quickly so that it may proceed to a fuller program of testing and mitigation of the balance of the assisted multifamily stock. Depending upon the nature of the information gathered during this initial phase, the second phase of testing and mitigation efforts might possibly be the high risk types of buildings that are located in high radon areas, or, alternatively, all remaining units in the HUD-owned inventory.

The Senate Committee Report also requires the Department to submit, within 6 months of enactment, a report on implementation of this revised policy of testing and mitigation. Please be assured that the Department intends to fully comply with both the spirit and language of the Committee report.

Very sincerely yours,

JACK KEMP,
Secretary.

Mr. LAUTENBERG. Mr. President, these technical changes have been cleared by the minority. Therefore, Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate. If not, the question is on agreeing to the amendment.

The amendment (No. 1702) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Mr. President, I yield the floor. I believe the Senator from New Hampshire has an amendment he wants to offer.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire, Mr. SMITH. Under the previous agreement, the Senator is permitted to offer a first-degree amend-

ment. The Senator is recognized, accordingly, for up to 10 minutes.

AMENDMENT NO. 1703

(Purpose: To provide for the application of multimedia risk assessment procedures for the implementation of National Primary Drinking Water Regulations for Radionuclides)

Mr. SMITH. I thank the Chair. I thank my colleagues, Senator LAUTENBERG and Senator DURENBERGER, for their courtesy and an indication they will accept the amendment.

I do have an amendment at the desk which I would offer at this time, Mr. President.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself and Mr. SEYMOUR, proposes an amendment numbered 1703.

Mr. SMITH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

"SEC. . . Prior to promulgating any national primary drinking water regulation for radionuclides under the Safe Drinking Water Act, the Administrator of the Environmental Protection Agency shall conduct a multimedia risk assessment of radon considering: (a) the relative risk of adverse human health effects associated with various pathways of exposure to radon; (b) the relative costs of controlling or mitigating exposure to radon from each pathway; and (c) the relative costs for radon control or mitigation experienced by households, communities and other entities including the costs experienced by small communities as the result of such regulation. Such an evaluation shall consider the risks posed by the treatment or disposal of any wastes produced by water treatment. Upon completion of this risk assessment, the Administrator shall report his findings to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce. Nothing in this section shall modify or be the basis for an extension of any statutory or court-ordered deadline for the promulgation of such regulation."

Mr. SMITH. Mr. President, as my colleagues may be aware, on July 18, 1991, the Environmental Protection Agency proposed rules placing limits on radon in drinking water. These rules, which are under the jurisdiction of the Safe Drinking Water Act, would require that community and nontransient, noncommunity water systems provide water having no more than 300 picoCuries per liter of radon. While I would not disagree that radon in drinking water is an important health concern, I believe that the 300 pCi/l set by the EPA is too low.

Presently, the EPA has a voluntary guideline that would limit the level of indoor radon to no more than 4 pCi/l from all sources. Using the EPA's water-to-air ratio of 10,000 to 1, it would take, in theory, 40,000 pCi/l of

radon in water to create 4 pCi/l in the air, assuming that water was the sole contributor. Yet, not only is water a small contributor to overall indoor radon levels, but a 1,000 pCi/l level in water—three times the proposed standard—would contribute only .01 pCi/l to the indoor radon level.

I am also concerned that the EPA's estimated cost for the implementation of the radon rule—with a capital cost of \$1.6 billion, and an annual operating cost of \$180 million—is too low. According to the American Water Works Association, the overall cost of the radon rule will be \$20 billion in capital costs and \$2.7 billion in annual costs. It should also be remembered that these figures do not take into account the dozens of other water rules that communities and water suppliers must comply with.

Regardless of whose figures you believe, it is clear that small communities and townships will clearly bear the greatest financial burden from this proposed rule. Indeed, in my home State of New Hampshire, 96.5 percent of the 2,746 community wells cannot currently meet the proposed standard of 300 pCi/l. Even if the EPA adopted a less stringent standard of 1,000 pCi/l, 75 percent of the wells in my State would not meet this proposed radon rule.

Mr. President, we have mandated that our communities meet a variety of safe drinking water rules, the cost of expensive landfill requirements, the expense of more stringent sewage treatment facilities, and in many instances, the cost of cleaning up Superfund sites—all with very little Federal funding. Prior to establishing new Federal regulatory mandates, we need to conduct adequate risk assessment to determine the most significant health and environmental risks, so that we can fund these programs in the priority of their risk, rather than in the priority of their political expediency.

On January 29, 1992, the chairman of the executive committee of the EPA Science Advisory Board, Mr. Raymond C. Loehr, in a letter to EPA Administrator William Reilly, stated that:

Radon in drinking water is a very small contributor to radon risk except in rare cases and the committee suggests that the Agency focus its efforts on primary rather than secondary sources of risk. The Agency should conduct a full multimedia risk assessment of the various options for regulating radon in drinking water.

Mr. President, at this time I ask unanimous consent to print that letter in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, January 29, 1992.
Subject: Reducing Risks from Radon; Drinking Water Criteria Documents.

Hon. WILLIAM K. REILLY,
Administrator, Environmental Protection Agency,
Washington, DC.

DEAR MR. REILLY: The Radiation Advisory Committee of the Science Advisory Board has reviewed several radon-related issues brought to it by the Agency during the past year-and-a-half.¹ The Committee has also commented extensively on the criteria documents supporting the proposed regulations for radionuclides in drinking water.² As a result of their reviews and the proposed National Primary Drinking Water Regulations for Radionuclides³, the Committee is writing to convey its concern about the inconsistent approach within the Agency regarding reducing risks from radon exposures in homes. This issue illustrates a larger concern that the Agency is not effectively applying the recommendations set forth in the Science Advisory Board Report Reducing Risk: Setting Priorities and Strategies for Environmental Protection (subsequently referred to as Reducing Risk).

The purpose of this letter is two-fold: (a) to address the fragmented and inconsistent approach regarding reduction of radon risk and (b) to provide our closing comments on the revised drinking water criteria documents that support the proposed regulations.

THE PROPOSED DRINKING WATER REGULATION IN RELATION TO THE REDUCING RISK REPORT

The Committee realizes that the technical aspects are only one of many factors that must be considered in making policy determinations and that the Agency has already given significant thought to these issues in preparing the proposed regulation for radon in drinking water. However, the Radiation Advisory Committee would like to express its views on the relative risks addressed by the proposed regulation vis a vis other radon risks reviewed by the Committee and offer its views as well on what its technical observations mean for matters of policy.

TECHNICAL OBSERVATIONS

The Agency has recognized that there is a serious question about the regulation of radon in drinking water. After considerable deliberation, the Office of Drinking Water has proposed to regulate it in the manner adopted for other contaminants under the Safe Drinking Water Act; that is, at an approximate lifetime risk level of 10^{-4} . The chief risk due to radon in water is its release into the air and subsequent inhalation, as opposed to ingestion of waterborne radon. Thus a 10^{-4} risk level (averaged over smokers and non-smokers) translates into about 0.03 Pci/L in air, or approximately 300 Pci/L in water. That air concentration is more than 100 times smaller than the Agency's voluntary guideline of 4 Pci/L for indoor radon concentrations. It also well within the natural year-to-year variation in indoor radon concentrations in average houses. As part of the Indoor Radon Abatement Act (Public Law 100-551) the Congress defined the goal of achieving an indoor radon level equal

to the natural outdoor level, which is 0.1-0.5 Pci/L depending on the area of the country (NCRP Report No. 94). This goal is a factor of 8-40 below the indoor radon action level, but about a factor of 10 higher than the indoor radon level corresponding to the proposed regulation for radon in drinking water.

The Agency estimates that about 5% of the total indoor radon in homes served by ground water is due to radon released from household water use. (In homes served by surface water supplies, only a fraction of a percent of the indoor radon will be due to water use). Data in the radon criteria document indicate that approximately 10-30% of the population that relies on ground water sources is exposed to water with radon concentrations above the proposed maximum contaminant level of 300 Pci/L. Overall, about 1% of the total indoor radon in areas with ground water supplies would be addressed by adopting the current proposal.

Although some point estimates of parameters have been employed here, the Committee is well aware of, and wishes to bring to your attention again, the uncertainties in parameters and models employed in the Agency's assessments. Full consideration of uncertainties is called for in the Reducing Risk report and is an essential part of the evaluations that the Committee recommends below. The Committee urges appropriate action to assure that the risk assessment fully considers the uncertainties.

POLICY CONSIDERATIONS AND RECOMMENDATIONS

The radon exposure situation reflects the fragmentation of environmental policy identified in Reducing Risk. The tactics and goals of different laws designed to address radon exposures are not consistent. Efforts within the Agency to reduce radon risks, while not uncoordinated, are rooted in programmatic areas that respond to different laws.

The field of radiation protection relies on the principle of optimization, which the Committee believes is in harmony with Reducing Risk, particularly with Recommendation 4:

"EPA should reflect risk-based priorities in its strategic planning processes. *The Agency's long range plans should be driven not so much by past risk reduction efforts or by existing programmatic structures, but by ongoing assessments of remaining environmental risks, the explicit comparison of those risks, and the analysis of opportunities available for reducing risks (italics ours).*"

Optimization, like the philosophy espoused in Reducing Risk, means that we should apply our limited resources to the more important risks.

Frankly, radon in drinking water is a very small contributor to radon risk except in rare cases and the Committee suggests that the Agency focus its efforts on primary rather than secondary sources of risk. The Agency should conduct a full multi-media risk assessment of the various options for regulating radon in drinking water. Such an evaluation would include the risks posed by the treatment or disposal of any wastes produced by water treatment. It would also consider the effects of releases of other volatile compounds during treatment. (This is currently cited as an ancillary benefit of treatment without analysis of the overall result.)

The Committee understands that the Safe Drinking Water Act requires the Agency to develop regulations for radionuclides in drinking water. The Committee further realizes that a management structure based on media/pollutants may make recommenda-

tions that involve different perspective difficult to implement. However, if the Agency, the Congress, and the country are going to grapple seriously with the concepts in Reducing Risk, then it is precisely this type of issue that must be confronted directly, openly, and creatively.

CLOSING COMMENTS ON THE REVISED DRINKING WATER CRITERIA DOCUMENTS

The Committee would also like to comment on some aspects of the criteria documents prepared in support of the proposed regulations. Reviews of two earlier drafts of the associated criteria documents have been performed.² Following the Committee's review in the summer of 1990, the Office of Drinking Water, with the assistance of the Office of Radiation Programs, revised the criteria documents supporting the proposed regulation. The Committee does not wish to undertake a detailed formal review of the third set of criteria documents. The fundamental scientific questions were discussed in the previous reviews, cited above. The Committee stands by its original positions and believes that the Agency could further improve the scientific credibility of the criteria documents by adopting its recommendations.

The new set of documents is more complete and individual reports now include more explanation of the options considered, selection criteria, and possible alternative choices. The Agency was less successful in implementing the Committee's advice on uncertainty analysis. Although each criteria document now includes a chapter discussing uncertainty, the content of those chapters is very qualitative and is not the rigorous technical analysis envisioned by the Committee. Overall document quality and clarity are still inadequate for reports that are intended to be the technical bulwark for Agency decisions.

Broad scope assessments, of the type recommended above for radon, are also needed for other of the proposed regulations. The Agency's analyses should include the risks resulting from the concentration of radium, uranium, and other radionuclides in wastes resulting from water treatment. These include the risks to workers involved in disposal activities and the risks of disposal itself. A complete picture of the costs and benefits of implementing these regulations is needed. The importance of cost-effective treatment is stressed in Section V of the proposed regulations, but evaluation of the net benefit of the proposals is far from comprehensive.

The Committee appreciates the hard work of the Offices of Drinking Water and Radiation Programs. We thank them for briefings and presentations that have aided our reviews.

In closing, the Committee strongly encourages the Agency to review its proposed drinking water regulations in light of Recommendation 4 of the Reducing Risk report and to prepare comprehensive analyses of the complex questions that arise. We look forward to receiving a reply that delineates your planned response to these challenging issues.

RAYMOND C. LOEHR,
Chair, Executive Committee, Science Advisory Board.

ODDVAR F. NYGAARD,
Chair, Radiation Advisory Committee.

PAUL G. VOILLEQUE,
Chair, Drinking Water Subcommittee, Radi-

¹Relationship Between Short- and Long-term Correlations for Radon Tests (EPA-SAB-RAC-92-008); Revised Radon Risk Estimates and Associated Uncertainties (EPA-SAB-RAC-LTR-92-003); Draft Citizen's Guide to Radon (EPA-SAB-RAC-LTR-92-005).

²Report to the Administrator on a Review of the Office of Drinking Water Assessment of Radionuclides in Drinking Water and Four Draft Criteria Documents (SAB-RAC-87-035); Review of the Office of Drinking Water's Criteria Documents and Related Reports for Uranium, Radium, Radon, and Manmade Beta-gamma Emitters (EPA-SAB-RAC-92-009).

³National Primary Drinking Water Regulations: Radionuclides: Proposed rule. Federal Register, 56:33050-33127, 18 July 1991.

ation Advisory Committee.

Mr. SMITH. Mr. President, the purpose of my amendment is to respond to the recommendations of the EPA Science Advisory Board. In particular, my amendment would require the Administrator of the EPA to conduct a multimedia risk assessment of radon considering the relative risk of adverse human health effects associated with various radon pathways, the relative costs of controlling radon exposure from these pathways, and the relative costs these controls will impose on households, communities, and other entities. Additionally, my amendment specifically requires the Administrator to review the costs that will be experienced by small communities as a result of the radon regulation, and to report these findings to Congress.

Put quite simply, Mr. President, my amendment requires the EPA to look at the costs and benefits of treating radon in water and help focus resources on sources and levels of radon that pose the greatest risk.

Due to opposition from some Senators, I removed language from an earlier draft of this amendment which would have specifically required the Administrator to consider this analysis in determining the maximum containment level for radon. While this language is not contained in my amendment, I believe that the results of a risk assessment should consider the relative risk of radon in water to the relative risk of radon in the air and address them appropriately. Further, I expect that this new assessment will be reviewed by the EPA Science Advisory Board so that Congress can get a true picture of this problem.

Mr. President, the issue of the regulation of radon in water is an important one, and although I believe my amendment will provide the information necessary to allow Congress to rationally assess the needs for these controls, this amendment is not a solution. These proposed rules will cost our Nation a great deal of money in order to address the proportionally small risk of radon exposure. I believe we should follow appropriate risk assessment to ensure our limited funds are spent on these issues that truly represent a health and environmental risk.

In conclusion, I thank my colleagues for their assistance. I believe this amendment is an important first step in addressing this problem, and I urge its immediate consideration.

Mr. LAUTENBERG. Mr. President, we are prepared to accept the amendment. The provision will not delay any statutory or court-ordered deadline pursuant to the Safe Drinking Water Act.

The amendment very simply, as described by the Senator from New Hampshire, requires EPA to develop

and report to the Congress specific multimedia risk information on radon prior to promulgating the national primary drinking water regulations for radionuclides.

So we have no objection on this side. Mr. DURENBERGER. Mr. President, if my colleagues do not have any objection, I will take slightly longer to acknowledge the contribution that Senator SMITH has made, and to outline the problem that we have before us.

I am going to do that because I was the Senate author of the legislation that led to the regulations for radon in drinking water that my colleague from New Hampshire has described. I managed the 1986 amendments to the Safe Drinking Water Act here on the floor of the Senate, and chaired the conference with the House. So I have some familiarity with the issues that have been raised.

I wanted to assure my colleague that this is going to take a minute or two to do at the end of which I am going to recommend what my colleague from New Jersey has already indicated, that the Senate accept the amendment by my colleague from New Hampshire.

But I want to for the sake of the record, and for those who have expressed the concern that our colleague has so well articulated here today, share a little bit of the background that we have in sort of the fundamental dilemma in the structure of the Safe Drinking Water Act, because it divides the people of this country into two groups—the big city group and the small town group. Many of us represent a lot of the latter. Even though they are only 20 percent of the total population, we represent quite a few of the latter.

Protecting drinking water quality is mostly a question of infrastructure, the building of water supply and treatment systems that provide safe public water. In our larger cities it is possible to build a very good drinking water supply and a treatment system that can deliver safe water at a cost of just a few dollars per family. Because the cost of the capital investment in a big city gets spread over a large number of people for a very long time, you can get high quality drinking water in a big city relatively cheaply.

But that same level of protection attempted in a small community leads to very large costs. It could be hundreds of dollars per family per year. That is simply because there is only a small population to serve the retired debt of the infrastructure capital investment that goes into the drinking water.

So, this is the dilemma for the Federal Government as it tries to set a national drinking water standard. If we set the standard based on what the big cities can afford, then families in small communities are hard pressed to pay for the same level of protection.

On the other hand, if the standard is set at a level that is not as stringent,

at a level that reflects affordability for a very small town, then the bulk of the population that live in the large cities, 80 percent of all Americans who get their drinking water from these large systems, will not be getting the health protection that they could otherwise afford. The health risks from drinking water would be higher for the 80 percent than they would choose, or that they could afford.

So Congress was fully aware of the dilemma when it enacted the original Safe Drinking Water Act in 1974, and when it was reauthorized in 1986, and on both of those occasions ended up requiring that the standards be set according to the level of protection that large cities could afford.

That is the very clear requirement in the law. EPA is to set the national standards to maximize the health protection that can be afforded by the 80 percent of our people who live in large cities.

The Safe Drinking Water Act contains provisions that recognize and attempt to mitigate the cost problems that small communities may face. There are variance and exception provisions all of which can be applied to small communities. The period for compliance can be lengthened to accommodate the particular capital investment needs of the community. There are other steps that can be used to ease the costs.

I have to say having observed the implementation of the act for a long period that these safeguards have not been implemented with any consistent sense of purpose by the EPA or by the States.

We also have a program run by the Farmers Home Administration. It provides grants and loans to small communities to build drinking water supply and treatment systems. Each year this Congress makes a substantial appropriation for this program, and the size of the appropriation as a practical matter has grown in recent years.

So in summary, in the past, Congress has chosen to impose drinking water standards that reflect the level of health protection that people in large cities can afford. Those standards have been imposed on the whole Nation, large city and small.

I suppose we could have chosen a different course. We could have gone with a small community standard. We could have authorized more relaxed standards that provide less health protection. In fact, in the very regulation under discussion here, it appears that EPA in contravention of the law, relaxed the standard to reflect affordability for small communities.

Although some are complaining that the standard proposed for radon by EPA will be too expensive for some communities, if EPA had actually followed the clear direction of the law, the standards would have been even tighter.

Why should it be? Because as we have already heard this morning radon causes cancer. Because in some communities the exposure to radon from drinking water can be a significant risk. Because the 80 percent of the population that receives its drinking water from large city systems could easily afford better water with less cancer risk.

Let us not forget in this debate the American public wants safer drinking water, and that the American public is willing to pay for it. The American public today spends \$2 billion a year for bottled water. They apparently do not have sufficient confidence in the quality of the public supply. So they spend \$2 billion a year bringing bottled water home for drinking water purposes. That is a huge expenditure. And Mr. President, I would argue it is some measure of the public demand for safe water supplies.

We might also have authorized EPA to set two standards, one for large cities and one for small. We could solve the dilemma that way. We could ask rural Americans, those who live in our small towns, to accept a higher health risk from their drinking water than their city cousins experience.

As someone who represents a rural State, I have never been in favor of that approach. I do not want two Americans, one urban and one rural. When we are dealing with something as basic as drinking water, I have always believed that we have an obligation to give the whole population on equal level of protection.

So the solution I prefer is to find a way to equalize the burden between communities through fees and grants. I have proposed legislation that would impose a fee of 2 cents per thousand gallons of water on the water delivered by large systems.

In my legislation, the revenue generated by that fee, which would be about \$125 million a year, would then be used to support the capital investment necessary to upgrade the drinking water supply of small communities and to repair private wells. Twenty million Americans still live outside of the protection of the Safe Drinking Water Act because they draw their water from private rather than public supplies.

Since the average price for drinking water in the United States is about \$1.30 per thousand gallons, the 2 cents would be a small fee on the 80 percent living in the large cities to provide high quality, safe drinking water for all Americans. We can certainly reach that objective for less than the \$2 billion that the public already spends for bottled water.

So, Mr. President, I must say there is opposition to my solution to the drinking water dilemma. Much of the water used in the United States is consumed by big industries. They would pay a

substantial part of their 2 cents, thousand gallon fee. So they are all opposed to it.

Furthermore, the managers of the medium-sized systems—that is, the cities of 10,000 to 25,000 people—are also reluctant to pay a fee for this kind of a subsidy.

Many of the small systems that would receive aid are subdivisions built just outside the city limits of medium-sized cities, largely for the purpose of avoiding assessments and taxes that come from being inside the city limits. Of the 39,000 public water systems in the Nation, 4,000 are of that type.

The water department managers do not have much sympathy with the water quality problems that are brought on by building a subdivision to avoid city water and sewage charges.

With that background, Mr. President, as I indicated earlier, I want to commend my colleague, Senator SMITH, for his concern for this problem. I mean it is a real concern for real people, who live in small towns all over this country. I have tried to express the concern that I have today not only for their economic health but for their real health as well.

So I am going to recommend that the Senate accept the amendment by the Senator from New Hampshire. I am sympathetic with the concerns that bring him to the floor. The information that is required to be developed by his amendment will be useful in understanding the future of the drinking water program. He was not a Member of the Senate when we considered these issues in 1986. He is now, and he is a most valued member of the Committee on Environment and Public Works, and I look forward to working with him and Senator LAUTENBERG as these questions are considered in the next reauthorization. With his assistance, I am sure we will make progress in solving the dilemma I tried to bring to my colleagues today.

Mr. SEYMOUR. Mr. President, I rise in strong support of the Smith-Seymour amendment to require the Environmental Protection Agency to conduct a multimedia risk assessment of radon before it promulgates any radionuclide regulation under the Safe Drinking Water Act. In light of the ever increasing regulatory burden facing our Nation's municipal governments, it seems only reasonable to require the EPA to get a better feel for the risk associated with radon in drinking water before it regulates it.

In July 1991, EPA proposed a 300 picoCurie per liter standard for radon in drinking water. Such a standard would cost California \$3.7 billion to meet. No one would question even this enormous expenditure if it could be shown that such a standard would significantly reduce the risk of radon exposure for Californians. Unfortunately, that is simply not the case. Tap water

only contributes one to 5 percent of indoor radon contamination. EPA's own Scientific Advisory Board has stated that radon in drinking water is a very small contributor to the overall risk of radon exposure.

Our Nation is faced with many environmental and public health problems. We cannot afford to waste our valuable resources on expensive efforts that do little to protect the public's health. The Smith-Seymour amendment will help assure that the EPA views radon risk reduction in a more holistic manner. It is my hope that such a more balanced approach will yield greater environmental benefit at a lower cost.

I would like to take this opportunity to thank Senator SMITH for sponsoring this important measure, and the managers of S. 792 for accepting it. I believe this measure strengthens the Indoor Radon Abatement Reauthorization Act of 1991, and with its addition I intend to fully support the bill.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Mr. President, I neglected to mention that Senator SEYMOUR was an original cosponsor of this legislation, and I also ask unanimous consent that Senator WALLOP be added as a cosponsor of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1703) was agreed to.

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

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, I ask unanimous consent that I might speak for 10 minutes on the bill.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senator is recognized for up to 10 minutes.

Mr. SYMMS. Mr. President, I have been concerned about indoor air quality for many years now in the Congress. As far back as 1974, when we had our first big wave of legislation to start stressing conservation of the building codes and so forth, and Congress dived headlong into pushing the public into sealing public buildings airtight, and then they pressured the American citizens to lock themselves into little bubbles within their own homes, I said then we should go slow about change and that forcing the public into these sealed homes until we know a little more about what happens to air quality.

Congress, in its zeal and so-called wisdom in the early 1970's, at the time of the first boycott with respect to oil

and energy supplies and higher escalating energy costs, acted anyway.

Now we have before us a bill that addresses some of these problems. People have found out in time that a little fresh air inside buildings saves a lot of problems with respect to air quality.

The bill, for the most part, is a well-balanced, measured response. The bill does, however, put forward some new, aggressive research initiatives and clarifies the objections of the Federal Indoor Air Quality Response Act and gets some information out to those people who may need it. So that part of the bill, on the whole, is not a bad thing.

I guess I should put it this way: I think this is unneeded legislation. But I also say to my colleagues who are here before the Senate pushing this legislation, on a scale of 1 to 10 on legislation that would be detrimental to the economy of the country, this is low on the scale. I did not think it will do any good. It is going to increase spending and help break the budget, and it is part of the reason we have a \$300-billion deficit.

But I do think that there can be some meritorious comments made on behalf of our colleagues pushing this legislation, who want to make sure that people have the basic understanding of what radon levels mean, and where the national radon education program comes into effect. We cannot just tell folks a given radon level and expect they will know it is good or bad.

In the past, we have drastically overstated effects. I think what we need in all of these pieces of legislation is more sound science—more sound science. I think that if you go to Canada and look at the standards there as compared to here, you get quite a different story.

Mr. President, I think it also needs to be said here on the floor that the administration does oppose the enactment of S. 792. The bill's prescriptive and regulatory requirements will duplicate programs without significantly lowering the radon qualities and levels.

The bill will also undermine programs designed to provide States with the flexibility to develop self-sustaining and cost-effective specific programs.

The Federal Government is already undertaking numerous programs to address elevated radon levels in buildings. The EPA provides a wide range of technical assistance to help States identify and mitigate elevated radon in residents, workplaces, and schools. The EPA is also working with other Federal agencies to develop policies for federally run programs.

The bill would inappropriately reauthorize the State radon program as a federally subsidized program. This reauthorization is contrary to the original intent of the existing 3-year start-up program, Mr. President. The pro-

gram was designed with Federal assistance after 3 years by gradually increasing the State's share. While the administration would not oppose a 1-year extension at a reduced Federal share, it opposes the longer extension.

The bill's unfocused requirements that definitions will result in overcontrol and excessive societal costs where radon levels are relatively low.

These definitions of priority radon areas and target action points are too broad and ignore the work that EPA and other agencies have already done to determine these areas.

The bill's prescriptive regulatory approach is premature, given the state of scientific and technical expertise in mitigating radon. S. 792 will unnecessarily insert the Federal Government into areas that have traditionally been the province of States and local governments. I am sure that does not slow down the intent of those who are in favor of this legislation, but I think it is something that should be considered.

With respect to the cost—and I know in terms of the legislation that passes this Congress, one almost hesitates to get up and talk about a bill that is as small in terms of spending as this one. But it is millions and millions of dollars, Mr. President, and this is the fundamental problem that we have here with respect to scoring this bill as pay as you go.

S. 792 will increase spending. It is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. The budget point of order applies in both the House and Senate against any bill that is not fully under CBO scoring. If, contrary to the administration's recommendation, the Senate waives any such point of order that applies to S. 792, the effect of enactment of this legislation would be included in a look-back, pay-as-you-go sequester report at the end of the congressional session.

OMB's preliminary scoring estimates of this bill are presented in the table that I will read from.

In 1992, it will be \$16 million; 1993, \$5 million; 1994, \$5 million; 1995, \$5 million; and 1992-95, a total of \$31 million.

So, as I say, in terms of costs here, it is not as bad as many pieces of legislation. But the principal point I think should be understood by my colleagues is that, as in many instances, this radon problem is already being looked at and undertaken by EPA and many State indoor air quality agencies throughout the country.

I believe the country would probably be better off not to spend the \$31 million. Raise the issue, let the public find out about it. Let the States worry about this problem, and let EPA do what they have been doing with respect to an education program to the public so that people are aware of it.

Basically, one way to avoid some of the problems is to have a little fresh

air and circulation inside of houses. It is not all that complicated, but it is one of those things that we have brought largely on ourselves.

This bill speaks to a problem that was brought upon the American people by earlier actions of Congress.

I would be remiss, also, if I did not compliment my colleague from New Hampshire for his amendment, which I think is a substantial improvement to the legislation with respect to water quality.

Mr. President, I ask unanimous consent that at the end of my remarks, a Warren Brookes article of June 25, 1990, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, June 25, 1990]

IRRATIONAL TOXIC GOAL

(By Warren Bookes)

If Congress and the Environmental Protection Agency get their way, American homeowners will have to spend \$1 trillion to bring the radon levels in their houses down to natural background levels. Those levels are 70 percent lower than even the present EPA danger target and they are the ludicrous goal set by Congress as an amendment to the 1988 Toxic Substances Control Act.

A paper in this month's Journal of Environmental Science and Technology says: "The implications of measures needed to achieve this goal are staggering. Even if it is technically feasible, the costs would be prohibitively large, on the order of \$1 trillion (\$10,000 to \$16,000 per household times 70 million households)."

Yet, as the paper points out, less than 3 percent of total risks of radon exposure are among those who do not smoke. That's fewer than 500 people per year nationwide. Ninety seven percent comes from smoking and radon. In other words, nonsmokers make up 60 percent of the population but only 3 percent of the radon risk.

The author of this paper is William Nazaroff of Lawrence Berkeley Laboratory at the University of California. He and his colleague, Anthony Nero, are generally regarded as the nation's foremost experts on radon risk and its mitigation.

Mr. Nazaroff's paper is a scorching indictment of the EPA and Congress for a radon policy that "is developing without careful analysis of the premises and objectives for controlling risk in the indoor environment."

In short, we have here a replay of Congress and the EPA's asbestos disaster, where billions are being misspent because of a failure to accurately identify real risk. In that case as well, much of the miscalculation of asbestos risk was failure to identify the 88 percent role of smoking in the original study of asbestos exposure.

At the heart of the radon risk problem is the fact that although the current risk estimates project some 16,000 cancer deaths from this source, "only 3 percent of this mortality rate (about 500 cases) is projected to occur among individuals who have never smoked." Even that is based on models which deliberately overstate risk by at least 10 to 100 times or more, suggesting an insignificant public health risk.

The respected Journal of Health Physics will soon publish a study by Dr. Linda Titus Ernstoff of the University of Pittsburgh and Dr. Thomas Gerusky of the Pennsylvania De-

partment of Health, which shows that among a sample of 800 residents of very high radon exposure homes in the infamous, "Reading Prong"—10 times the EPA danger level—there was no evidence of raised lung cancer death rates.

Partly because of this kind of data, Pennsylvania has adopted an official policy of offering professional testing help only to those whose basement canister readings are above 20 picocuries per liter. That's five times the EPA level of 4 picocuries per liter and is the same level now used in Canada to detect possible remediation targets.

The economic significance of this is huge. At 20 picocuries per liter, less than 80,000 U.S. homes would need radon mitigation at a cost of about \$150 million or about 0.1 percent of the cost of meeting the EPA's current standard, which targets 8 million to 10 million homes. Mr. Nazaroff also suggests that the Canadian 20 picocureis per liter level would make more sense.

One reason, he says, is that "More than 90 percent of the lung-cancer risk associated with radon could be controlled by eliminating smoking without any changes in radon concentrations."

He estimates even the total cost of meeting present EPA standards of 4 picocuries per liter is about \$20 billion. He points out that "A reduction by about 3 percent in the number of cigarette smokers would reduce the annual mortality due to lung cancer by the same amount as a radon-mitigation program" at current standards.

As Mr. Nazaroff puts it, "From a public health perspective, the goal of reducing lung cancer incidence may be more easily met by changing the population's smoking habits rather than by aggressive measures to reduce indoor radon concentrations."

This is reinforced by the work of University of Pittsburgh radiation physicist Bernard Cohen. He looked at 411 U.S. counties and discovered the correlations between lung cancer deaths and radon levels are on the average negative—higher radon levels are associated with lower lung cancer deaths. A similar lack of correlation has been just reported in a study of more than 200,000 medical records in Florida.

Mr. Nazaroff says, "It has not yet been possible and will be difficult in the future to demonstrate a compelling association between environmental radon exposure and lung cancer rates."

In the March 1990 issue of *Epidemiology*, Fanny Ennever of the Case Western Reserve School of Medicine says the lifetime risk of lung cancer for someone never exposed to radon (at EPA danger levels) and who has never smoked is 1.1 percent. That risk only rises to 1.5 percent from 40 years of exposure to EPA's radon danger levels! By contrast, the lifetime risk for the full-time smoker is 12.3 percent which rises to 15.8 percent with radon exposure. She concludes: "Ceasing to smoke is considerably more beneficial than easing radon exposure"—and a whole lot less costly.

RADON AND LUNG CANCER DEATHS

	From all causes	From radon
Current population (1986):		
Never smoked	5,000	500
Former smokers	57,600	6,500
Current smokers	67,800	8,700
Total	130,400	15,700

Source: Lawrence Berkeley Laboratory, University of California, William Nazaroff.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LAUTENBERG. The time that the Senator from Idaho just used was in response to a unanimous-consent request; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LAUTENBERG. Therefore, it does not come off the bill, nor does it come from the amendment that Senator WALLOP will offer; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that we extend the time that we are going to have on the bill by another 20 minutes; 10 minutes equally divided.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Who yields time?

Mr. LAUTENBERG. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. LAUTENBERG. Mr. President, I want to very quickly respond to our colleague from Idaho in terms of his warm support for this legislation.

We heard very critical comments by the Senator. I want to very quickly go to the issue of direct spending. CBO has declared that the bill will not result in direct spending because of the committee amendment that was introduced and approved by the Senate this morning.

So, to the Senator from Idaho, I would just mention that the issue of direct spending has been taken care of. There was a technical amendment accepted by the Senate. So that eliminated the problem of direct spending.

The other issue, Mr. President, is whether we need a significant effort by the Federal Government to deal with the health problems caused by exposure to radon or whether, as described by my friend and colleague from Idaho, it is an unneeded, unnecessary, insignificant—I do not have the whole list of adjectives that were used. The issue is whether or not we are serious when we talk about protecting the public health.

We have a statement by the Assistant Surgeon General, Dr. Houk, who agrees with EPA that somewhere between 7,000 and 30,000 lung-cancer deaths a year result from radon. Unfortunately, people are not alarmed because they do not see it; they do not smell it; and they do not taste it. Therefore, it is not significant.

Mr. President, I yield myself 5 additional minutes, on top of the 3 that I have already expended.

The PRESIDING OFFICER. The Senator is recognized for an additional 5 minutes.

Mr. LAUTENBERG. Mr. President, we are looking at a health threat that

in terms of lung cancer is second only to smoking. And yet the Senator casually dismisses this threat to the lives of so many, to the health costs for dealing with lung cancer caused by radon and the threats to children who ingest air at a higher rate. I would ask the Senator whether or not he thinks we ought to ignore the problem of radon in schools. There are very few States around this country that do not have a significant radon threat.

I took a trip to Sweden in 1985 to see how that nation deals with the radon problem. They do not permit houses or buildings to be built unless they deal first with the exposure to radon. They take it seriously. I know the Senator too well to believe that he would want to casually dismiss this kind of a health threat.

We have labels on cigarettes. We can label the threat posed by radon by simply testing the homes. We are not talking about major costs. We do all kinds of things to protect the public health. So why is this suddenly something that is so trivialized and dismissed? I do not understand.

Mr. SYMMS. Mr. President, will my colleague yield?

The PRESIDING OFFICER. Does the distinguished Senator from New Jersey yield to the Senator from Idaho for a question?

Mr. LAUTENBERG. I am happy to yield.

Mr. SYMMS. Mr. President, I in no way want to trivialize the intent or motives of our colleagues on the committee, but I would just point out there is substantial evidence that comes from the other side that indicates that it may not be 20 million lung cancers caused by radon.

Mr. LAUTENBERG. Twenty thousand.

Mr. SYMMS. Twenty thousand. There is not substantial evidence of that.

To back that up, Mr. President, I refer to the Warren Brookes article that has been printed in the RECORD. It speaks to that issue and speaks to some of the overstatements that we often hear. And EPA's own remarks, Mr. President, do not say that anyone is getting lung cancer from radon. They say they have suspicion, but they do not really know.

I thank my colleague.

Mr. LAUTENBERG. Mr. President, the debate about the seriousness of radon has been dealt with very clearly. In 1990, a report by the EPA Science Advisory Board which—I mentioned in my opening remarks—an expert panel of scientists which provide technical advice to the EPA Administrator, identified radon and other indoor air pollutants as posing relatively high risks to human health, compared to other environmental threats.

So I think that with the scientific evidence, we no longer have a debate

about the seriousness of radon as a health threat.

Mr. President, I yield the floor at this point.

The PRESIDING OFFICER. Who yields time?

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming [Mr. WALLOP].

AMENDMENT NO. 1704

(Purpose: To clarify and improve certain provisions relating to indoor radon abatement)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1704.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

"SEC. 322. PERIODIC REASSESSMENT OF HEALTH RISKS.

The Administrator, in consultation with the heads of the National Academy of Sciences and the Centers for Disease Control, shall conduct a program to reassess, on a periodic basis, the human health risks associated with radon exposure."

On page 36, line 4, before the semicolon, insert "and include a summary of scientific evidence that demonstrates the human health effects of exposure to radon".

On page 53, between lines 11 and 12, strike the item relating to section 321 and insert the following new items:

"Sec. 321. Citizens suits.

"Sec. 322. Periodic Reassessment of Health Risks."

On page 55, after line 6, insert the following new section:

SEC. 24. PERIODIC REASSESSMENT OF HEALTH RISKS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) is amended by adding at the end thereof the following new section:

Mr. WALLOP. Mr. President, I thank the majority leader for his civility in allowing me to go ahead with the amendment.

Mr. President, the Senate is once again engaged in one of our most persistent, one of our most contentious and certainly one of our most expensive debates, the quest for an acceptable level of risk for inhabiting our planet. Risk comes in many forms. We face physical threats, such as driving a car, emotional threats, such as a personal failure or loss, and environmental threats, such as eating an apple sprayed with Alar.

One philosophy of government insists that we should develop a zero-risk society through government regulation. The economic cost of the regulation becomes a secondary issue. It is not

surprising that the greatest government burden on our economy today is the cost of environmental regulations. The Hansen report estimates that this regulatory activity cost \$400 billion annually.

No doubt there is a need for environmental regulation and standards. But we do sometimes lose our way. Recall the poor fellow we had standing stark naked next to the chainlink fence surrounding a coal-fired powerplant 24 hours a day for 70 years. The purpose was to determine a Federal standard for exposure to emissions from powerplants using high sulfur coal. By requiring scrubbers on all power plants, we may have saved that fellow standing by the fence from lung cancer. But, in the meantime, he caught a terminal case of pneumonia.

We will never eliminate risk. What we should do is focus on real hazards, real threats. Tuberculosis is a example of a real and immediate problem. We thought we have virtually eradicated TB in this country. But it is back, and it is causing life-threatening health problems in many communities. Obviously, our public health agencies should respond to what some have described as an epidemic of TB.

TB is a known, measurable, and containable risk. But, many health risks are unknown, obscure, or latent. In response to such environmental health threats, we have relied on questionable scientific methodology. For instance, in banning saccharin, the Federal Government relied on research which studied the effects of giving rats 1,000 times the normal daily dosage of saccharin. Of course the rats got sick, and the Feds banned saccharin. But, after massive costs to the industry and years of conflict over the research, a mistake was admitted and the ban was lifted.

More recently, animal studies demonstrated that dioxin is an extremely toxic carcinogen to some animals. Once again, a serious health effect was extrapolated to humans. When dioxin was discovered in the soil at Times Beach, MO, the Centers for Disease Control recommended evacuation of the town. The Federal Government paid \$36 million for the community, and a \$200 million cleanup was begun.

Families were destroyed, divorces occurred, old people were uprooted from homes and put in retirement centers prematurely. But a \$200 million cleanup started.

However by 1989, Vernon Houk, head of the CDC's Center for Environmental Health told a congressional committee that new evidence suggests that the risk of dioxin had been vastly overstated. Sometimes, even the scientific method does not provide the correct, or at least the total answer.

But, problems with the data has never deterred Congress from enacting legislation to regulate. Later this year, attempts will be made to label oil and

gas drilling muds as toxic wastes, based on the wish that the muds are a health hazard. If this were ever to become law, have we improved public health and reduced risk? No. But we have fulfilled the environmentalists' dream of stopping all domestic oil and gas drilling.

Congress also bases decisions on inadequate scientific data. We banned virtually all uses of all forms of asbestos because of health risks based in part on studies of exposure in shipyards during World War II. After an expensive effort in the schools and elsewhere, questions have been raised about whether all forms of asbestos are a health hazard. One hundred years ago, it was discovered that asbestos was the most common mineral in Wyoming. The airborne levels exceed that in any building that exists in America. I wonder whether my State would have ever been settled if there had been an EPA back in 1892.

Our latest adventure in health risks involves radon. Much of the data on health effects is based on studies of uranium miners in Western States, such as Wyoming, back in the 1950's and 1960's. For many years, the miners worked in unvented underground mines. Many also smoked. The level of lung disease was above the national average, so a new, serious health risk was determined. The congressional response is an expensive effort to eradicate this indoor air pollutant.

Radon gas, as a byproduct of radioactive decay, does have health effects. The issues are, first, whether there is a serious, prevalent public health threat, and, second, what cost should society undertake in response to this threat. Two years ago, a paper by William Nazaroff in the Journal of Environmental Science and Technology stated, "The implications of measures needed to achieve this goal (of reducing indoor radon levels to natural background levels) are staggering. Even if it is technically feasible, the costs would be prohibitively large" about \$10,000 to \$16,000 per household, for a total of \$1 trillion. Fortunately, the Senate has scaled back its ambitions, and we will only focus on radon testing and information on mitigation. A colloquy I had with the sponsor, Senator LAUTENBERG, discusses this program from the perspective of public schools.

The Nazaroff paper also points out for over 60 percent of the population, they face less than 3 percent of the lung cancer risks from radon exposure. Why? Because they do not smoke. The radon risk, whether with uranium miners or other exposed groups, is most intense for those who smoke.

As Nazaroff states:

More than 90 percent of the lung cancer risk associated with radon could be controlled by eliminating smoking without any changes in radon concentrations. A reduction by about 3 percent in the number of cig-

arette smokers would reduce the annual mortality due to lung cancer by the same amount as a radon-mitigation program.

The solution to the radon risk is simple. We do not need a new, expensive program to renovate our homes and schools, we need an effective program to reduce smoking. We do not need billboards with skull and bones imposed over a radon canister, as have recently appeared around Casper, WY. We do need accurate science, and responsible legislation.

I would ask unanimous consent that two articles published last fall in the Cato Institute publication, "Regulation," on the science of health effects and on the radon threat appear at the end of my remarks. Also, that a letter explaining the administration's position on S. 792 also be included in the RECORD.

The PRESIDING OFFICER (Mr. KOHL). Without objection, it is so ordered.

(See exhibit 1.)

EXHIBIT 1

[From Cato Review of Business & Government, Fall 1991]

THE PERIOD AND PROMISE OF RISK ASSESSMENT

(By Richard B. Belzer)

Unfortunately, the practice of risk assessment by the federal government routinely departs from the academic ideal. Federal risk assessments continue to rely on conservative models and assumptions that effectively intermingle important policy judgments with science. This often makes it difficult to discern serious hazards from trivial ones, and it distorts the ordering of the government's regulatory priorities. These distortions typically lead to disproportionate investments in reducing very small threats to health and life. In some cases these distortions may actually increase net health and safety risks.

Widely acknowledged problems that continue to plague the practice of risk assessment in the federal government were described in the 1990 edition of the Regulatory Program of the United States, an annual publication of the Office of Management and Budget. The issues were not new, nor was the forum original inasmuch as previous editions of the Regulatory Program had raised similar concerns. But the unusual candor of the 1990 edition provoked a storm of controversy within federal regulatory agencies. The policy issues kindled by risk assessment, which for years had been relegated to obscure scientific journals, had finally become visible to the highest levels of the federal government.

The 1990 Regulatory Program highlighted three concerns. First, the continued reliance on "reasonable worst-case" assumptions distorts risk assessment and yields estimates that may overstate the expected level of risk by several orders of magnitude. Second, the assumptions embedded in risk assessments impart arbitrary "margins of safety" for which there is no scientific basis. The choice of an appropriate margin of safety is a value judgment that should remain the province of responsible risk management officials, and it is inappropriate to conceal it within ostensibly scientific risk assessments. Third, current risk assessment procedures distort the regulatory priorities of the federal govern-

ment and direct scarce resources toward reducing trivial carcinogenic risks while failing to address more substantial threats to life and health.

Cancer risk assessment has become extraordinarily controversial over the past few years. It has been subjected to the crescendo of criticism by prominent scientists, risk assessment professionals, and policy analysts. Defenders of the faith have responded in kind by challenging the arguments of the accusers with gusto and occasional vitriol. It remains an open question whether risk assessment can survive this internecine warfare.

Despite these battles over its underlying validity, quantitative risk assessment plays an increasingly important role in the federal government's management of risks. Public confidence in the government's scientific objectivity never has been so important. Policymakers and risk management officials need high-quality risk assessment to assure an effective ordering of regulatory priorities and to maintain (or perhaps to restore) public confidence in the risk management process. As former EPA Administrator William D. Ruckelshaus noted in 1983, "risk assessment . . . must be based on scientific evidence and scientific consequences only. Nothing will erode public confidence faster than the suspicion that policy considerations have been allowed to influence the assessment of risk."

CURRENT RISK ASSESSMENT PROCEDURES

Risk assessments of chemical substances in general (and possible carcinogens in particular) consist of a mixture of facts, models, and assumptions. Facts are beyond dispute, of course, but there is considerable debate concerning the scientific merits of the models and assumptions commonly used in risk assessment. In some cases a scientific consensus has developed to support a particular model or assumption, but in many other instances certain models and assumptions are relied on simply because they reflect past practices. Put simply, no scientific basis exists for some of the most critical models and assumptions used to assess cancer risk.

These models and assumptions generally lead to a substantial overestimate of risks. That is, they lead to estimates of a "reasonable worst case" rather than provide information about the typical or average level of risk. This bias arises within the procedures used to estimate both hazard and exposure. In fact, additional biases are embedded in so many steps that in the final result risk assessments often exceed by orders of magnitude the risk posed to the average exposed individual.

Several procedures generally used to extrapolate the results from animal tests to human risk are explicitly and intentionally biased. Therefore, risk assessors often characterize estimates as "upper-bound excess lifetime cancer risks." The term upper bound means that there is a small (but known) probability that the true (but unknown) risk actually exceeds the value specified. Of course, the true risk is just as likely to be as small as a corresponding lower bound, which may be zero. Similarly, the caveat "lifetime" is added to reflect the assumption that exposure to the substance in question occurs continuously for seventy years.

It is also important to recognize that these estimates refer to "excess" cancer risks. The average American's lifetime risk of cancer is approximately one in four. One-third of this risk is attributable to smoking; another one-sixth is related to diet. All other causes, including environmental, occupational, and dietary exposures to carcinogens and aging,

thus pose an average lifetime cancer risk of one in eight. When a risk assessment is published that suggests that a particular substance poses an "excess" cancer risk of one in 10,000, this means that the lifetime risk of cancer faced by the average non-smoking American exposed to this substance may be increased by as much as one tenth of one percent.

Choosing between Animal Tests and Epidemiology.—Animal testing enables scientists to estimate risks before human health effects become evident. Animal tests can also be conducted under tightly controlled laboratory conditions that allow exposure to be carefully calibrated. In contrast, epidemiological studies must rely on less accurate exposure measures, some of which (such as recall) are inherently biased. It is also easier to control for confounding factors that would systematically alter risk estimates with laboratory animal tests than with epidemiological studies.

For these reasons, combined with an ethical aversion to delaying action until human "body counts" are available, animal studies are the dominant source of risk assessment data. Unfortunately, animal testing also suffers from serious limitations. Laboratory controls are by no means complete or sufficient. They generally fail to control for total caloric intake, for example, which has been associated with an increased incidence of tumors independent of exposure to possible toxins. Even more important, there is no generally accepted scientific basis for extrapolating low-dose human cancer risks from high-dose rodent bioassays. Current practice reflects a collection of scientific conventions for which there is little more scientific support today than there was over a decade ago when the procedures were first developed.

Despite these problems, properly conducted animal tests and epidemiological studies both have useful roles to play in quantitative risk assessment. Indeed, they are complementary. The usual weaknesses of epidemiological investigations—unreliable exposure data, confounding effects—are readily avoided in laboratory tests on animals. Conversely, the weaknesses of animal tests—problematic extrapolation from higher to low doses, arbitrary conversion of animal exposure to human equivalents—do not arise in epidemiological studies. Careful risk assessments incorporate both kinds of analysis to ensure that the emerging pictures are themselves internally consistent.

Current practice among federal regulatory agencies departs significantly from this ideal. Animal tests are often preferred to epidemiological studies when the former suggest higher risks. In a recently proposed regulations concerning cadmium, for example, the Occupational Safety and Health Administration (OSHA) proposed a new permissible exposure limit based on a risk assessment derived from an animal test rather than from a high-quality epidemiological investigation. OSHA rationalized its preference by pointing to the animal study's superior control of exposure and its capacity to predict tumors at multiple sites. Animal tests inherently have these advantages over epidemiological studies, however, so the conditions under which OSHA would rely on human rather than animal data are unclear. But the more important question is whether OSHA was also influenced by the fact that the data from the animal test predicted low-dose cancer risks ten times greater than the data obtained from the epidemiological study.

Biases Embedded in Cancer Risk Assessment.—In many important ways the judg-

ment that enter into animal-based risk assessments are intended to amplify the resulting estimate of risk.

Sensitive Test Animals.—Animal bioassays rely on homogeneous, genetically sensitive strains of rats and mice. This enhances the power of the test to detect abnormalities such as cancer. Certain animal strains have high rates of spontaneous tumor formation, however, and some scientists question whether observing elevated tumor rates in such animals provides useful information in estimating human cancer risk. Despite these concerns, cancer risk assessments often proceed on the assumption that elevated tumor rates found in sensitive animals are sufficient to conclude that a substance is likely to be a human carcinogen.

The use of sensitive animal strains is not suggestive of bias per se, however. Rather, the bias arises because federal risk analysts often select the combination of species, strain, and gender that yielded the most significant tumorigenic response, and disregard all other results. Because there is no scientific basis for making such determinations, this practice cannot avoid imparting bias to federal agency risk assessments.

Severe Testing Conditions.—Current risk assessment protocols require the use of very high doses in animal tests. One group of animals is exposed to the highest dose that can be administered without inducing chronic excessive morbidity or mortality—the so-called maximally tolerated dose. A second group is exposed to one-half of this dose, and a third group (if there is one) is exposed to one-fourth of the dose. Typically, all of these doses greatly exceed the level of exposure encountered by human populations.

Unfortunately, high doses may induce cancer for reasons unrelated to biological mechanisms that operate at low doses. At the maximally tolerated dose substances often cause severe inflammation and chronic cell killing. These doses may induce cancer simply because of chronic toxicity. For example, formaldehyde administered at the maximally tolerated dose causes nasal tumors in rats. These tumors appear to result from the inflammation of the nasal passage tissues. It is unclear whether the observed response is due to high-dose toxicity or perhaps to some other characteristic of the test species since the observed tumor rates exceed by a factor of twelve the rates found in the next-most-sensitive species tested.

Some scientists have concluded that it is not scientifically credible to use the results from rodent tests performed at the maximally tolerated dose to estimate human health risks arising from exposure to low doses. By one estimate, about half of all chemicals tested at the maximally tolerated dose cause tumors in animal tests, and this ratio appears to be the same whether the chemical in question is natural or synthetic. Two-thirds of these positive results drop out at a dose equal to one-half the maximally tolerated dose, however. This leads some scientists to ask whether other factors besides mutation (cell proliferation, for example) may be the underlying mechanism behind high-dose carcinogenesis. Such questions have led to considerable pressure within the scientific community to reconsider whether maximally tolerated dose administration is appropriate for estimating human cancer risks.

Conversion from Animals to Humans.—When relying on animal tests to estimate human cancer risks, scientists must convert exposures in the test animal to human dose-equivalents. The two most common conver-

sion formulas involve body weight and surface area, and there are scientific reasons for choosing either approach in individual cases. The surface area approach leads to estimates of risk that are between seven and twelve times greater than those that derive from the body-weight methods, however, and despite the ambiguity of the underlying science, EPA guidelines require the use of the surface-area method except in extraordinary cases.

Federal risk analysts have been working for some time to resolve the dispute concerning the appropriate conversion factor. This is both a welcome development and a potential problem. Although it is indisputable that scientific consensus is desirable on this issue, the anticipated resolution—using body weight raised to the two-thirds power—appears to be more of a political compromise than a scientific consensus. A uniform assumption based on non-scientific concerns may bury this legitimate scientific dispute within the risk assessment process and leave risk management officials and the public unaware of one more significant area of scientific uncertainty.

Selective Use of Alternative Studies.—Federal risk assessment guidelines recommend that relevant animal studies be considered irrespective of whether they reveal a positive relationship. These guidelines give appropriately greater credence to studies that show a positive response than to studies that are ambiguous or negative. In practice, however, a single positive study may overwhelm a host of negative studies.

A recent example of the selective use of alternative studies is the EPA's decision to ban the plant growth regulator daminozide (Alar). The scientific basis for this decision was a single positive animal bioassay. According to the EPA's cancer risk assessment guidelines, overcoming such a classification requires, at a minimum, two "essentially identical" studies showing no positive relationship. In the case of Alar, however, a more stringent test appears to have been applied. Three high-quality studies failed to show significant effects, but they received little or no apparent weight in the classification decision. In cancer risk assessment, once a statistically significant positive result has been obtained in one test species, strain, or gender, the statistical burden of proof shifts to the no-effect hypothesis. Because it is logically impossible to prove a negative, however, these procedures establish a virtually irrefutable presumption in favor of the carcinogenesis hypothesis.

A more defensible approach is to assign weights explicitly to each relevant study that meets the minimum standards of scientific quality. Such a procedure would actively seek to incorporate in a scientifically appropriate manner all the information available at the time a decision must be made. Risk analysts shy away from such a process because they consider any weights to be subjective emendations lacking scientific basis. Although this concern is certainly valid, the absence of an explicit weighting system leads to an equally subjective but hidden implicit weighting scheme. A weight-of-evidence procedure with documented weights would reflect the informed judgment of respected scientists, whereas the existing procedure is both undocumented and politically unaccountable.

The Choice of Dose-Response Model.—Having selected a single data set from among the laboratory animal tests, risk analysts must then extrapolate low-dose human risks from the data generated by high-dose animal

tests. They use mathematical models to do this.

No single mathematical model is accepted as generally superior for extrapolating from high to low doses. Rather than be a scientific footnote to the risk assessment process, however, the choice of model thus becomes an important policy issue. For example, when OSHA used five different dose-response models to estimate cancer risks from cadmium, risks at moderate doses varied by a factor of 100. At doses in the range of the proposed exposure limit, two of the five models yielded excess lifetime cancer risk estimates on the order of one in 1,000, a level often regarded by policymakers as unacceptable. Two other models predicted essentially zero risk, however. Since none of the five models enjoys a biologically superior basis for estimating low-dose risks, the choice of dose-response model became a critical policy decision.

The preferred procedure under such circumstances would be to explicitly develop a subjectively derived "best" estimate or risk distribution while fully informing both political officials and the general public as to the uncertainties involved. In the case of OSHA's cadmium proposal, however, this practice was not followed. Agency staff used a multistage model to determine whether low-dose exposures constituted a significant risk and estimated both the baseline risks and the benefits from regulation solely on the basis of this embedded policy choice.

The multistage model is the most commonly used method for estimating low-dose risks. Various features of the model typically cause it to produce high risk estimates even when the data are poor or inconsistent. Moreover, it yields higher risk estimates than many other models that have equal scientific plausibility. The linearized multistage model, a special version of the multistage model, is much more inherently conservative than the multistage model because it is explicitly and intentionally biased. Some agencies routinely use the linearized multistage model despite (or perhaps because of) its additional inherent bias. This practice lacks any basis in either biology or statistics. Ironically, the degree of hidden bias is greatest where the true risk is the lowest.

Advocates of the linearized multistage model argue that it offers important advantages over alternatives. For example, they say that it is more "stable" than alternative models and that this stability is a desirable trait in the face of uncertainty. In addition, proponents contend that using the same model across a variety of chemicals provides a "yardstick" for comparing relative potencies and thus for ranking relative risks. Finally, advocates of this model argue that it is prudent risk assessment practice to err on the side of caution when dealing with potentially carcinogenic substances. None of these arguments has any merit.

The observed statistical "stability" in the linearized multistage model arises because the model is insensitive to the data it is supposed to fit. Stability arises from an intentional specification error, not from any desirable characteristic of the model. By constraining the data to fit the model, risk analysts implicitly display greater scientific confidence in the model than in the underlying data.

The yardstick argument in favor of the linearized multistage model fails because it institutionalizes these systematic biases. Any rank-ordering of chemical hazards based on this model will be biased in theory as well as

in practice. An especially pernicious use of the yardstick argument is the assertion that it enables government agencies to set regulatory priorities. Besides the structural bias implied in the model, further bias occurs because the model fails to take account of human exposure. This failure virtually guarantees that regulatory priorities will be misordered. For example, in the air toxics title of the recently enacted Clean Air Act amendments, Congress gave special consideration to the cancer risks said to be associated with dioxins. It is reasonable to believe that the congressional concern about dioxin was motivated substantially by the very high potency estimate for one of those chemicals—an estimate that is widely believed by scientists to be a gross overestimate of the true risk.

Proper model specification is the foundation of modern statistical methods, so challenges to the multistage model should be expected and encouraged as better data and improved models become available. Indeed, change is a hallmark of scientific inquiry; policies that institutionalize any particular model specification effectively stifle scientific advancement.

In practice, however, use of other models is generally discouraged. For a risk assessment to be based on an alternative model, there must be substantial scientific evidence supporting the alternative. Instead of incorporating the latest scientific information and statistical procedures, current federal agency practices discourage such advancements by communicating a generic mistrust of alternatives. The resulting value judgments embedded in the multistage models were never explicitly approved by risk management officials. In many cases government officials charged with making difficult regulatory decisions are never even aware of the implicit policy judgments of staff risk analysts.

Biases Embedded in Human Exposure Estimates.—It is a generally accepted principle of exposure assessment that estimates should be based on realistic scenarios, with appropriate consideration of uncertainty. Nevertheless, regulatory agencies often rely heavily on "reasonable worst-case" environmental conditions, base human health assessments on the so-called maximum exposed individual, and assume that exposure occurs constantly over an entire lifetime, even when it is intermittent or short-lived. Each of these assumptions tends to overstate the estimate of average human risk. In combination these biases are multiplied so that the final result is a cascade of biases that may mislead policymakers and create undue public alarm. Most disturbing, perhaps, is that excessive bias in risk assessment encourages regulatory initiatives that promise more protection from the ravages of cancer than policymakers can possibly deliver.

"Reasonable Worst-Case" Exposure Conditions.—When exposure data are available, they often relate to unusually sensitive environments or highly contaminated conditions. But agencies frequently use these data to estimate regional or nationwide environmental exposures under the false assumption that unusual localized circumstances apply rather generally.

In a recently proposed rule governing the allowable level of synthetic organic chemicals in drinking water, the EPA estimated the level of existing contamination by using a handful of state studies. These studies had been undertaken to measure contamination levels at previously identified "hot spots," not to characterize nationwide exposures.

Nevertheless, data from these studies were extrapolated nationwide. After combining modelling assumptions, hot spot data, and conservative potency estimates derived from the hazard assessment process described earlier, the EPA estimated a baseline cancer incidence of seventy-four cases per year. But the true incidence is very likely to be much lower simply because of the extreme environmental conditions on which nationwide exposure estimates were based.

The "Maximum Exposed Individual."—Risk analyses must also consider the conditions under which humans may be exposed. Actual exposure varies considerably depending on location, population mobility, and a host of other factors. But exposure estimates are often based on the "maximum exposed individual," a hypothetical person whose exposure represents the worst case. Exposures to environmental contaminants are generally assumed to occur twenty-four hours each day for seventy years. Occupational cancer risks are based on an analogous construct—a hypothetical worker who is exposed at the permissible exposure limit eight hours per day, five days per week, fifty weeks per year over a forty-five-year working lifetime. Risks to the entire exposed population are often estimated by assuming that all are exposed at levels equivalent to the maximum exposure—a statistical absurdity that imparts a substantial and quantifiable bias.

Risk assessments focused on the drinking water pathway offer another example of exposure bias. First, adults are assumed to drink two liters of tap water per day, but the average adult consumes only 1.4 liters of all beverages per day, less than half of which is drinking water. Second, the full daily consumption of drinking water is assumed to come from the same contaminated source, but the average adult spends more than one-half of all waking hours away from home. Finally, exposure is assumed to occur for seventy years, but the average person spends just nine years at any one residence. Each of these assumptions may be plausible for a small subset of the exposed population, but the likelihood that anyone is accurately characterized by all three is extremely remote. Indeed, these three assumptions lead to estimates that exceed the average level of exposure by a factor of more than fifty.

The design of cleanup plans for hazardous waste sites offers another example in which biased assumptions are used to estimate human exposure. The procedures give special weight to unusually sensitive subpopulations, such as children, pregnant women, the elderly, and those with chronic illnesses. Children's exposure is generally estimated by assuming that half of nearby households include children and that one child from each household plays at the hazardous waste site. Soil ingestion exposures are based on children who intentionally eat dirt. For air exposures, all nearby residents are assumed to spend the entire day within the contaminated zone. Dermal exposures are similarly calculated on the basis of worst-case conditions and assumptions.

A common defense for these biased exposure assumptions is that risk assessments often fail to measure risks from all relevant pathways. Risk assessors thus account for what they cannot estimate by intentionally exaggerating what they can. This was the case for many years because analytic methods for some pathways were considered excessively primitive. More recently, however, federal risk analysts have working diligently to capture multiple pathways. It is now

quite common to see risk assessments that estimate risks from inhalation, dermal absorption, and ingestion through drinking water, meat, milk, home-grown vegetables, and locally caught fish. These efforts to analyze pathways comprehensively have not diminished the use of conservative exposure assumptions, however. These assumptions are simply extended to the additional pathways. The resulting exposure scenario combines the reasonable worst case from each pathway into a mega-worst case.

Assumptions versus Real-World Exposure Data.—These exposure assumptions are typically used in lieu of real-world data, even when such data exist. Risk estimates are only as good as the data and assumptions used to create them, and even small biases in assumed exposure levels can result in substantial overestimates of average risk.

For example, regulatory agencies may not have statistically reliable real-world data on pesticide residues in agricultural products, and they also may not know the proportion of a given crop that has been treated with a particular pesticide. A common resolution of these uncertainties is to assume that residues are equal to the regulatory "tolerance" (the maximum level allowed to be present in food sold in interstate commerce) and that 100 percent of the relevant crop has been treated. Both assumptions are likely to overstate actual exposure, but they are encouraged by agency guidance as mechanisms intended to produce inflated estimates of risk.

When data are available, the extent of this bias becomes evident. In a recent pesticide review the EPA reduced its earlier upper-bound excess lifetime cancer risk estimate by a factor of 100 when its exposure assumptions were replaced with real-world data. The EPA then still acknowledged that upperbound risks were probably overstated because field tests were performed on the basis of applications at the maximum legal rate and as close to harvest as the label permits. Similarly, feeding studies assumed that animal diets were dominated by feedstuffs containing relatively high residues, such as almond hulls and raisin waste. As the EPA noted, even if these assumptions accurately reflected typical animal diets, they would do so only for portions of California where almonds and raisins are grown. Nationwide extrapolations based on these unusual diets significantly overstate average exposure.

IMPLICATIONS OF BIASED RISK ASSESSMENT FOR REGULATORY DECISIONMAKING

The primary purpose of risk assessment is to provide data and analysis that can serve as the foundation for making risk management decisions. This requires the synthesis of information concerning risks and exposure levels into a coherent package that can be used to develop regulatory options. Decisionmakers can then use risk estimates as inputs in their regulatory analysis.

Unfortunately, risk information tends to be presented in ways that frustrate regulatory analysis and mislead decisionmakers. First, the substantial uncertainties underlying risk estimation are generally discarded in favor of reporting only point estimates. Decisionmakers are thus led to believe that scientists have determined the actual level of human cancer risk. Second, the point estimates provided do not represent the expected values of the underlying risk distributions. Instead, they are laden with biases. Both of these factors imply that regulatory choices may differ systematically from what they would have been if decisionmakers had been fully and accurately informed.

Failure to Quantify Uncertainty.—Scientists agree that uncertainties should be quantified and presented to decisionmakers as part of the risk assessment package. In practice, regulatory proposals that utilize risk assessment rarely provide this information, nor do they analyze the implications of uncertainty. Virtually all risk assessments prepared in support of regulatory decision-making identify only the upper-bound risk estimates.

The difference between upper-bound and expected-value estimates may be considerable. The EPA's current upper-bound risk estimate for dioxin may be 5,000 times greater than the expected-value estimate. The upper-bound risk estimate for perchloroethylene (the primary solvent in dry cleaning) exceeds the expected value estimate by a factor of about 35,000. The significance of these distortions becomes evident only when agencies strive to avoid them. For example, the EPA's recent decision to ban asbestos relied on epidemiological data rather than animal studies and on the geometric mean from a collection of studies rather than the highest risk estimate available. These simple improvements in risk assessment combined to reduce the estimated risk of lung cancer by a factor of ten and the estimated risk of mesothelioma by a factor of twenty.

In many instances decisionmakers are not informed that risk estimates differ because of underlying methodological and policy choices. In the EPA's draft proposed rule limiting emissions from coke ovens, for example, cancer risks were estimated on the basis of the linearized multistage model described above. In previous rules involving similar types of risks, however, the EPA has used a maximum likelihood procedure designed to identify the expected value of the dose-response mode. Unsurprisingly, the linearized multistage model projected higher risks. To the extent that decisionmakers were not informed that the higher risk estimate was largely due to the use of a different extrapolation procedure rather than to any fundamental change in scientific knowledge, choices based on this risk assessment were likely to reflect misunderstanding rather than science.

Some risk estimates are so large as to defy all reason and common sense. In a recent decision to list spent wood-preserving chemicals as hazardous wastes, the EPA provided a table listing all of the contaminants in the waste stream, the levels of these constituent chemicals, and the calculated groundwater risks based on specified but arbitrary dilution and attenuation factors. When the risks posed by these individual contaminants are summed, they yield an estimated upper-bound excess lifetime cancer risk of forty-two. This implies that an individual exposed to the diluted form of this waste stream could expect to die from cancer every two years for seventy years.

Misordered Priorities, Perverse Outcomes.—Logically, one would expect that routine exaggeration of likely risks would lead to inefficient regulatory choices. Decisionmakers, convinced that a certain substance or activity poses a significant threat to public health, may well take actions that they would otherwise resist. Nevertheless, decisionmakers would still be able to establish sensible priorities as long as all risk estimates were equally exaggerated.

Federal risk analysts are not consistent in their assessments of different risks, however. This makes it difficult to determine which activities pose the greater risks or to estab-

lish reasonable priorities for regulatory action. The bias in risk assessment is especially severe with respect to carcinogens. It is thus reasonable to expect that other health and safety risks tend to receive relatively less attention and weight than they would if different types of risk were measured more consistently. Society implicitly bears greater total risks because the bias in cancer risk assessment has misordered regulatory and budgetary priorities.

Conservative risk assessments can lead to truly bizarre regulatory decisions. When the EPA established its new "toxicity characteristic for hazardous waste," the agency also identified twenty-five organic chemicals that, if detected above specified thresholds, would render a waste stream "hazardous." This designation is significant because it triggers expensive treatment and disposal requirements. Biased risk assessment procedures dictated very low thresholds for these organics.

Several months after promulgating the regulation, the EPA learned that common chlorofluorocarbons (CFCs) may contain trace levels of carbon tetrachloride and chloroform—two of the twenty-five organic chemicals listed. Further, under previously established EPA rules the act of removing these CFCs from refrigeration units for recycling made them "solid wastes." Thus, anyone seeking to reclaim CFCs rather than vent them to the atmosphere faced a rather difficult decision. The required testing of these "solid wastes" would trigger a "hazardous waste" designation and the full weight of expensive regulation under the Resource Conservation and Recovery Act. These burdens could be avoided only by doing the wrong thing—venting the refrigerants to the atmosphere.

After discovering this problem, the EPA moved quickly to suspend the application of the toxicity characteristic to CFCs, but the event symbolizes the perversities that can result from conservative risk assessment. As it happens, the same CFC compounds that would have been hazardous wastes if reclaimed from refrigeration units are also used as inert propellants in a variety of pharmaceuticals—including the inhalers that asthmatics rely on to breathe freely.

Finally, the use of biased risk estimates may actually increase individual risk, even in situations in which cancer is the only concern. Regulatory actions taken to address what are in fact insignificant threats may implicitly tolerate or ignore risks that are far more serious. For example, before it was banned, ethylene dibromide (EDB) was used as a grain and soil fumigant to combat vermin and molds. Vermin transmit disease, and molds harbor the natural and potent carcinogen aflatoxin B. The estimated human cancer risk from the aflatoxin contained in one peanut butter sandwich is about seventy-five times greater than a full day's dietary risk from EDB exposure. By eliminating the relatively small hazard from EDB, federal officials may have intensified the relatively potent threat of aflatoxin.

STRATEGIES FOR IMPROVING RISK ASSESSMENT

The practice of risk assessment is extremely complex and fraught with controversy. The underlying problem is inherently difficult to analyze, and the stakes involved are enormous. Seemingly innocuous choices made in assessing risk often have huge consequences.

The problems identified here do not imply that risk assessment should be abandoned, although increasing dissatisfaction with the process has intensified the pressures to do

so. For risk assessment to survive as a useful component of regulatory analysis and decision making, dramatic changes must occur that will restore its credibility and relevance.

Renewed Commitment to Separating Science from Policy.—First, heroic efforts must be made to separate science from policy. Criticisms leveled more than a decade ago by the National Academy of Sciences are still unanswered. Risk assessment remains a seamless web of science and value judgment that is impenetrable by the average citizen and wholly lacking in public accountability. Confidence in government as a risk management institution cannot improve until the credibility of risk assessment as a scientific enterprise is restored.

Regulatory agencies tend to be institutionally resistant to change. Scientific advancements in risk assessment methodology that implicitly cast doubt upon earlier decisions are particularly distressing. Although this phenomenon characterizes many institutions, it appears to be especially pernicious with regard to regulatory agencies and risk assessment. Thus, a formulaic approach to risk assessment has evolved in which departures from the accepted pattern are inherently controversial simply because they are different. The process needs to be reopened to admit a wider variety of new ideas, hypotheses, and results.

Develop Risk Distributions in Lieu of Point Estimates.—Perhaps the single most important reform needed is the replacement of upper-bound estimates with risk distributions. There are a variety of analytic methods available for estimating distributions and retaining the uncertainties of risk analysis. While these methods were computationally quite difficult a decade ago, contemporary computer technology is more than adequate for the task.

Besides enabling risk analysts to communicate uncertainty, risk distributions are compatible with efforts to incorporate all the available information. Risk assessments would be far less sensitive to individual assumptions, model choices, and data, and they would reflect scientific and statistical advancements more quickly.

The role played by decisionmakers would be enhanced in such a setting. If decisionmakers wanted to choose a very cautious strategy, they could do so and explicitly apply a margin of safety in the final decision. The public and affected parties would also benefit from knowing the full risk distribution and its expected value, rather than learning only an alarming estimate implicitly derived from the distribution's upper tail.

Sensitivity Analysis of Major Parameters and Assumptions.—In the short run, risk assessments would be substantially improved if analysts performed sensitivity analyses on those parameters and assumptions that are believed to dominate the outcome. This is the conventional practice in benefit-cost analysis where both sides of the economic ledger are often characterized by considerable uncertainty. There is no reason why federal risk assessments should not be so rigorous as the economic analyses that agencies perform in support of regulatory decision-making.

CONCLUSION

Risk assessment lies at a crucial stage in its evolution. Whether it will survive as a useful policymaking instrument will ultimately depend on whether the risk assessment profession responds to long-standing concerns such as those discussed here. An ob-

jective observer could well interpret the pattern of bias—as extensive, pernicious, and resistant to reform as it appears to be—as a malignant invasion of such magnitude that the organism cannot be saved. Whether risk assessment ultimately survives will depend on whether the methodology (and its practitioners) can adapt to the changing needs of policy officials and decisionmakers and can incorporate the latest advances in science.

[From Cato Review of Business and Government, fall, 1991]

RADON TODAY: THE ROLE OF FLIMFLAM IN PUBLIC POLICY

(By Philip H. Abelson)

The Environmental Protection Agency and some members of Congress are embarked on a questionable radon program that will entail great costs and produce trivial benefits. The costs include huge financial expenditures for renovation and new construction in schools, residences, large buildings, and federal buildings, as well as fees for litigation. The program also will cause needless anxiety for millions of people.

In its warnings to the public and in its guidelines the EPA adopts what it calls a conservative approach. It gives credence to the piece of evidence or analysis that implies the greatest risk or danger. Solid evidence that the risk is minimal is disregarded. As a result of that approach to asbestos, radon, and industrial chemicals, our country is on the road to wasting a trillion dollars or more to obtain negligible health benefits.

This article will analyze the shaky scientific basis on which the EPA has set goals for radon levels. It will provide evidence that EPA estimates of the carcinogenicity of radon at low levels are unreliable, and it will describe some of the efforts of the EPA to frighten the public.

The EPA has issued many statements about the number of lung cancer deaths attributable to radon. The numbers vary but are of the order of 16,000 per year, with an upper limit of 43,200 per year. The numbers are not supported by epidemiological studies, but are based on limited data derived mainly from experiences of uranium miners. The data, many of which are based on high exposures in dusty unventilated mines, have been extrapolated to low doses in relatively dust-free living rooms.

Shortly after World War II, the Atomic Energy Commission embarked on a high-priority program to develop domestic sources of uranium. A high price was established for crude uranium-containing ores. John Morgan, a purchasing agent for the Atomic Energy Commission in the early days, observed that many truck drivers and other amateurs had used geiger counters to prospect for uranium. As result, a substantial number of the prospectors became millionaire miners. Indeed, about 2,000 small mines were soon producing uranium. Morgan called the mines "dog holes" since in many cases the opening were sealed to a size more comfortable for dogs than for humans. The early mines were not ventilated. Howard L. Kusnetz, who as an officer of the U.S. Public Health Service from 1951 to 1971 monitored conditions in the uranium mines of the Colorado Plateau and developed improved methods of radon determination, told of primitive conditions in the small mines in which he crawled to measure radon levels. He spoke of the early difficulties of obtaining reliable results and stated that many of the reported measurements were made by miners. Their data were not reliable and tended to understate exposures.

The vast majority of the miners were smokers. In the cramped mine quarters, all

those present inhaled the smoke. But during the 1950s the small unventilated mines contained more than cigarette smoke and radon. There were also nitrogen oxides and mineral dusts. The dust itself contained uranium and its decay products. Beyond the effects of radiation were the lung irritant effects of the dust itself. It is well known that asbestos workers who smoked had a greatly enhanced frequency of lung cancer. In any event, conditions in the mines were not conducive to good health. Silicosis, chronic obstructive pulmonary disease, and other noncancerous lung pathologies were noted in nonsmokers. The miners—smokers and nonsmokers—were exposed to pathology-inducing mineral irritants not present in one's home.

The EPA's statements on the carcinogenicity of radon and its decay products depend heavily on a report of a committee of the National Research Council—the so-called BEIR IV report. That report is largely based on a survey of literature relevant to uranium miners on the Colorado Plateau and includes references before 1987. It is a careful study, but it can be no more reliable than the fragmentary data available to the committee. A table in the document indicates how poorly radon exposures were monitored during the 1950's. For example, in 1955 radon was measured in only four of more than 2000 mines. In the interval from 1951 to 1958 the fraction of mines monitored seldom exceeded about 7 percent. The committee did recognize that the data and models on which they based their report were controversial. The council's report concluded: "In summary, a number of sources of uncertainty may substantially affect the committee's risk projections; the magnitude of uncertainty associated with each of these sources cannot readily be quantified. Accordingly, the committee acknowledges that the total uncertainty in its risk projection is large."

The one conclusion of the report that is valid beyond doubt is that at high doses of radon, miners who are cigarette smokers experience an enhanced incidence of lung cancer. The data with respect to nonsmokers are less impressive. Only small numbers of cancers are involved in this cohort.

In its projections to estimate dangers associated with low exposures, the committee made the conventional assumption that risk is a linear function of dose. That is, one can extrapolate from high-dose effects to predict those at low doses. This assumption has never been proved.

Many epidemiological surveys and various surgeon General's reports have linked cigarette smoking with the incidence of lung cancer and other pathologies. Each year about 140,000 smokers die of lung cancer. In the days before smoking became prevalent (from 1920 to 1930) lung cancer was a rare disease. Radon levels in residences then were comparable to or greater than those now existing. In fact, the average radon levels experienced by people in the early 1900s were probably considerably higher than those of today. Radon is formed in soil and accumulates in households largely through leakage through the basement or bottom floor. Amounts of radon are greatest at the lowest floor level and much lower higher up. In today's apartment living residents receive much lower exposures than in the past. The historical data indicate that with moderate exposure to radon, nonsmokers are not subject to lung cancer. Rosalyn Yalow, a Nobel laureate, reported: "According to American Cancer Society statistics the age-adjusted lung cancer death rates in 1930 were 5 per 100,000 for males and 2.5 per 100,000 for fe-

males. At the present time, the rates are about 15-fold higher for men and 10-fold higher for women." The increased death rate is clearly linked to increased smoking.

The EPA has estimated that among a total of 140,000 lung cancer deaths, as an upper limit as many as 43,200 might be due to radon. Such a large number—whether 43,200, 20,000 or 16,000—should be glaringly evident in the population from even a casual epidemiological survey. A large number of homes have been monitored. The EPA has provided data for levels of radon in thirty-four states. Five states in the Midwest, including Iowa, have the highest radon levels. Taken together, those states were recorded as having about twice the national level. The lung cancer incidence in those five highest radon states was reported as only about 80 percent of the national average, however. Studies in other regions by Dr. Bernard Cohen and Dr. Ralph Lapp have yielded similar results. Lapp compared rates of lung cancer deaths in counties in New Jersey. Some counties over the Reading Prong have very high radon levels. Atlantic Coastal Plain counties have low radon levels. Warren County has thirteen times as much radon as the Coastal Plain counties, but rates of lung cancer deaths were the same in both regions. Moderate but higher than average levels of radon correlate with beneficial lessening of the incidence of lung cancer. This is a finding that appears to hold elsewhere in the world.

Doctor Yalow has also commented on the epidemiological findings: "In the three states with the highest mean radon levels in home living areas (Colorado, North Dakota, Iowa: 3.9, 3.5, 3.3 pCi/liter respectively), the lung cancer death rate averages 41 per 100,000, and in the three states with the lowest radon levels (Delaware, Louisiana, California: 0.75, 0.96, 0.97 pCi/liter respectively), the rate averages 66 per 100,000."

The observation that small doses of radiation need not be harmful is counter to a widely accepted hypothesis of radiation biophysicists. But the hypothesis was created more than fifty years ago at a time of ignorance because of the absence of solid data. Actually, some experimental data indicate no effect or a beneficial effect for small radiation exposures. While it is known that ionizing radiation creates free oxygen radicals and can injure chromosomes, it is now known that repair mechanisms exist. Moreover, it has been shown that low-level radiations make the cells less susceptible to subsequent high doses of radiation. This adaptive response has been attributed to the induction of a chromosomal break-repair mechanism that can repair much of the damage when cells are exposed to high doses of radiation.

We know that when humans engage in physical exercise, their metabolism increases. This creates an enhanced level of free oxygen radicals, some of which react to destroy the integrity of DNA. But the existing repair mechanisms are effective. As a result, the exercise is overall beneficial to health.

Evidence for absence of a carcinogenic effect of radiation and radon at moderately elevated doses was also provided by an epidemiological study financed by the U.S. National Cancer Institute and conducted in China. In some Chinese rural provinces little movement of population occurs, and there are areas where the soils contain unusually large amounts of uranium and thorium minerals. Thus, it is feasible to compare the effects of radiation on highly exposed and low-level control populations. The radiation lev-

els differed by a factor of three. In both instances populations of 70,000 were involved. Although the numbers of lung cancer cases in both groups were small, the controls had more lung cancer than the highly exposed persons. There was about twice as much cancer of all kinds in the controls as in the highly exposed population.

A crucial assumption underlying many of the regulatory standards issued by the EPA is that substances toxic at high levels are also injurious at low levels approaching zero. That is, one extrapolates from high levels to low levels by using a linear approach. The EPA uses this assumption to estimate the effect of radon as well as the effects of chemicals that are carcinogenic in animals at very high exposure levels. But the error of this approach is becoming increasingly apparent through experiments that produce data that do not fit the linear model. A striking illustration comes from human stomach cancer caused by excessive ingestion of table salt. If the EPA were consistent in its regulatory program, the known occurrence of salt-induced stomach cancer should lead to a ban on the use of table salt. A number of trace elements that are absolutely essential to life are carcinogenic at high doses. Pharmacologists have long stated that it is the dose that makes the poison.

The EPA has no solid evidence that low levels of radon cause lung cancer, especially in nonsmokers. Epidemiological evidence (part of it gathered by the EPA) indicates the contrary. In addition, authorities in the United Kingdom and Canada do not share the EPA's view of the extent of the hazards posed by radon. In the United Kingdom radon levels in Cornwall and Devon are four times as great as the national average, but the incidence of lung cancer in those two areas is 15 percent less than the nation's average. The Canadians also have a history of radiation and health research. They have experience with high levels of radon in Manitoba and elsewhere. They have set the exposure level at which remediation is required at five times that of the EPA.

Despite such information, the EPA has chosen to rely on the questionable linear extrapolation of questionable data obtained from miners' exposures to radon to calculate effects in a quite different residential environment. In fact, the EPA seems to have become so convinced of the validity of its point of view that it has been taking strong measures to brainwash and alarm the public. It appears to have adopted the view that the end justifies the means. That is, the goal of reducing exposure to radon justifies using inaccurate data and inflicting psychological trauma.

THE EPA'S PUBLIC MISINFORMATION CAMPAIGN

An elevated incidence of lung cancer in uranium miners was well known before 1980. The existence of areas with high radon levels was also known. The EPA gave no urgency to those facts until about 1985, when high radon concentrations were detected in homes on the Reading Prong in Pennsylvania. A burst of activity followed, and soon the EPA made statements to the effect that radon is the second leading cause of lung cancer.

The public did not respond in great numbers to the EPA's 1986 Citizen's Guide to Radon or to subsequent public urgings. The public's lack of response has led the EPA to resort to motivational efforts that depend less on truth and education and more on creating public anxiety.

In the autumn of 1988, then EPA administrator Lee Thomas appeared on national television to say that up to a third of U.S.

homes had excessive radon levels. That is, the exposure levels exceeded the EPA action level of four pCi per liter. That statement conflicted with scientific studies showing that only about one-fifteenth of homes had levels exceeding four pCi per liter. From time to time the EPA issued a variety of different estimates on the fraction of homes with excessive levels. Estimates often were obtained by nonrandom state surveys that oversampled in areas with high radon levels.

The effort to motivate the public became increasingly shrill. With absolutely no proof, the agency compared the effects of radon to those of smoking. The EPA asserted that daily exposure to four pCi per liter of radon produced a lung cancer risk comparable to smoking up to half a pack of cigarettes a day. William Reilly, administrator of the EPA, revised this estimate to more than 10 cigarettes a day in an October 1989 news conference. There was no scientific basis for such a remark; no new facts had been developed to warrant a change from earlier estimates. What is inexcusable is that the statement did not differentiate between radon's effects on smokers and nonsmokers.

A continuing series of statements by the EPA led to media coverage and in turn to congressional interest in radon. One result was legislation establishing a virtually impossible goal for the EPA of reducing residential levels of radon to the level in the outside air. The EPA has repeatedly taken the position that no level of radon is safe, and the cost of reaching the congressional goal has been estimated at about a trillion dollars. Nearly every home owner in the country would be adversely affected, most without benefit.

The key to creating action-producing anxiety is to work through mothers. When they are told that their children are at risk, they tend to respond decisively. That was observed during the asbestos scare, when large sums of money were spent to remove asbestos from schools. To create anxiety about radon, the EPA adopted a model that alleges that children are three times as susceptible to radon as are adults. Jay Lubin has written that "the proposition that children are at greater risk is currently unsupported." He based his statement on a study that was made on Chinese miners who had been first exposed to radon while under the age of thirteen. He also cited a BEIR V report on radon that stated that "the model for respiratory cancer does not depend upon age at exposure."

Despite the lack of evidence that children are particularly at risk, in 1989 the EPA participated in a campaign with the Advertising Council to exploit parents' concern for their children so as to frighten them into implementing EPA recommendations. A thirty-second television spot was created and repeatedly run. Dr. Anthony Nero, a physicist specializing in radon matters at Lawrence Berkeley Laboratory, wrote: "In the TV spot a family is seen in front of their television set. A voice says that high radon in one's home is like having hundreds of chest X rays a year. Flashes occur 7 or 8 times causing the entire skeleton of a child, safe in his mother's * * * lap, to appear before us. It isn't only the child's chest that is exposed to X rays. It's his entire skeleton, flashing at the rate of a thousand times an hour (a million times a year)—conveying a palpable danger of death. The frequent flashes showing us a dead child are not intended to inform, but to cause undue fear, moving people to action with the threat of death. This is terrorism."

Additional details concerning the relationship of the EPA and the Advertising Council appear in a briefing document entitled "Radon Media Campaign." The document was apparently constructed from Xeroxed copies of slides used to brief the EPA some time in the autumn of 1990. One section of the briefing asked, "Why an Advertising Campaign?" The answers were: radon has become "old news"; the public is apathetic about radon—although most people have heard of it, fewer than 5 percent of homes nationwide have been tested; and sustained media coverage is needed to motivate public action. Another section, headed "Advertising Research Findings," noted that radon is not perceived as a serious risk, that only educated self-starters are taking action, and that smoking comparisons are not effective. It went on to suggest that an easy first step is needed and pointed out that the major problem is denial: more information results in more denial. A following section, titled "Keys to Overcoming Denial," called for relating radon risks to others in the household, personalizing radon with relevant, tangible comparisons, eliminating unnecessary information, and using strong and unsettling messages. Those last two recommendations bear emphasis. In other words they say, "Do not inform them; scare them".

In August 1990 the EPA circulated a draft of a proposed revised Citizen's Guide to Radon. The subtitle to the draft was Don't Let A Dangerous Intruder Invade Your Home. The document employed the "scare them" strategy; it was designed to raise anxiety rather than to present facts. Many reviewers of the draft denounced the strategy as inappropriate. In the November 9, 1990, publication of Inside EPA one reviewer reportedly castigated the agency's use of emotional motivational language to spur public action on radon as "little more than a euphemism for misrepresentation and obfuscation." Another reviewer described the draft guide as "a clever example of deceptive advertising and a distortion of scientific fact." Other reviewers compared the guide to "an advertisement for radon contractors," criticized "improperly presented scientific information, omission, and just plain fictitious statements," and suggested that the guide should "emphasize much more that people should stop smoking." A frequently recurring criticism related to the lack of credibility the EPA would have for publishing such an alarmist guide. One reviewer wrote: "[T]he long-term negative effects of the alarmist approach as presented by this guide are not evaluated. One should not underrate the need to retain credibility." As a result of largely scathing comment about the draft of the 1990 Citizen's Guide, the document was not issued. A revision is in progress, however.

The repeated concern about the guide's destruction of the credibility of the federal government was also present in other correspondence. Scare tactics that employ demonstrably inaccurate data are bad public policy. In the case of radon such tactics have proved ineffective. For more than five years, the EPA has attempted to scare people into testing for radon. The efforts have been fostered by a tremendous amount of media coverage, but only about 5 percent of the public has responded. Even with the ghoulish thirty-second TV spot showing children's skeletons, the response was not great. Is the public becoming jaded after a long series of scary media coverage of environmental matters?

The answer may lie in another direction—does the individual believe that a risk is

being imposed by others? A substantial fraction of the population smokes, although the public has been repeatedly informed of the great hazard of lung cancer. When told of minuscule hazards from chemicals emitted by industry, however, smokers react strongly, for the risk is imposed by others. In contrast, radon is produced by Mother Nature, so it cannot be very bad.

Many scientists and physicians have suggested that if the EPA were really determined to diminish lung cancer deaths due to radon, it would engage in a campaign to reduce smoking. Reducing the number of smokers by a few percent would more effectively improve health than would a frontal attack on radon that would cost hundreds of billions of dollars.

One strategy designed to diminish exposures to radon that has been partially implemented has to do with real estate sales. Increasingly, owners find that to sell their homes they must test for radon and remediate if necessary. Were the EPA to lower the radon exposure levels that would require remedial action to meet congressional goals of a level equivalent to that of the outside air, the costs of remediation would become enormous. In that event, the EPA would surely come under angry scrutiny. The best policy would be for the EPA to abandon attempts to frighten all the citizens and instead concentrate on identifying those areas of the country and the circumstances in which high levels of radon prevail.

Levels of radon are variable around the country, and in areas where the uranium content is high, the radon hazard is correspondingly elevated. In limited areas the levels of radon in homes are at least 100 times higher than the national average. Scientists have repeatedly urged the EPA to focus its efforts on attaining remediation in those areas. Legislation now pending in Congress mandates such efforts.

One of the weaknesses of the EPA is that it seems unable to learn. Its basic policies were set nearly twenty years ago. Whenever a risk is identified, the EPA takes what it calls a conservative approach. This entails developing worst-case scenarios and giving credence to sloppy data if they indicate a greater risk. Experiments that later show that no risk exists are disregarded. Very rarely indeed has the EPA loosened regulations on the basis of new, valid scientific data. With respect to radon, new data could be obtained. An epidemiological survey could establish the extent to which, if any, non-smokers are affected by ambient levels of radon. Some millions of dollars devoted to such a study would be a better investment than spending billions of dollars on recommendations that might merely be a waste of money. Since the EPA has not shown the alacrity to foster such a study, another agency such as the National Institutes of Health or the Department of Energy should be assigned the task.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 25, 1992.

STATEMENT OF ADMINISTRATION POLICY

(S. 792—Indoor Radon Abatement Reauthorization Act of 1991—Lautenberg of New Jersey and four others)

The Administration opposes enactment of S. 792. The bill's prescriptive and costly regulatory requirements would duplicate existing Federal programs without significantly lowering indoor air radon levels. The bill would also undermine programs designed to provide States with the flexibility to develop self-sustaining, cost-effective, and location-specific programs.

The Federal Government is already undertaking numerous programs to address elevated radon levels in buildings. The Environmental Protection Agency's (EPA) Radon Action Program provides a wide range of technical assistance to help States identify and mitigate elevated radon in residences, work places, and schools. EPA also is working with other Federal agencies to develop radon policies for federally run housing programs.

The bill would inappropriately reauthorize the State Radon grant program as a permanent federally subsidized program. This reauthorization is contrary to the original intent of the existing three-year start-up grant program. The program was designated to end Federal assistance after three years by gradually increasing the State share. While the Administration would not oppose a one-year extension at a reduced Federal share, it opposes a longer extension.

The bill's unfocused requirements and definitions will result in over-control and excessive societal costs where radon levels are relatively low. The definitions of "Priority Radon Areas" and "target action point" are too broad and ignore the work that EPA and other agencies have already done to determine areas with a high probability of elevated radon levels. The Administration opposes any change to the existing radon guidelines without first going through the appropriate scientific review process.

The bill's prescriptive regulatory approach is premature given the current state of scientific and technical expertise on mitigating radon. Some of the techniques developed for mitigating radon have been successfully applied in schools and large buildings. However, more research is needed, particularly in multifamily residences, to develop and refine these techniques, and a regulatory approach for mitigating radon problems in large buildings is premature at this time.

S. 792 would unnecessarily insert the Federal Government into areas that have traditionally been the province of State and local governments. It is inappropriate for the Federal Government to interfere with State and local control of the housing market by regulation, forcing them to adopt Federal minimum radon building standards. The bill may supersede successful State and local government programs designed to reflect the particular needs of their jurisdictions.

SCORING FOR PURPOSES OF PAY-AS-YOU-GO

S. 792 would increase direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA). A budget point of order applies in both the House and the Senate against any bill that is not fully offset under CBO scoring. If, contrary to the Administration's recommendation, the Senate waives any such point of order that applies against S. 792, the effects of enactment of this legislation would be included in a look back pay-as-you-go sequester report at the end of the congressional session.

OMB's preliminary scoring estimates of this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If S. 792 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be issued in monthly reports transmitted to the Congress.

Estimates for pay-as-you-go

Outlays:	Millions
1992	\$16

	Millions
1993	5
1994	5
1995	5
Total	31

Mr. WALLOP. The amendment I am offering today would provide the medical community with more extensive information on the radon health effects research. It would also require EPA to conduct further research on the health effects of radon exposure. It is a response to the need for more thorough analysis of the health effects on our general population from exposure to radon. I appreciate the assistance of the staff of the Environment and Public Works Committee in working out this amendment. And, I urge the adoption of the amendment.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, we have agreed to accept this amendment. I confirm what I said in my opening statement, that there is overwhelming evidence with proof substantiating that radon presents a serious health risk. The National Academy of Sciences has already issued two reports confirming the extent of the problem. EPA continues to work with the NAS, the National Academy of Sciences, and Centers for Disease Control to further refine radon risk estimates.

The amendment offered, however, by the Senator from Wyoming is consistent with existing EPA efforts. It would require EPA to work with the National Academy and to work with the Centers for Disease Control to periodically update the estimates of public health risks caused by exposure to radon. It would also require EPA to include in its medical outreach program a summary of scientific evidence demonstrating the human health effects of exposure to radon.

So I support the Wallop amendment and ask that it be agreed to.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota.

Mr. DURENBERGER. Mr. President, the chairman of the committee and the manager of this bill has accurately stated the view of our colleague's amendment and, on behalf of the minority, I recommend its adoption, and I compliment my colleague from Wyoming for his contribution to the legislation.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 1704) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, I just offer my thanks to the chairman and ranking member. One of the reasons I felt it was important is illustrated in a letter that I received yesterday from the Acting Regional Administrator of EPA, Denver region, region 8, which contains the following sentence:

Although there is not yet consensus on what concentration level of radon gas in the air creates a health risk, scientists do agree that this can be dangerous if not detected and properly addressed.

And enclosed is a pamphlet from the EPA on radon which is fraught with comments. They simply do not know. I think the thrust of this amendment is to require them to base as much as possible on scientific efforts and not the emotional outcry that has arisen.

RADON IN SCHOOLS

Mr. WALLOP. In section 9 of the bill, EPA is required to publish guidelines on remediating radon in school buildings. Would the remediation guidelines require renovation or new construction by the schools? Have any cost estimates been prepared on the average cost per school to comply with the guidelines?

Mr. LAUTENBERG. S. 792 takes a right-to-know approach to radon in schools. It requires testing by schools in priority radon areas and disclosure of the results. But it does not mandate any mitigation. That decision is left up to the school districts. So no renovation or new construction of schools is required by S. 792.

To encourage those schools with elevated radon levels to undertake these efforts, the bill authorizes \$5 million per year to assist needy schools. Any mitigation efforts undertaken with this Federal assistance must be conducted consistent with EPA school mitigation guidelines. The guidelines themselves would not require either extensive renovation or new construction. Basic techniques used to reduce radon in schools are similar to standard methods to reduce radon in homes. Adjustments to the heating, ventilation, and air conditioning system will sometimes resolve the problem.

EPA estimates that it will cost on average \$1,000 to test a school and a few hundred to \$15,000 for mitigation.

Mr. WALLOP. The bill requires remediation to be carried out in accordance with EPA guidelines. Is this, in effect, a mandated activity by EPA with which the local school districts will have to comply?

Mr. LAUTENBERG. S. 792 requires that remediation carried out pursuant to the bill and funded by EPA must be consistent with EPA remediation guidelines. As I indicated, the bill does not require schools to undertake mitigation efforts.

Mr. WALLOP. As the chairman is aware, there is a great deal of concern in my State over the actions of some contractors and consultants involved in asbestos removal. In some cases their mistakes have been very costly to local school districts. What safeguards are being taken in this bill to ensure that school districts do not experience the same problem with radon consultants? If the federally certified consultants are in error in their actions, is there provision for EPA to assume the cost of the error rather than the school district?

Mr. LAUTENBERG. I am aware of the Senator's concern. Under S. 792 EPA will administer a mandatory radon proficiency program. EPA already has developed two proficiency programs designed to help the public and school officials find reliable radon contractors, and to set performance requirements for the radon industry.

EPA is required to issue guidance to States to establish a radon proficiency program. And we authorize EPA to delegate the proficiency program to the States and authorize States to use their radon grant funds to establish these programs. So it may be that a State rather than EPA will be responsible for implementing the proficiency program. Schools can arrange to have their own employees certified under the program. Through its regional radon training centers, EPA has developed a special training course for school facility managers. And EPA is developing technical radon diagnostic and mitigation documents for school administrators and facility managers to assist their selection of contractors.

As I said, S. 792 does not require mitigation efforts. If a school has a high radon reading but is concerned about error, it can retest. And in any event, the school is not required to mitigate radon levels.

Mr. WALLOP. S. 792 requires EPA to designate radon priority areas. Areas in which there is a reasonable likelihood that the average radon level is likely to exceed the national average radon level by more than a de minimis amount are to be designated priority radon areas. Could the Senator explain what this means?

Mr. LAUTENBERG. S. 792 conserves scarce Federal resources by requiring EPA to focus on those areas which, on the basis of test results, present the greatest risks from radon. Under S. 792, EPA would designate priority radon areas and require certain efforts to be focused in those areas.

Under this definition, EPA would designate areas in which the average radon measurement is above the national average. But we have given EPA some flexibility in this definition by allowing EPA to exclude areas which are above the national average by only a de minimis amount. EPA would have some discretion in determining what a de minimis amount is.

Mr. WALLOP. I want to be assured that EPA radon standards are not based on worst-case exposure, extrapolating risks of exposure to radon gas by underground miners in poorly ventilated mines to risks of exposure in residential and school environments. Is this accurate, and will EPA be required by the bill to update their assessment of risk to reflect the actual risk of exposure in a home or school setting?

Mr. LAUTENBERG. Radon health risk estimates are based on estimates of actual population exposure to radon in the residential environment. Radon health risks are not based on worst-case exposure.

Further, the radon risk assessment already has been adjusted to account for the differences between underground mines and homes based on an extensive study by the National Academy of Sciences concluded last year. This study confirmed that epidemiological studies of underground miners can be used to estimate risk in homes but recommended that EPA lower its population risk estimate by 20-30 percent to account for the differences in the two environments. EPA has incorporated these findings into its radon risk estimates. Based on this report, EPA has reestimated the risk posed by radon to 7,000-30,000 lung cancer deaths a year with a mean estimate of 14,000 cancer deaths.

EPA is continuing to work with the National Academy of Sciences and the Centers for Disease Control to further refine radon risk estimates. Such efforts include the examination of ongoing residential epidemiological studies which may further refine the understanding of residential radon risks.

I expect EPA to continue to evaluate the threat posed by radon based on the best available evidence.

Mr. President, I ask unanimous consent that letters of support from the National Association of Home Builders, the National Educational Association, the National Parent Teachers Association, and editorials from two New Jersey newspapers in support of radon testing in schools be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF
HOME BUILDERS,
Washington, DC, March 6, 1992.

Hon. FRANK LAUTENBERG,
Chairman, Subcommittee on Superfund, Ocean
and Water Protection, Washington, DC.

DEAR CHAIRMAN: On behalf of the National Association of Home Builders, I am writing to convey our support for S. 792, the Indoor Radon Abatement Reauthorization Act.

While S. 792 reauthorizes existing radon programs, it also takes a responsible step forward in dealing with a number of more far-reaching radon issues, such as implementation of EPA's Model Construction Standards at the state and local level, greater information dissemination requirements and designation of high radon areas for regula-

tion. We are grateful for having the opportunity to provide input into the drafting of provisions directly affecting the home building industry.

We also appreciate your patience and willingness to give our members the time necessary to work through some of the provisions in S. 792 with the Environmental Protection Agency (EPA). While I can not speak for EPA, the experience was a productive and educational one for NAHB. We look forward to assisting EPA in implementing the Model Construction Standards in accordance with the resolution passed by NAHB in January.

Again, thank you and your staff person, Ric Erdheim, for the good will and cooperation shown to NAHB.

Respectfully yours,

ROBERT "JAY" BUCHERT.

NATIONAL EDUCATION ASSOCIATION,
Washington, DC, March 6, 1992.

DEAR SENATOR: On behalf of the two million-member National Education Association, I strongly urge you to vote for S. 792, the Indoor Radon Abatement Reauthorization Act.

Among the provisions of S. 792 is a requirement that all schools located in areas of high radon concentration test for elevated levels of radon gas. NEA strongly supports this particular provision and opposes any amendment to delete or weaken it.

Radon is widely agreed to be among the most serious environmental health problems. Not only EPA, but the American Medical Association, the American Lung Association, the Surgeon General, and the Centers for Disease Control agree that radon is the most critical indoor carcinogen to be dealt with in this century. Indeed, radon is the second leading cause of lung cancer, resulting in as many as 20,000 deaths a year.

Requiring schools to test for hazardous levels of radon is critical, because children may be more susceptible than adults to adverse health effects from radon. In addition, an EPA survey of radon in schools conducted in 16 states, found more than half of all schools tested had at least one classroom with unsafe levels of radon. The highest reading was equivalent to exposing children to over 10,000 chest x-rays per year!

S. 792 gives schools in high priority radon areas two years to conduct these tests and authorizes up to \$5 million per year in financial assistance to help needy schools pay for needed radon mitigation and testing activities.

The health of our nation's schoolchildren is far too precious to endanger from unhealthy levels of radon in schools. Enactment of S. 792 represents a crucial step to ensure a healthy and safe environment in school buildings. Votes on this issue may be used in NEA's Legislative Report Card for the 102nd Congress.

Sincerely,

DEBRA DELEE,
Director of Government Relations.

THE NATIONAL PTA,
Chicago, Ill, March 5, 1992.

DEAR SENATOR: On behalf of the 7 million parents, teachers, students and other child advocates who are members of the National PTA, I am writing to urge your support of S. 792, the Indoor Radon Abatement Reauthorization Act.

Radon is considered the number one environmental cancer risk, ranking second only to cigarette smoking as a cause of lung cancer fatalities. As is suspected with most environmental hazards, children are more sus-

ceptible to the adverse health effects of exposure to radon. In 1988, the Environmental Protection Agency issued a national radon health advisory promoting radon testing in homes, and now the Agency also recommends that all schools be tested for radon as well. In fact, an EPA survey of schools in 16 states showed that a majority of schools tested had unsafe levels of radon in at least one classroom.

S. 792 would require local education agencies to test school buildings in areas designated to have high levels of radon, and create a financial assistance program to help schools mitigate high levels of radon. Further, the bill would require that parents be notified of radon hazards, and renew the Environmental Protection Agency's (EPA) existing radon programs.

Parents have the right to know if the school buildings their children attend are safe from environmental hazards. Schools will not know if their buildings are safe without testing. If schools find hazards, they can initiate relatively simple corrective actions to lower the radon levels.

The National PTA strongly supports legislative efforts to address environmental health hazards in schools. We urge you to support S. 792, and to oppose any weakening amendments that are offered to the bill.

Sincerely,

ARLENE ZIELKE,
Vice-President for Legislative Activity.

[From the Bergen (NJ) Record, May 29, 1989]

RADON ALERT FOR SCHOOLS

Schools have no immunity from the radon problems that plague many homes across northern New Jersey. Yet some schools fail to carry out the easy, inexpensive tests that would show whether students are in danger because of the colorless, odorless gas that has been linked to lung cancer. Sen. Frank Lautenberg, D-N.J., is on the right track with a bill that would require testing of all schools in high-risk radon areas by 1993.

Since students spend many hours a day in school, radon there poses a special risk. And Assistant Surgeon General Vernon N. Houk to a recent congressional hearing that children's lungs are especially susceptible to damage from radon. This is especially significant in northern New Jersey, where decaying deposits of uranium and radium have produced high levels of radon in many communities. A recent state survey of 69 schools in 11 counties found at least one school in every county had dangerously high radon levels.

Mr. Lautenberg is right that testing should be required. Perhaps, as he suggests, the federal government should provide \$10 million to pay for testing in high-risk areas. Perhaps schools themselves should pick up the costs, estimated at only about \$1,000 per school. But whoever pays the bill, failure to test will lead to unacceptable health risks for schoolchildren.

[From the Star-Ledger, July 16, 1989]

RADON IN THE CLASSROOM

In a disturbing revelation, the federal Environmental Protection Agency (EPA) found increasing levels of dangerous radon in schools throughout the country, including New Jersey, which was included in a survey of 130 schools in 16 states.

EPA Administrator William Reilly, in announcing the survey results, said it is important to "understand both the seriousness of the risk and the relative simplicity of testing for and fixing the problem." Nationally,

54 percent of the schools tested had at least one room in which radon levels exceeded the standard used to determine if there is a health risk, which prompted Mr. Reilly's concern.

An estimated 400,000 homes in northern and central portions of New Jersey could contain unhealthy levels of radon. State environmental officials have urged that homes be tested and have told school administrators for the past two years that schools should also be checked.

School districts in the Garden State are not required by law to check for radon or to provide information to the state, although state Department of Environmental Protection officials believe many schools have conducted tests.

Radon, the colorless, odorless, naturally occurring gas formed by the radioactive decay of uranium, is found in soil, rocks and some groundwater supplies. Studies indicate that indoor exposure to radon may cause up to 20,000 lung cancer deaths per year—second only to smoking.

The radon survey was required under a 1988 law promoted by Rep. James Florio (D-1st Dist.) and Sen. Frank Lautenberg (D-N.J.), a commendable piece of legislation. Mr. Reilly was wise to personally bring this potentially hazardous condition to the attention of the American public and advise districts to do ongoing testing, ensuring that radon levels do not exceed healthful limits. It would be wise if the testing were made mandatory, with the results forwarded to the state as a means of determining followup and corrective measures.

New Jersey does not presently have a problem of major proportions, but preventive steps are essential. The last thing anyone wants is children exposed to dangerous elements. Continuous testing and remedial action could prevent a lot of grief in the long run.

The PRESIDING OFFICER. Are there further amendments?

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. MITCHELL. Mr. President, I rise in strong support of legislation to reauthorize the Indoor Radon Abatement Act.

Almost 5 years ago, I learned of the serious health threats posed by exposure to naturally occurring radon gas in the air indoors. Dangerous radon levels exist throughout the country, but radon is an especially serious problem in my home State of Maine. Recent surveys indicate that 30 percent of Maine homes have elevated radon levels.

The Congress responded to this problem by passing radon legislation which I introduced. For the past several years, this legislation has guided the Environmental Protection Agency and States to improve the public's understanding of radon health threats and to support other needed efforts to reduce radon exposures.

I am pleased that we have before us today legislation to extend and expand the radon program. I commend Senator LAUTENBERG, the sponsor of this bill, for his tireless efforts to advance this legislation. I also thank Senator CHAFEE for his thoughtful and constructive contributions to the bill.

Radon is a naturally occurring, radioactive gas that can seep indoors, cause damage to lung tissue, and increase the risk of lung cancer. According to EPA, radon may cause 14,000 lung cancer deaths in the United States each year.

Over the past several years, EPA has conducted surveys of radon in homes in 34 States. These surveys indicate that one in five homes nationwide may have radon at levels above the EPA recommended action level. In some States, the percentage of homes with radon above the recommended action level is even higher. Based on this survey date, EPA has recommended that every detached home in the United States be tested for radon.

In April 1989, EPA reported the results of a preliminary assessment of radon levels in schools. EPA Administrator William Reilly stated at that time—

Indoor radon is one of the major environmental health threats facing Americans, and I am now recommending that schools nationwide be tested.

The EPA survey included a total of 130 schools in 16 States. Of these schools, 54 percent had at least one room with radon levels above the EPA recommended action level. A total of 3,000 rooms were tested in the survey and 19 percent had radon at levels above the EPA action level and three percent were found to have levels five times higher than the EPA action level.

The Indoor Radon Abatement Act, passed by the 100th Congress, established a foundation for efforts to reduce radon exposures. The act provides for technical assistance and grants to States to start up radon response programs, authorizes EPA to certify private radon measurement and mitigation firms, provides for development of model building codes to control radon, authorizes creation of regional radon training centers, and directs the EPA to conduct testing for radon in schools and Federal buildings.

Last year, the Environment and Public Works Committee started the process of reauthorizing radon legislation.

Senator LAUTENBERG introduced bills calling for radon testing in schools and expansion of the key elements of the existing statute. His bill, S. 792, proposed new initiatives, including making adoption of new construction standards a priority for the award of State grants; requiring that new Federal buildings and schools be built to new construction standards; requiring a national radon education campaign; and requiring EPA to conduct a survey of radon in workplaces.

Senator CHAFEE introduced provisions making the existing voluntary radon testing program mandatory and requiring radon information to be available to buyers at the time of sale of a home.

In addition, I introduced legislation reauthorizing existing programs and adding several new elements including requirements for the development and implementation of radon new construction standards, requirements for radon testing and mitigation in Federal buildings, clarification of authority for publication of radon information and the Citizen's Guide, and a new initiative for radon information outreach to the medical community.

Today we have before us an amended version of S. 792 which includes the best provisions of each of our bills. This bill builds on the success we have had with the existing program. It also revises and expands the program to address critical needs, such as reducing radon in schools, and preventing radon problems through improved home construction techniques.

I am especially pleased that the bill will continue the grants to support State radon programs. This grant assistance is critical to a number of States, including my home State of Maine.

Mr. President, this legislation is an effective and workable approach to a significant public health problem and I urge my colleagues to give it their full support.

Mr. President, it had been my intention to obtain an unanimous-consent agreement governing the disposition of this bill to accommodate Senator CHAFEE. But I am now advised we are still awaiting clearance on the Republican side. So I will withhold the request until that clearance is obtained.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, just to acknowledge the majority leader's comments, I express my gratitude to him both for his statement and for his consideration for those on our side. I indicated earlier my colleague from Rhode Island could not be here and would not be here. But our colleague from Pennsylvania, the senior Senator, Senator SPECTER, would like to come to the floor and make a brief speech, a 5-minute speech, if he can do it.

Mr. MITCHELL. Mr. President, if I might say, this proposed agreement would not preclude that. What I intend to propose, as soon as we get clearance, is simply that between 2:15 and 2:30 there be 15 minutes of debate, 10 minutes under the control of Senator CHAFEE, 5 under Senator LAUTENBERG'S control, and that we vote at 2:30 on the bill. There would still be time this morning for any Senator who wished to address this subject to do so.

I will withhold the request at this time. I understand it is being cleared on the Republican side. The intention of this is to accommodate Senator CHAFEE.

Mr. DURENBERGER. Mr. President, we would have no objection on this side.

Mr. LAUTENBERG. Mr. President, while the majority leader is still on the floor, I would like to thank him for his support, his comments, and for his persistence in dealing with the radon issue. Maine, like New Jersey and so many other States, has a serious problem with the presence of radon. Wherever there is uranium in the soil, the potential exists for this invisible gas to invade homes, schools, and buildings and pose a health threat.

So I want to thank the majority leader and note that his contribution to the investigation of radon, the threats that it poses, and the concern for schools, has been consistent and I join him in hoping that this bill will pass.

Mr. President, as we discuss this bill, some suggest that maybe we are making a mountain out of a molehill. I want to take a few minutes this morning just to recall what it is that triggered off this concern and this interest in this very serious problem.

Radon gas had been known as a health threat to miners. The discovery of lung cancer in miners introduced the concerns that surround radon.

It was never thought, as I understand, to be the kind of problem permeating from the soil that we later discovered. We thought this was confined to people who mined minerals, coal, and were buried in the bowels of the Earth as they did their job.

But one day in 1984 in the State of Pennsylvania, a man named Stanley Watras, who worked for a nuclear powerplant, passed through a routine radiation inspection that the utility had to check for radioactivity on the person's body. There was a shocking response. The fact is that this man had very high levels of radioactive indications on his body. They checked because the utility was concerned that there may have been a problem within the plant that exposed this man to this kind of condition.

Lo and behold, they found out that his home was in a radon belt that extended from Pennsylvania through New Jersey into New York, where uranium was deposited in the soil. And that was the first opportunity that we had to really identify the threat radon poses in homes, schools, and buildings.

We heard a lot of debate this morning about whether or not this threat is serious, whether or not we ought to spend all this money, whether or not it is worth the effort, and whether or not this is another program to expand the Government bureaucracy.

But I ask any of those who question the validity of this legislation whether they have had discussions with parents, with teachers, with families of those who work in school buildings to see whether or not we just ought to pass it by; avoiding the alleged additional bungling bureaucracy. Certainly there is not a parent in the country

who would say: Listen, do not bother with radon because it really has not been proven to be serious. Even though the EPA and the Assistant Surgeon General have ascertained it is responsible for somewhere between 7,000 and 30,000 lung cancer deaths a year, and everyone knows that lung cancer has one of the poorest records of survivability among the various forms of cancer that develop.

Ask any of those families, those citizens whether or not it is worth getting involved. I think the answer will be an overwhelming yes. I would be willing to pose that question, realizing that I might look pretty silly, to ask a parent whether or not it would be a bad idea to test, for not a lot of money, radon in schools and homes. And my own home in Montclair, NJ, had some radon exposure. We had it tested. It was in the corner of the house beneath the porch. It was determined the risk in that case was not significant. But only a few blocks from me the Federal Government under Superfund has spent a great deal of money to get rid of that radon contaminated earth. It happens to be from a man-made cause. There was a dump from a watchmaker in the 1920's who used radium on the dials and there are about a dozen homes where the families had to be uprooted, where the property values just sunk, and the problem was very severe in this particular area.

We have overwhelming evidence of the threat posed by radon. As a consequence, Mr. President, I think it is urgent that we go ahead and pass this legislation.

We have agreement pretty much in the Senate. I am responding principally to some of the suggestions made this morning about the relatively low importance of this legislation. I think it is important. I think citizens across the country will regard it as an important matter. Radon is evident in almost every State in the country. In some of the States a very significant number of homes have elevated levels of radon gas present.

Mr. President, I will continue to urge my colleagues to support this reauthorization. At the moment, I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. LAUTENBERG. Mr. President, on behalf of the majority leader, I ask unanimous consent that at 2:15 today, the Senate resume consideration of S. 792 and that there be 15 minutes re-

maining for debate on the bill, with the time controlled as follows: From 2:15 to 2:25 under the control of Senator CHAFEE, and the remaining 5 minutes under my control; that no amendments or motions be in order; that when the time is used or yielded back, the Senate, without intervening action or debate, adopt the committee substitute, as amended, and vote on final passage of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

MORNING BUSINESS

Mr. LAUTENBERG. Mr. President, on behalf of the majority leader, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Minnesota [Mr. DURENBERGER] is recognized.

THE DEATH OF FORMER ISRAELI PRIME MINISTER, MENACHEM BEGIN

Mr. DURENBERGER. Mr. President, yesterday, our friends in Israel laid to rest a true national hero. Former prime minister Menachem Begin was one of Israel's founding fathers. He struggled to achieve the Zionist dream while in Poland, the country of his birth. He fought for independence in British mandatory Palestine in the 1940's. He led in the political opposition for many years after that. Menachem Begin served his country and his people as prime minister from 1977 to 1983.

In his greatest achievement, Menachem Begin led his country to a historic peace with Egypt, which remains Israel's only neighbor to formally accept its existence. Begin and Egyptian President Anwar Sadat shared the Nobel Peace Prize for that crowning achievement of both their careers.

Menachem Begin never wavered from his single-minded purpose of doing what he thought was best for his people.

Indeed, by the force of his will and determination, Menachem Begin helped shape history.

In many ways, of course, Menachem Begin led a very controversial life. Clearly, not every one agreed with his ideas, tactics, or his policies. But everyone, across the political spectrum in Israel, and throughout the world, agrees that Menachem Begin always remained true and faithful to his prin-

ciples. Nothing ever deflected him from his singular pursuit of securing a Jewish state and ensuring its continued survival and prosperity.

Few people knew better than Menachem Begin did the imperative for establishing a secure homeland for the Jewish people. Having grown up in Poland, he and his beloved wife fled the Nazis in 1939. Although his wife managed to reach Palestine, Begin was imprisoned by the Soviet Union for his past activities in Zionist youth organizations. It was only in 1941, after serving 1 year of an 8-year sentence, that he was released from prison, because his services were needed by Stalin to fight off the Germans.

In a personal tragedy that deeply influenced his future actions, he lost his parents and a brother to the Nazi Holocaust. He knew firsthand the unspeakable horrors being perpetrated against the Jewish nation and so many others.

Menachem Begin lived his life to ensure that that would never happen again.

As a leader of the armed opposition to British mandatory rule, Begin took many controversial actions, some of which were opposed even by other Jews and Jewish organizations. For good or ill, Menachem Begin never strayed from his single-minded determination to ensure the creation and continued survival of a Jewish national state. Only in this way could Jews ensure that never again would another holocaust befall them.

After Israel achieved independence in 1948, Begin became a leader in the political opposition. His views were rarely mainstream, but Begin never deviated from the course his principles demanded. He always had the courage to remain true to his convictions.

Soon after becoming Prime Minister in 1977, Menachem Begin recognized an opening for peace with Egypt that President Sadat had courageously created. He seized that opportunity, and he and Sadat made history by forging a first-ever peace treaty between Israel and an Arab neighbor. These two courageous leaders would share the Nobel Peace Prize for their efforts to forge a peace that remains in force to this day.

As well, Mr. President, as we continue our struggle today to ensure the destruction of Iraq's capacity for weapons of mass destruction, let us not forget that it was Menachem Begin who took the bold action to destroy Iraq's major nuclear facility in 1981. That action was harshly criticized at the time, including by the United States. Begin was undaunted by the severe international condemnation, apparently confident that history would prove his action correct.

I think we can all agree now that that decision was indeed correct. Today, instead of being critical, we can be thankful that Israel had that kind of leader who made that daring strike.

Nevertheless, this courageous leader was soon embroiled in the most bruising controversy of his political career. Begin ordered the invasion of Lebanon in 1982 in order to destroy PLO operations there that were continuously endangering the lives of Israeli civilians in northern Israel. It was a costly enterprise, in terms of Israeli and Arab casualties, but also in terms of Israel's vision of itself and its place among nations. This is a controversy that followed Menachem Begin to his grave.

Mr. President, whatever one's views are of his life, Menachem Begin has earned his place in history. He demonstrated throughout his life the courage of his convictions, the determination to achieve his objectives, and the constancy of purpose that so few others have managed.

Let me conclude with a quote from yesterday's Washington Post: "Those who met and observed him say Begin seemed to identify his survival with that of the Jews as a people and that he steadfastly kept that single goal before him, regardless of how history might judge him or his actions. All else was secondary."

Mr. President, we share in the grief and mourning of our friends in Israel. In his death, we commemorate the life of a great Israeli leader. May he rest in peace and serenity. He has earned nothing less.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial and an op ed from this morning's Washington Post.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 10, 1992]
MENACHEM BEGIN

It was difficult, even at moments when he was at his most vexing and pugnacious, not to harbor a certain admiration for the integrity of Menachem Begin. In an age—was there ever any other?—when so many politicians changed position in the slightest breeze, the former Israeli prime minister represented a rare constancy and devotion to personal principle. The odds were almost always against him, but that never diminished his ardor to do what he considered right for his people. His style was that of another period and place, but what he delivered was quintessentially of his time.

His role in creating Israel in 1948 is still a matter of controversy, as many critics in Israel and elsewhere are still reluctant to credit his leadership of an underground movement against the British, and his sometimes terroristic activity, for the birth of the Jewish state. But Mr. Begin himself was never in doubt that his Holocaust-learned readiness to fight for his Zionist beliefs tipped the balance. In this instance, as was his habit, he left the compromising to others.

A turn of the political wheel finally brought Mr. Begin and his Likud Party to power in 1977. Egypt's Anwar Sadat found himself terminally prickly—though he did have his courtly side—but also reliable and strong enough to fashion, with Jimmy Carter's help, the first Arab-Israeli peace agreement. Thus did a rigid radical right-

winger accomplish an immense strategic feat, neutralizing Israel's most powerful foe, that had eluded Israel's liberal Labor establishment through four wars over nearly 30 years.

In 1982 Menachem Begin conducted, or at least let loose, the invasion of Lebanon that in its bloodiness and inconclusiveness severely strained his relations with the United States and led to his stepping down in the following year. He fought the war to crush the threat posed by Palestinians struggling, as he himself had earlier struggled, to claim a state on the land contested between them. Mr. Begin never understood that his goal of annexing the West Bank with its predominantly hostile Arab population was consistent neither with obtaining full peace for Israel in its region nor maintaining full democracy in the Jewish state. Still, his contribution in helping to start negotiations between Israel and his hostile neighbors was enormous and historic.

[From the Washington Post, Mar. 10, 1992]

MENACHEM BEGIN: SHAPED BY HOLOCAUST
(By David Ignatius)

Menachem Begin told me in July 1982, before the war in Lebanon had gone sour on him, that when he retired he planned to write a book, to be called "The Generation of Holocaust and Redemption."

"This is my generation," Begin said during an interview that day, outlining the chapters of his book. "I survived 10 wars, two world wars, Soviet concentration camp, five years in the underground as a hunted man and 26 years in opposition in the [Israeli] parliament. Twenty-six years, never losing faith in a cause."

And how would Begin end his book? "People ask me sometimes the question, 'How would you like to be remembered?'" he said. "Perhaps I will end the book with this. And the answer is, as a decent man. No more."

Begin never published the book, but in a sense it was unnecessary. For Begin's entire life was the story of that generation—of the impossible tragedy of the Holocaust, and the impossible triumph of Israel.

The last time I saw Begin was a year later, in August 1983. By then, he was the Lion in Winter, gaunt and sad-eyed, brooding about the war in Lebanon that had gone so badly wrong. A man who had devoted his career to saving Jewish lives and making Israel more secure was now caught in a war that was daily killing Jews, without adding to Israel's security. For Menachem Begin, that recognition must have been agony.

"The truth is that he is sad," said Yehiel Kadishai, Begin's personal secretary and comrade from the Irgun underground, when I asked about his melancholy boss. "It's true. There is a deep sadness in his heart. He is a person who can't show a laughing face when there is sadness in his heart."

Begin's aides explained that he couldn't take his mind off the continuing Israel death toll in Lebanon. He would ask each day for the latest casualty figures, for the details of how each soldier had died. When his aides tried to change the subject, he would steer them back to the death and destruction.

A few weeks later, Begin was gone. He resigned as prime minister on Sept. 15, 1983, telling his colleagues he could not continue. He spent the rest of his life as a virtual recluse, surfacing only occasionally—but never to explain or complain.

The Begin I got to know during two long interviews for The Wall Street Journal was a different person from the unsmiling, unyielding man Americans met on their tele-

vision screens. He was an old-world gentleman who dressed in a formal business suit even when everyone else in Israel was wearing an open-neck sport shirt; a lawyer who worked in an office lined with Israeli texts, a Jewish encyclopedia and a "Jane's" guide to military weapons around the world.

And he was funny. That was the great shock about Menachem Begin; he was funny like Mel Brooks' 2,000 Year-Old Man. When I once mentioned to him that I had just read his book, "The Revolt," he responded: "What? You were having trouble sleeping, maybe?" When a colleague once asked him what had been the greatest achievement of the Jewish people during their long history, Begin gave him a cockeyed look and deadpanned: "The day of rest."

Begin knew who his enemies were: The Palestine Liberation Organization, which he always called the "so-called PLO." He explained during my first conversation with him, in July 1981: "My language is 'so-called PLO.' Not because of the 'P' and not because of the 'O.' They may stay. Because of the 'L.' What kind of a liberation is it to try to destroy a people, and all the time to turn the weapons against the civilian population?"

He talked about the old man from the town of Nahariya who had recently been killed by the PLO's Soviet-made Katyusha rockets, and the way he described it reminded his listener that for Begin, the Holocaust was always present in memory, something that had happened just before yesterday.

"Amongst the people who got killed by the Katyushas was a man age 68," Begin said. "Yes, he lived for several years in Auschwitz, if I may say so. And then he survived Auschwitz and came to this land, or he came back to the land of his forefathers. And here, 36 years after the end of the war, and after he had survived Auschwitz, the Soviet-supplied Katyusha—supplied to a neo-Nazi organization, which killed a Jew because he is a Jew—it got him."

That was the essential Begin. He was born into his generation of holocaust and redemption, and it was foolish of the Americans, let alone the Arabs, to imagine that they could ever sweet-talk Begin out of it, and into a sense of security and confidence that his entire history denied.

What if Yasser Arafat were to announce (as he later did) that he accepted Israel's right to exist? Here is how Begin, wary to the end of his days, answered that question in 1982.

"It would be a deception," he said. "I wouldn't believe Hitler, or Goering, or Goebbels, and I will not believe Mr. Arafat, or Farouk Khaddoumi, or Abu Iyad. They proved to us in writing, in deeds, in speeches that they are bent on the destruction of Israel. And no nation will ever agree to commit suicide."

Mr. DURENBERGER. Mr. President, I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey [Mr. LAUTENBERG] is recognized.

Mr. LAUTENBERG. Mr. President, the Senator from Minnesota made some very significant and, I think, eloquent remarks about Prime Minister Menachem Begin, ex-Prime Minister. I think the title followed him to his grave even though he was not formally sitting in the prime minister's chair.

I had the privilege, Mr. President, of meeting Mr. Begin several times. I was

in Israel when President Sadat visited on that historic occasion. I was there when he broke all the rules, broke all of the taboos—and went directly to Israel to make peace.

It was quite a stirring moment not just in the history of Israel but in the history of mankind; in that sworn enemies, avowed combatants, were able to sit down at a table, finally, when the will prevailed and obtain peace.

In those discussions, under Prime Minister Begin's stewardship, much was exchanged for peace. The Israelis gave back the Sinai Desert which they had captured in the 1973 war, including oil wells. The significant supply of oil in the Sinai would have been enough to allow Israel self-sufficiency in her energy needs. For peace, Israel gave back enormous amounts of territory including a town called Yamit in which people had settled and infrastructure had been built, including houses and schools and stores, all kinds of facilities.

Mr. Begin was known by some as a terrorist. We know that he was a person deeply imbued with a commitment to his own people.

He ordered, in the interest of peace, that that town of Yamit, built on the Mediterranean, just in, now, the eastern reaches of Egypt, be evacuated. They physically carried residents out of that town, destroyed the buildings that they had built that were of value. The residents did not want to turn that over—and give back the Sinai, but they did. A year or so ago in the final settlement of a border on the Gulf of Aqaba, Israel conceded a very sensitive, new boundary because they wanted peace. They wanted more than anything to save the lives of their young people.

Now, Mr. President, as we look at the discussions underway purportedly leading to peace, we do not have the same kind of a gathering or a meeting that we had had between President Sadat and Prime Minister Begin.

President Sadat paid a terrible price for his peace overtures. He died at the hands of assassins. We were all shocked; all dismayed. His widow continues in search of peace in the area, and lectures regularly in the United States, as does his daughter. Sadat paid a terrible price for wanting to make peace, but he made it. And there were no preconditions.

Mr. President, this peace conference that is taking place now ought also to be conducted without preconditioning.

We do not need the heavy hand of the administration saying settlements are the greatest obstacle to peace and, therefore, we ought not to help Israel in a humanitarian mission to help to provide for absorption of new immigrants. Instead, what we have done is entered into the peace discussions in a material and detrimental way by not saying to the parties: Sit down, talk, as did Prime Ministers Begin and

Sadat, and talk about peace and how you get there without preconditions.

Mr. President, the territories were taken in response to a war, a war against Israel, in which the mission of her enemies was to destroy the country and to, as often said, "Drive the Jews into the sea; exterminate them; eliminate the Jewish State."

Mr. DURENBERGER. I wonder if my colleague will yield for a minute.

Mr. LAUTENBERG. Sure.

Mr. DURENBERGER. Mr. President, I appreciate the opportunity to be here and to listen to my colleague talk about both his personal experiences and his commitment. And I think I understand the appropriateness of the message he is leaving with all of us now.

Because I must be elsewhere, much as I would like to continue to engage in this—he is expressing many of the feelings that I have—I did want to thank him for sharing the personal experiences he had. I was reminded, as my colleague from New Jersey was speaking, of the first time I went with—this happened to be right after the Camp David conference—I went with former colleague from Connecticut, Senator Ribicoff, and with Bob Strauss.

We went to Egypt, and we spent some time having our eyes opened there, with the help of President Sadat; and then to Israel, to meet with President Begin, Prime Minister Begin. I was struck by how little these two adversaries had really known about each other, until one of them offered to open up a personal relationship.

I was struck, too, because of the tough image that I had of Prime Minister Begin up to that point, and what a large heart he had, and how he demonstrated that in his discussion of what he was learning about President Sadat; what he was learning about the Egyptian people; what he was learning about the conditions under which the Egyptian people were living in their country.

And I think that probably one of the lessons I took away from that was that it always takes a special relationship between world leaders to bring about the kind of relationship on which you are going to build peace. It does not take the artificialities of outside-determined conditions and a variety of priorities set by other people. It really does take sort of a confidence and a trust, that obviously these two men had built between themselves, in order to lay the foundation for this peace.

And right now, my sense is—and I perhaps think it is the sense of the Senator from New Jersey—that that trust between the people involved, which is so essential on which to rebuild the foundation for the future in the Middle East, is starting to get a little shaky, for whatever reason; and that unless somebody starts to move fairly quickly to bring those people

back together and to build the relationship that Menachem Begin and Anwar Sadat built with each other, you are not going to see more than that one Arab country join in an effort to bring peace to the Middle East, and thus, for many of us, peace to the world.

I thank my colleague for yielding.

Mr. LAUTENBERG. Mr. President, I thank my colleague once again for his thoughtful remarks, because we are talking about a significant world leader passing from the scene. It is an appropriate time to reflect on what that individual's life meant as we contemplate discussions for peace in the troubled area. I started to say that in the defensive war of 1967, the Israelis ended up with the territories because they were responding to a threat to obliterate the State of Israel and to try to remove her from the face of the Earth.

That experience conditioned the Israelis; they learned something. They learned that they had to take care of themselves, that they had to be prepared for any eventuality. Because, let us say, for the population of some 4 to 5 million, surrounded by a population of more than 100 million, some of those countries very rich in resources, they had to further survive.

This is a time now to mark Prime Minister Begin's departure by taking a vow that this will be the time to put aside any preconditions, encourage the parties to go to the table, and wind up in the direction of peace.

Senator DURENBERGER said it: Nobody ever believed, when Begin came to office, that this hardliner, tough guy who fought for survival would ever make peace. Instead, when it was eye to eye, face to face with his counterpart in Egypt, they managed to strike an agreement. Yes, President Carter's intervention and helping hand made an enormous difference. But the fact is that peace was obtained.

That is what ought to be happening here, Mr. President. We ought not to be discussing territories or settlements; we ought to be encouraging the parties to get together to resolve those issues. There is a serious discussion about housing loan guarantees taking place. I think they ought to be conducted apart from the discussion of the territories or settlements.

We can debate the humanitarian obligation that the United States has to provide those housing loan guarantees at no cost to the American public, since we for decades insisted that the Soviet Union, as it then existed, permit people to emigrate freely. That is the condition we required for trade and commerce, and we stayed fast with that.

Finally, as a result of Mr. Gorbachev's tries, and encouragement by then President Reagan and the Congress, we arrived at a condition where

people were free to emigrate. President Bush encouraged it very significantly as well.

Mr. LEAHY. Will the Senator yield for a comment?

Mr. LAUTENBERG. Yes.

Mr. LEAHY. I would note to the distinguished Senator from New Jersey, who is one of the leaders on this issue on settlements and loan guarantees, on the question of loan guarantees, I had made a proposal which the distinguished ranking member of the Subcommittee on Foreign Operations, Senator KASTEN, has agreed to. It has to be either vetoed, or signed by the President, should it be passed; we have no way of guaranteeing anybody's votes except ours.

There is a proposal that Senator KASTEN and I are willing to agree on. The Leahy-Kasten proposal has been given to the administration, and we are asking them for their reaction. I have told them that I want a definitive answer. It will either be signed, were it to be passed by the Congress—not an easy step, when a majority of the people in this country oppose loan guarantees. Should it be passed, would it be signed or vetoed?

In any event, within the next few days, our committee, the Subcommittee on Appropriations, will meet, and that question will be presented to us. I mention this because a number of Senators have asked what is happening on this. The Senator from New Jersey, of course, has been one of the most active in trying to work out this situation. I know of his deep, abiding concern.

Incidentally, the part that I heard of his expression of the tremendous step toward peace that former Prime Minister Begin took, I happen to agree with—the step he took, that President Sadat took, and I think the tremendous courage and stick-to-itiveness of former President Jimmy Carter.

It was one of those moments in history, a somewhat finer moment, where you had three people willing to put aside decades—generations, perhaps—of thinking in other ways, with distrust and animosity, and all the rest, and came together not for their own personal benefit but for the benefit of their countries—our country in the case of President Carter, Prime Minister Begin's country in his case, and President Sadat's country in his.

I hope that the same kind of effort will be used on both sides in the ongoing peace talks. The fact of having them is a tremendous step forward, but it is not enough. Ultimately, peace should come, and there are tremendous opportunities in the Middle East for both the Arab world and for Israel, but it is an opportunity that only comes about through cooperation and the removal of the threat of war. There are some parties who think that takes a huge leap of faith, who think we will never get to that. There are a lot of

other parties that can work to it and should.

The question of loan guarantees will be settled one way or another, at least at the committee level, in the next few days. I hope the compromise that I had proposed, and which Senator KASTEN accepts, can be agreed to and can be signed because it will still be a long row to get it through the Senate, get it through a committee of conference, and get it through both parties after that. So it is not a done deal even with it.

But I would like to see that issue settled because I agree with the Senator from New Jersey that that should not be something that tangles up the peace process. There are enough serious issues within the peace process to be negotiated without the actions of the U.S. Congress tangling it up. I agree with that, and I thank the Senator from New Jersey for yielding his time.

Mr. LAUTENBERG. Mr. President, I thank the Senator from Vermont for his comments. He has tried very hard. We are old friends, and we have had some difficult moments. His job is to try to fashion a compromise. I reserve the right, as do all of us, to stand up for what we believe is an obligation, but he has the job, the Senator from Vermont, as chairman of the Subcommittee on Foreign Operations, to fashion an arrangement that can survive. I know he has had a very tough time in dealing with the administration on one side and with those on the other side who think the United States ought to provide humanitarian relief unconditionally. So his efforts have been significant. I hope that he will be able to succeed in getting an acceptable bill through the subcommittee and through the committee. I sit on the subcommittee and I would like to continue working with him to determine what constitutes an acceptable bill.

There is one thing I would just like to say to my friend and colleague in terms of the comment that he made that people are overwhelmingly opposed to these housing loan guarantees. I do not think the case has been presented, Mr. President. I do not think that there have been those advocates standing up there and saying, "Listen, Israel, for decades now, in her very short history has saved perhaps thousands of American lives and billions of American dollars."

Where would we have been if Saddam Hussein had the nuclear capability that was being developed in 1981 when the Israelis intervened by bombing the reactor at Osiraq. Yes, there was universal condemnation and criticism at the time. Inside the Pentagon, however, they were cheering because they knew how significant that action was going to be.

Mr. LEAHY. Mr. President, will the Senator yield for one observation one more time?

Mr. LAUTENBERG. I yield.

Mr. LEAHY. I agree with the Senator. A lot can be made and done to make the case. When the Leahy-Kasten compromise makes it to the floor of the Senate, I will certainly expect the Senator and others to make their case because we have to.

Mr. LAUTENBERG. I hope there will be an acceptable proposal on the floor.

Mr. LEAHY. I think the compromise itself will not be a popular one. I think it is a wise one. I think it is a just one. I think it speaks both to the significant interest of the United States and the significant interest of Israel, and when it makes it to the floor, then we are going to also have to make a case and the case will have to be made in the other body.

Mr. LAUTENBERG. We will be working together if there is an acceptable proposal.

Mr. LEAHY. I thank the Senator.

Mr. LAUTENBERG. Mr. President, I do not think the impatience of the democratic presence of Israel in the Middle East has meant to the United States has been clearly articulated. I stand here today talking about only America's interests, what is good for America, what is good for our country. We want to preserve our position of international leadership.

We have been battered from pillar to post now, whether it is on the economic front, perhaps even the diplomatic front, criticism today by President Nixon of President Bush's action in terms of Russia. We want those new democracies to survive. We have a very important stake in that area, and we hope that we will be able to see a boldness on the part of the President in remaining in the forefront of the international body so that we can preserve the leadership role for America.

But, Mr. President, we cannot do that if we suddenly turn our back on an ally who has been there for us for decades; an ally who helped us maintain a degree of stability in a region that would have, in my view, gone up in flames in earlier times were it not for Israel there to unite the enmity of the Arab countries.

We concluded a war just about a year ago, Mr. President, in the Persian Gulf in which America survived with glory and with honor at the time. We had over 500,000 of our best young people there, and they did their job quickly and effectively. The fact is that we did not bring democracy to that area. You have not seen the Kuwaiti Government ask the Palestinians, who lived there and earned a living there, and invite them back into their community. These human beings who have families and have homes and still want to make a life for themselves.

In Saudi Arabia we see constant repression by the monarchy. We know there has been a recent attempt to democratize. If one reads between the

lines, however, one sees that the king is not giving away the store by a long shot. And, further, we won the war in 100 days, but Saudi Arabia has not been able to pay its bill to the United States. They still owe us over \$1 billion, or did as of last week, on a pledge they made to pay for the cost of saving their country. It is like the parents of the kidnaped child who said, "Listen, return my kid and I will pay you as soon as I get the money." We should have demanded cash up front. That is the least they could have done. It cost us a fortune; we lost people. Yes, it was a relatively small number, but every one of those young people who died, died a hero or heroine, and their families still mourn. So it was not without cost. And the least those so-called friends of ours could have done was ponied up and paid their bills when they were due. Everyone knows that Saudi Arabia does not have any problem getting cash. Just look at the homes that the royal family has and the profligate spending that they engage in. Pay your bills, that is what I say.

Mr. President, today we are reminded by the death of Prime Minister Menachem Begin about the sacrifices that were made on behalf of democracy in the Middle East. But we also have to remember those occasions, like in 1970 when the Jordanian King turned artillery fire on Palestinians living on the east side of the Jordan River and they swam and they walked across Jordan seeking refuge in Israel. The avowed enemy was where they turned to to protect themselves and their families.

So we have an interest, Mr. President, to try to keep this democracy strong. She has been a dependable ally. She has asked for housing loan guarantees, and it may come as a surprise, but the United States has been providing guarantees for the last 5 years in excess of \$10 billion to Arab countries, including \$2 billion to Kuwait. We underwrote their loans unconditionally and said, "Look, these guys will pay their debt."

We have been doing that without any political condition. And that is the way we ought to do it with Israel's request. We ought to make sure that Israel pays her bills—that is her responsibility—but we ought to help provide a refuge and a haven and a home for those who now live in the former Soviet Union who are threatened by the rise of nationalism, antisemitism and other acts of racism.

And there would not be a more appropriate time to see that happen, Mr. President, than as we acknowledge the passing of a leader, someone who, as we heard from Senator DURENBURGER, defended his people, defended his country, and died with honor and dignity.

I was in Oslo, Norway, invited to see the award of the Nobel Peace Prize to President Sadat and Prime Minister

Begin. It was a very touching ceremony. It is really touching when you think about it. If one wants to talk about how people can resolve differences, a reference is always made to Israel and Egypt. People say, well, if Israel and Egypt can do it, then anybody can do it, because there were no more bitter enemies than those two countries. There was no greater loss of life in terms of the size of their population than the wars between those countries.

And so as we look at the recent past, we have to also look to a future and say, America, stand up. There is a humanitarian need you ought to address.

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. LAUTENBERG. 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. SIMPSON. Mr. President, in general, this bill is a quite straightforward reauthorization of an existing program.

Several amendments to the original act have been made. However, the administration remains opposed to this bill for a number of reasons, primarily due to its prescriptive and costly regulatory requirements and the possibility of duplication with existing Federal programs.

Further, there is a question that this act may not significantly lower indoor air radon levels.

This brings up my specific concern with the bill. Are we, in fact, addressing the greatest risk posed by exposure to radon first, thus efficiently and effectively allocating scarce resources?

For this reason, I wholeheartedly support Senator SMITH's and Senator WALLOP's amendments.

Senator SMITH's amendment requires the Environmental Protection Agency [EPA] to conduct a multimedia risk assessment of radon prior to promulgating any national primary drinking water regulation for radionuclides under the Safe Drinking Water Act.

The EPA's Radiation Advisory Committee of the Science Advisory Board wrote to Administrator Reilly on January 29, 1992, 6 weeks ago, that the proposed National Primary Drinking Water Regulations for Radionuclides, proposed rule in the July 18, 1991, Federal Register, revealed an inconsistent approach within the EPA regarding reducing risks from radon exposures in homes.

The EPA's own Science Advisory Board is seriously concerned that the recommendations set forth in the Science Advisory Board report, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection," were not applied in this rule-making.

The Radiation Advisory Committee further recommended that EPA "conduct a full multimedia risk assessment of the various options for regulating radon in drinking water. Such an evaluation would include the risks posed by the treatment or disposal of any wastes produced by water treatment."

What this means is that since radon in drinking water represents only 1 percent of total exposure to radon that regulating radon in drinking water to the proposed 300 picoCuries per liter standard may not be the most cost-effective program.

Further, the equivalency between air radon levels and water radon levels is 10,000 to 1. This means that if the air radon level is 1 picoCurie per liter then the equivalent water level is 10,000 picoCuries per liter.

Given that background levels for radon are 0.1 to 0.5 picoCuries per liter outdoors and 1 to 2 picoCuries indoors the equivalent drinking water level would be 10,000 to 20,000.

One may easily conclude that the proposed 300 picoCuries per liter is disproportionately minuscule and certainly should be revised proportionately to the indoor radon level—to the 3,000 picoCuries per liter range.

In my own State of Wyoming, tests have been conducted in all 23 counties for indoor residential radon readings. Sixty percent of all homes tested fall below the EPA indoor air action level of 4 picoCuries per liter, yet the proposed rule would require expensive treatment for water serving these homes, even though radon in the water contributes less than five percent to the radon level in the air. This rule would require removal of radon in drinking water to a level of .03 in air. There seems to be a contradiction in our policies.

In looking at nine tests on homes and schools in Laramie County, all pass the recommended EPA indoor air level but not one can meet EPA's proposed drinking water radon limit of 300 picoCuries per liter.

Mr. President, I would point out that radon in drinking water is not a concern when ingested but when it escapes as a gas from the water and is inhaled. The geology of Wyoming, as well as most other States—produces radon in the soil and the gas mixes with well water—the primary source of drinking water in Wyoming.

We need to deal with the problem of radon, there is no question about that. What we must do, however, is make sure that we have the policy direction under control; that we are not just throwing money at a small portion of a problem that requires a comprehensive solution; that we consider the economic impacts of our good intentions. Therefore, I firmly support the Smith amendment because I believe that it accomplishes these goals. Thank you. With those significant amendments I shall support the bill.

I would like to submit several documents for the RECORD, and ask unanimous consent that they be printed after these remarks.

First, EPA Science Advisory Board letter of January 29, 1992; Second, the February 28, 1992, Statement of Administration policy; Third, the October 15, 1991, letter from the Wyoming Public Health Sanitarians Association to the EPA; and Fourth, the March 9, 1992, letter from the Wyoming Department of Health.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, January 29, 1992.

Subject: Reducing Risks from Radon; Drinking Water Criteria Documents.

HON. WILLIAM K. REILLY,
Administrator, Environmental Protection Agency,
Washington, DC.

DEAR MR. REILLY: The Radiation Advisory Committee of the Science Advisory Board has reviewed several radon-related issues brought to it by the Agency during the past year-and-a-half.¹ The Committee has also commented extensively on the criteria documents supporting the proposed regulations for radionuclides in drinking water.² As a result of these reviews and the proposed National Primary Drinking Water Regulations for Radionuclides³, the Committee is writing to convey its concerns about the inconsistent approach within the Agency regarding reducing risks from radon exposures in homes. This issue illustrates a larger concern that the Agency is not effectively applying the recommendations set forth in the Science Advisory Board report *Reducing Risk: Setting Priorities and Strategies for Environmental Protection* (subsequently referred to as *Reducing Risk*).

The purpose of this letter is two fold: (a) to address the fragmented and consistent approach regarding reduction of radon risk and (b) to provide our closing comments on the revised drinking water criteria documents that support the proposed regulations.

THE PROPOSED DRINKING WATER REGULATION IN RELATION TO THE REDUCING RISK REPORT

The Committee realizes that the technical aspects are only one of many factors that must be considered in making policy determinations and that the Agency has already given significant thought to these issues in preparing the proposed regulations for radon in drinking water. However, the Radiation Advisory Committee would like to express its views on the relative risks addressed by the proposed regulation *vis a vis* other radon risks reviewed by the Committee and offered its views as well on what its technical observations mean for matters of policy.

TECHNICAL OBSERVATIONS

The Agency has recognized that there is a serious question about the regulations of

¹Relationship Between Short- and Long-term Correlations for Radon Tests (EPA-SAB-RAC-92-008); Revised Radon Risk Estimates and Associated Uncertainties (EPA-SAB-RAC-LTR-92-003); Draft Citizen's Guide to Radon (EPA-SAB-RAC-LTR-92-005).

²Report to the Administrator on a Review of the Office of Drinking Water assessment of Radionuclides in Drinking Water and four Draft Criteria Documents (SAB-RAC-87-035); Review of Office of Drinking Water's Criteria Documents and Related Reports for Uranium, Radium, Radon, and Manmade Beta-gamma Emitters (EPA-SAB-RAC-92-009).

³National Primary Drinking Water Regulations: Radionuclides: Proposed rule. Federal Register, 56:33050-33127, 18 July 1991.

radon in drinking water. After considerable deliberation, the Office of Drinking Water has proposed to regulate it in the manner adopted for other contaminants under the Safe Drinking Water Act; that is, at an approximate lifetime risk level of 10^{-4} . The chief risk due to radon in water is its release into the air and subsequent inhalation, as opposed to ingestion of waterborne radon. Thus a 10^{-4} risk level (averaged over smokers and non-smokers) translates into about 0.03 Pci/L in air, or approximately 300 Pci/L in water. That air concentration is more than 100 times smaller than the Agency's voluntary guideline of 4 Pci/L for indoor radon concentrations. It is also well within the natural year-to-year variation in indoor radon concentrations in average houses. As part of the Indoor Radon Abatement Act (Public Law 100-551) the Congress defined the goal of achieving an indoor radon level equal to the natural outdoor level, which is 0.1-0.5 Pci/L depending on the area of the country (NCRP Report No. 94). This goal is a factor of 8-40 below the indoor radon action level, but about a factor of 10 higher than the indoor radon level corresponding to the proposed regulation for radon in drinking water.

The Agency estimates that about 5% of the total indoor radon in homes served by ground water is due to radon released from household water use. (In homes served by surface water supplies, only a fraction of the percent of the indoor radon will be due to water use.) Data in the radon criteria document indicate that approximately 10-30% of the population that relies on ground water sources is exposed to water with radon concentrations above the proposed contaminant level of 300 Pci/L. Overall, about 1% of the total indoor radon in areas with ground water supplies would be addressed by adopting the current proposal.

Although some point estimates of parameters have been employed here, the Committee is well aware of, and wishes to bring to your attention again, the uncertainties in parameters and models employed in the Agency's assessments. Full consideration of uncertainties is called for in the *Reducing Risk* report and its an essential part of the evaluations that the Committee recommends below. The Committee urges appropriate action to assure that the risk assessment fully considers the uncertainties.

POLICY CONSIDERATIONS AND RECOMMENDATIONS

The radon exposure situation reflects the fragmentation of environmental policy identified in *Reducing Risk*. The tactics and goals of different laws designed to address radon exposures are not consistent. Efforts within the Agency to reduce radon risks; while not uncoordinated, are rooted in programmatic areas that respond to different laws.

The field of radiation protection relies on the principle of optimization, which the Committee believes is in harmony with *Reducing Risk*, particularly with Recommendation 4:

EPA should reflect risk-based priorities in its strategic planning processes. *The Agency's long range plans should be driven not so much by past risk reduction efforts or by existing programmatic structures, but by ongoing assessments of remaining environmental risks, the explicit comparison of those risks, and the analysis of opportunities available for reducing risks (italics ours).*

Optimization, like the philosophy espoused in *Reducing Risk*, means that we should apply our limited resources to the more important risks.

Frankly, radon in drinking water is a very small contributor to radon risk except in

rare cases and the Committee suggests that the Agency focus its efforts on primary rather than secondary sources of risk. The Agency should conduct a full multi-media risk assessment of the various options for regulating radon in drinking water. Such an evaluation would include the risks posed by the treatment of disposal of any wastes produced by water treatment. It would also consider the effects of releases of other volatile compounds during treatment. (This is currently cited as an ancillary benefit of treatment without analysis of the overall result.)

The Committee understands that the Safe Drinking Water Act requires the Agency to develop regulations for radionuclides in drinking water. The Committee further realizes that a management structure based on media/pollutants may make recommendations that involve different perspectives difficult to implement. However, if the Agency, the Congress, and the country are going to grapple seriously with the concepts in *Reducing Risk*, then it is precisely this type of issue that must be confronted directly, openly, and creatively.

CLOSING COMMENTS ON THE REVISED DRINKING WATER CRITERIA DOCUMENTS

The Committee would also like to comment on some aspects of the criteria documents prepared in support of the proposed regulations. Reviews of two earlier drafts of the associated criteria documents have been performed. Following the Committee's review in the summer of 1990, the Office of Drinking Water, with the assistance of the Office of Radiation Programs, revised the criteria documents supporting the proposed regulation. The Committee does not wish to undertake a detailed formal review of the third set of criteria documents. The fundamental scientific questions were discussed in the previous reviews, cited above. The Committee stands by its original positions and believes that the Agency could further improve the scientific credibility of the criteria documents by adopting its recommendations.

The new set of documents is more complete and individual reports now include more explanation of the options considered, selection criteria, and possible alternative choices. The Agency was less successful in implementing the Committee's advice on uncertainty analysis. Although each criteria document now includes a chapter discussing uncertainty, the content of those chapters is very qualitative and is not the rigorous technical analysis envisioned by the Committee. Overall document quality and clarity are still inadequate for reports that are intended to be the technical bulwark for Agency decisions.

Broad scope assessments, of the type recommended above for radon, are also needed for other of the proposed regulations. The Agency's analyses should include the risks resulting from the concentration of radium, uranium, and other radionuclides in wastes resulting from water treatment. These include the risks to workers involved in disposal activities and the risks of disposal itself. A complete picture of the costs and benefits of implementing these regulations is needed. The importance of cost-effective treatment is stressed in Section V of the proposed regulations, but evaluation of the net benefit of the proposals is far from comprehensive.

The Committee appreciates the hard work of the Offices of Drinking Water and Radiation Programs. We thank them for briefings and presentations that have aided our reviews.

In closing, the Committee strongly encourages the Agency to review its proposed drinking water regulations in light of Recommendation 4 of the *Reducing Risk* report and to prepare comprehensive analyses of the complex questions that arise. We look forward to receiving a reply that delineates your planned response to these challenging issues.

RAYMOND C. LOEHR,
Chair, Executive Committee,
Science Advisory Board.

ODDVAR F. NYGAARD,
Chair, Radiation Advisory Committee.

PAUL G. VOLLEQUE,
Chair, Drinking Water Subcommittee,
Radiation Advisory Committee.

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 28, 1992.

STATEMENT OF ADMINISTRATION POLICY

(S. 792—Indoor Radon Abatement Reauthorization Act of 1991—Lautenberg of New Jersey and four others)

The Administration opposes enactment of S. 792. The bill's prescriptive and costly regulatory requirements would duplicate existing Federal programs without significantly lowering indoor air radon levels. The bill would also undermine programs designed to provide States with the flexibility to develop self-sustaining, cost-effective, and location-specific programs.

The Federal Government is already undertaking numerous programs to address elevated radon levels in buildings. The Environmental Protection Agency's (EPA) Radon Action Program provides a wide range of technical assistance to help States identify and mitigate elevated radon in residences, work places, and schools. EPA also is working with other Federal agencies to develop radon policies for federally run housing programs.

The bill would inappropriately reauthorize the State Radon grant program as a permanent federally subsidized program. This reauthorization is contrary to the original intent of the existing three-year start-up grant program. The program was designed to end Federal assistance after three years by gradually increasing the State share. While the Administration would not oppose a one-year extension at a reduced Federal share, it opposes a longer extension.

The bill's unfocused requirements and definitions will result in over-control and excessive societal costs where radon levels are relatively low. The definitions of "Priority Radon Areas" and "target action point" are too broad and ignore the work that EPA and other agencies have already done to determine areas with a high probability of elevated radon levels. The Administration opposes any change to the existing radon guidelines without first going through the appropriate scientific review process.

The bill's prescriptive regulatory approach is premature given the current state of scientific and technical expertise on mitigating radon. Some of the techniques developed for mitigating radon have been successfully applied in schools and large buildings. However, more research is needed, particularly in multifamily residences, to develop and refine these techniques, and a regulatory approach for mitigating radon problems in large buildings is premature at this time.

S. 792 would unnecessarily insert the Federal Government into areas that have traditionally been the province of State and local

governments. It is inappropriate for the Federal Government to interfere with State and local control of the housing market by regulation, forcing them to adopt Federal minimum radon building standards. The bill may supersede successful State and local government programs designed to reflect the particular needs of their jurisdictions.

SCORING FOR PURPOSES OF PAY-AS-YOU-GO

S. 792 would increase direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA). A budget point of order applies in both the House and the Senate against any bill that is not fully offset under CBO scoring. If, contrary to the Administration's recommendation, the Senate waives any such point of order that applies against S. 792, the effects of enactment of this legislation would be included in a look back pay-as-you-go sequester report at the end of the congressional session.

OMB's preliminary scoring estimates of this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If S. 792 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be issued in monthly reports transmitted to the Congress.

Estimates for pay-as-you-go

Outlays:	Millions
1992	\$16
1993	5
1994	5
1995	5
Total	31

STATE OF WYOMING,
DEPARTMENT OF HEALTH,
Cheyenne, WY, October 15, 1991.

COMMENTS CLERK—RADIONUCLIDES,
Drinking Water Standards Division, Office of
Ground Water and Drinking Water (WH-
550D), Environmental Protection Agency,
Washington, DC.

DEAR SIR OR MADAM: The Wyoming Public Health Sanitarians Association (WPHSA) is an organization concerned with environmental health and sanitation issues, particularly those with impact in the State of Wyoming. In response to 40 CFR, Part 141 and 142, Federal Register dated Thursday, July 18, 1991, we would like to state our opposition to the Radon-222 drinking water standard of 300 pCi/L. We recommend that a level, somewhere between the National average of 750 pCi/L and 3,000 pCi/L (the MCL for England) be adopted. England's socialized medicine should be aware of increased health risks.

Our opposition is based on the following facts:

(1) The present technology methods vary between 50% and 95% effective depending upon the type of radon treatment system. All of these, aeration, GAC and decay storage, have inherent technical problems which have yet to be addressed in order to adequately ensure that the sanitation of an otherwise potable water supply is not compromised during a radon reduction process.

(2) We do further oppose that at levels of 300 pCi/L, that Chapter 6 of the "Radon Technologies for Mitigators," an EPA publication, states that if limits are set between 200 and 2,000 pCi/L as an MCL, radon could easily become one of the most treated for contaminants in drinking water. This is based on

their assumption that the average radon concentration for most wells is approximately 750 pCi/L. There is concern that treatment for other contaminants in a water system other than for the radon, that the introduction of pathogenic bacteria by using aeration treatment would be an unacceptable risk. Present technology would require "3 or 4 passes to treat the water" and cause a need for chlorination after aeration treatment to ensure that no bacterial contamination has been introduced or sustained through the radon treatment process.

(3) Using the accepted ratio of 10,000 pCi/L in water to transfer to 1 pCi/L in air, it would take a waterborne radon level concentration in excess of 5 million to equate to the two working level months allowable by EPA for radon workers in the industry using a 30 minute water exposure twice a day.

(4) In our experience with testing in Laramie County, Wyoming, the mean average minus outliers on 9 wells is 2,203 pCi/L. The median for the same sample data set is 1,315 pCi/L.

(5) In reference to a publication in the Health Physics Journal, 1984, Dundulis, et al., "Individual potable water supplies containing 222 Rn concentrations as high as 400,000 pCi/L do not significantly increase the probability of stomach or intestinal cancer as defined by the Beir III risk estimates."

(6) The radon in drinking water typical variation ranges on an order of 2 to 3 magnitudes on a daily basis as cited in the EPA "Radon Technologies for Mitigator Handbook." Because of this, it is necessary that multiple samples be taken in order to ensure an adequate average.

We do believe that the data which we have been able to examine speaks strongly in opposition of the proposed 300 pCi/L for the reasons cited above. Thank you for the availability to comment on this Federal Register.

Sincerely,

LINDA D. STRATTON,
President, Wyoming Public Health
Sanitarians Association.

DEPARTMENT OF HEALTH,
STATE OF WYOMING,
Cheyenne, WY, March 9, 1992.

BRIDGETT O'GRADY,
National Water Resources Association, Wash-
ington, DC.

DEAR MS. O'GRADY: We are sending the summaries that you requested about indoor air radon in Wyoming. Although these readings are not directly related to water and radon, we have preliminarily found that those houses that had elevated indoor radon levels often have a well that is also elevated, but most of our home samples (2532) were not on a private well system.

Our position is based on only about a dozen results in Laramie County. A graph is also included outlining 9 of these results. As you can see there was not one well which would have passed the low-end proposed Radon limit of 300 pCi/L. However, the minimal water radon contamination was not solely responsible for the elevated indoor radon contamination levels. Furthermore, other than the Radon level, all these wells have potable water supplies and are presently untreated water sources.

I hope this data is useful to you. Please call if we can supply any other information.

Sincerely,

JAN HOUGH,
Coordinator, Radon Project.

INDOOR RESIDENTIAL RADON READING WYOMING—1987, 1990, 1991

	< 4 pCi/L	4-19 pCi/L	20-99 pCi/L	100-199 pCi/L	200 and > pCi/L		
1	33	10	0	0	0	43	
2	448	255	59	17	10	789	
3	93	153	13	0	0	259	
4	53	21	2	0	0	76	
5	67	29	1	0	0	97	
6	40	12	0	0	0	52	
7	55	52	3	0	0	110	
8	16	7	1	0	0	24	
9	24	6	0	0	0	30	
10	49	18	3	0	0	70	
11	53	6	1	0	0	60	
12	36	48	8	0	0	92	
13	21	9	0	0	0	30	
14	9	9	0	0	0	18	
15	24	11	0	0	0	35	
16	23	5	0	0	0	28	
17	72	17	2	0	0	91	
18	23	7	0	0	0	30	
19	16	4	0	0	0	20	
20	170	44	1	0	0	215	
21	21	12	2	0	0	35	
22	95	107	32	1	0	235	
23	79	12	2	0	0	93	
Total	1520	854	130	18	10	2532	
Percentage radon results	60	34	5	0.7	0.3	100	

Note.—All reported readings were short-term charcoal measurements reported to the Wyoming Department of Environmental Health, Radon program.

Mr. WALLOP. Mr. President, in the debate earlier today on S. 792, the indoor radon bill, I mentioned a recent letter I received from Jack McGraw, the Acting Regional Administrator of EPA in region VIII. This is the Rocky Mountains region which includes my State of Wyoming. The letter solicited my support for radon testing. It seems that all the tactics to scare people into testing their homes, and undergoing renovations, have failed. So, now, they want me to test my home for radon.

I did not have the testing canister when I was home in Big Horn, WY, this past weekend. I have it here in my office. I thought I would leave it on my desk here in the Senate, but the instructions state it should not be left in a windy atmosphere.

While I was home, I did notice the other part of the EPA radon campaign. Huge billboards with the skull and bones imprinted over the word "radon" have been erected across Wyoming. This fear-inducing effort not only poisons rational debate, but resembles an act of piracy. Rather than a crime on the high seas, this is deceit on the high plains.

In his letter, Mr. McGraw states, " * * * there is not yet consensus on what concentration level of radon gas in the air creates a health risk * * * ." Yet the attached "Citizen's Guide to Radon" explains that testing and mitigation should be undertaken to avoid the threat of lung cancer. In a rather questionable passage, the guide reports that 85 percent of the 130,000 annual deaths from lung cancer results from smoking. Above this parenthetical statement, the guide states that up to 20,000 annual deaths are due to radon exposure. This accounts for the remaining 15 percent of lung cancer deaths. So, all lung cancers result from either smoking or radon exposure. This would frighten any homeowner or parent into seeking immediate radon testing and mitigation in a home or school.

As I discussed earlier today, the science on the health effects of radon is still an area of dispute. Currently, EPA is working with the National Academy of Sciences on the so-called BIER 6 study, which would be a new review of the risks of radon exposure. The amendment I included to this bill also pushes for more accurate science on health effects. I hope this desire for accuracy also permeates EPA.

I ask unanimous consent that Mr. McGraw's letter, and the "Citizen's Guide" be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Denver, CO, March 3, 1992.

HON. MALCOLM WALLOP,
U.S. Senator,
Casper, WY.

DEAR SENATOR WALLOP: I'm writing to ask your participation in our Regional Radon Awareness Campaign. EPA, in cooperation with state radon programs, has made continuous strides in increasing public awareness of the serious health risk from radon gas. Although there is not yet consensus on what concentration level of radon gas in the air creates a health risk, scientists do agree that radon gas can be dangerous if not detected and properly addressed.

Your demonstrating how easy it is to test for the gas by testing your Wyoming home would greatly aid us in our efforts. EPA will publicize your participation as a leader in this public health protection campaign. Our news release would announce only your willingness to test for radon, not the test results.

In anticipating your willingness to participate, I have enclosed a charcoal canister with instructions on how to test your home and a copy of the "Citizen's Guide to Radon."

Tammy Kozak of our Radiation Programs staff will be contacting your office next week to answer any questions you might have. If you have comments or questions about radon or the test that you would like to discuss prior to her call, please do not

hesitate to call me or Tammy at (303) 293-0977.

Sincerely,

JACK W. MCGRAW,
Acting Regional Administrator.

A CITIZEN'S GUIDE TO RADON: WHAT IT IS AND
WHAT TO DO ABOUT IT
WHAT IS RADON?

Radon is a radioactive gas which occurs in nature. You cannot see it, smell it, or taste it.

WHERE DOES RADON COME FROM?

Radon comes from the natural breakdown (radioactive decay) of uranium. Radon can be found in high concentrations in soils and rocks containing uranium, granite, shale, phosphate, and pitchblende. Radon may also be found in soils contaminated with certain types of industrial wastes, such as the by-products from uranium or phosphate mining.

In outdoor air, radon is diluted to such low concentrations that it is usually nothing to worry about. However, once inside an enclosed space (such as a home) radon can accumulate. Indoor levels depend both on a building's construction and the concentration of radon in the underlying soil.

HOW DOES RADON AFFECT ME?

The only known health effect associated with exposure to elevated levels of radon is an increased risk of developing lung cancer. Not everyone exposed to elevated levels of radon will develop lung cancer, and the time between exposure and the onset of the disease may be many years.

Scientists estimate that from about 5,000 to about 20,000 lung cancer deaths a year in the United States may be attributed to radon. (The American Cancer Society expects that about 130,000 people will die of lung cancer in 1996. The Surgeon General attributes around 85 percent of all lung cancer deaths to smoking.)

Your risk of developing lung cancer from exposure to radon depends upon the concentration of radon and the length of time you are exposed. Exposure to a slightly elevated radon level for a long time may present a greater risk of developing lung cancer than exposure to a significantly elevated level for a short time. In general, your risk increases as the level of radon and the length of exposure increase.

HOW CERTAIN ARE SCIENTISTS OF THE RISKS?

With exposure to radon, as with other pollutants, there is some uncertainty about the

amount of health risk. Radon risk estimates are based on scientific studies of miners exposed to varying levels of radon in their work underground. Consequently, scientists are considerably more certain of the risk estimates for radon than they are of those risk estimates which rely solely on studies of animals.

To account for the uncertainty in the risk estimates for radon, scientists generally express the risks associated with exposure to a particular level as a range of numbers. (The risk estimates given in this booklet are based on the advice of EPA's Science Advisory Board, an independent group of scientists established to advise EPA on various scientific matters.)

Despite some uncertainty in the risk estimates for radon, it is widely believed that the greater your exposure to radon, the greater your risk of developing lung cancer.

HOW DOES RADON CAUSE LUNG CANCER?

Radon, itself, naturally breaks down and forms radioactive decay products. As you breathe, the radon decay products can become trapped in your lungs. As these decay products break down further, they release small bursts of energy which can damage lung tissue and lead to lung cancer.

WHEN DID RADON BECOME A PROBLEM?

Radon has always been present in the air. Concern about elevated indoor concentrations first arose in the late 1960's when homes were found in the West that had been built with materials contaminated by waste from uranium mines. Since then, cases of high indoor radon levels resulting from industrial activities have been found in many parts of the country. We have only recently become aware, however, that houses in various parts of the U.S. may have high indoor radon levels caused by natural deposits of uranium in the soil on which they are built.

DOES EVERY HOME HAVE A PROBLEM?

No, most houses in this country are not likely to have a radon problem; but relatively few houses do have highly elevated levels. The dilemma is that, right now, no one knows which houses have a problem and which do not. You may wish to call your state radiation protection office to find out if any high levels have been discovered in your area.

Many states, as well as the federal government, are sponsoring work to identify areas of the country which are likely to have indoor radon problems. However, early results from this work are inconclusive. If you are concerned that you may have an indoor radon problem, you should consider having your home tested.

HOW DOES RADON GET INTO A HOME?

Radon is a gas which can move through small spaces in the soil and rock on which a house is built. Radon can seep into a home through dirt floors, cracks in concrete floors and walls, floor drains, sumps, joints, and tiny cracks or pores in hollow-block walls.

Radon also can enter water within private wells and be released into a home when the water is used. Usually, radon is not a problem with large-community water supplies, where it would likely be released into the outside air before the water reaches a home. (For more information concerning radon in water, contact your state's radiation protection office.)

In some unusual situations, radon may be released from the materials used in the construction of a home. For example, this may be a problem if a house has a large stone fireplace or has a solar heating system in which

heat is stored in large beds of stone. In general, however, building materials are not a major source of indoor radon.

HOW IS RADON DETECTED?

Since you cannot see or smell radon, special equipment is needed to detect it. The two most popular, commercially-available radon detectors are the charcoal canister and the alpha track detector. Both of these devices are exposed to the air in your home for a specified period of time and sent to a laboratory for analysis.

Charcoal canisters.—Test period: 3 to 7 days. Approximate cost: \$10 to \$25 for one canister.

Alpha Track Detectors.—Minimum Test Period: 2 to 4 weeks. Approximate cost: \$20 to \$50 for one detector; discounts for multiple detectors.

There are other techniques—requiring operation by trained personnel—which can be used to measure radon levels, but such techniques may be more expensive than the devices shown above.

Your measurement result will be reported to you in one of two ways. Results from devices which measure radon decay products are reported as "Working Levels" (WL). Results from devices which measure concentrations of radon gas are reported as "picocuries per liter" (pCi/l).

HOW CAN I GET A RADON DETECTOR?

Homeowners in some areas are being provided with detectors by their state or local government. In many areas, private firms offer radon testing. Your state radiation protection office may be able to provide you with information on the availability of detection devices or services.

The U.S. Environmental Protection Agency conducts a Radon Measurement Proficiency Program. This voluntary program allows laboratories and businesses to demonstrate their capabilities in measuring indoor radon. The names of firms participating in this program can be obtained from your state radiation protection office or from your EPA regional office.

HOW SHOULD RADON DETECTORS BE USED?

Obtaining a useful estimate of the radon level in your home may require that several detectors be used to make measurements in different areas. Following the steps below should provide the information needed as you decide whether or not further action is advisable. (In making radon measurements, you should be sure to follow the instructions of the manufacturer as to the proper exposure period for the particular device you are using.)

Step One.—The screening measurement

The first step you should take is to have a short-term "screening" measurement made to give you an idea of the highest radon level in your home. Thus, you can find out quickly and inexpensively whether or not you have a potential radon problem.

The screening measurement should be made in the lowest livable area of your home (the basement, if you have one). All windows and doors should be closed for at least 12 hours prior to the start of the test, and kept closed as much as possible throughout the testing period. This is necessary to keep the radon level relatively constant throughout the testing period. Because of the need to keep the windows closed as much as possible, we recommend that you make short-term radon measurements during the cool months of the year.

Step Two. Determining the need for further measurements

In most cases, the screening measurements are not a reliable measure of the average

radon level to which you and your family are exposed. Since radon levels can vary greatly from season to season as well as from room to room, the screening measurement only serves to indicate the potential for a radon problem. Depending upon the result of your screening measurement, you may need to have follow-up measurements made to give you a better idea of the average radon level in your home.

The following guidance may be useful to you in determining the urgency of your need for follow-up measurements.

If your screening measurement result is greater than about 1.0 WL or greater than about 200 pCi/l, you should perform follow-up measurements as soon as possible. Expose the detectors for no more than one week. Doors and windows should be closed as much as possible during testing. You should also consider taking actions (see page 13) to immediately reduce the radon levels in your home.

If your screening measurement result is about 0.1 WL to about 1.0 WL, or about 20 pCi/l to about 200 pCi/l, perform follow-up measurements. Expose detectors for no more than three months. Doors and windows should be closed as much as possible during testing.

If your screening measurement result is about 0.02 WL to about 0.1 WL or about 4 pCi/l to about 20 pCi/l, perform follow-up measurements. Expose detectors for one year, or make measurements of no more than one week duration during each of the four seasons.

If your screening measurement result is less than about 0.02 WL or less than about 4 pCi/l, follow-up measurements are probably not required. If the screening measurement was made with the house closed up prior to and during the testing period, there is relatively little chance that the radon concentration in your home will be greater than 0.02 WL, or 4 pCi/l as an annual average.

Step Three. The follow-up measurement

Follow-up measurements will provide you with a relatively good estimate of the average radon concentration to which you and your family are exposed. We strongly recommend that you make follow-up measurements before you make any final decisions about whether to undertake major efforts to permanently correct the problem.

Follow-up measurements should be made in at least two lived-in areas of your home. If your home has lived-in areas on more than one floor, you should make measurements in a room on each of the floors. An example is to take a measurement in the living room on the first floor and another in a second-floor bedroom. The results of the follow-up measurements should be averaged together.

WHAT DO MY TEST RESULTS MEAN?

The results of your follow-up measurements provide you with an idea of the average concentration throughout your home. The actual risk you face depends upon the amount of time you are exposed to this concentration.

Another way to think about the risk associated with radon exposure is to compare it with the risk from other activities. The chart below gives an idea of how exposure to various radon levels over a lifetime compares to the risk of developing lung cancer from smoking and from chest x-rays. The chart also compares these levels to the average indoor and outdoor radon concentrations.

As you look at the chart, be sure to use the proper radon-level column for your results (either WL or pCi/l).

RADON RISK EVALUATION CHART

Estimated number of lung cancer deaths due to radon exposure (out of 1000)	pCi/l	WL	Comparable exposure levels	Comparable risk
400 to 770	200	1	1000 times average outdoor level.	More than 60 times non-smoker risk. 4 pack-a-day smoker.
270 to 630	100	0.5	100 times average indoor level.	2000 chest x-rays per year.
120 to 380	40	0.2	100 times average outdoor level.	2 pack-a-day smoker.
60 to 210	20	0.1	100 times average indoor level.	1 pack-a-day smoker. 5 times non-smoker risk.
30 to 120	10	0.05	10 times average indoor level.	
13 to 50	4	0.02	Average indoor level.	200 chest x-rays per year.
7 to 30	2	0.01	10 times average outdoor level.	Non-smoker risk of dying from lung cancer.
3 to 13	1	0.005	Average indoor level.	20 chest x-rays per year.
1 to 3	0.2	0.001	Average outdoor level.	

HOW QUICKLY SHOULD I TAKE ACTION?

In considering whether and how quickly to take action based on your test results, you may find the following guidelines useful. EPA believes that you should try to permanently reduce your radon levels as much as possible. Based on currently available information, EPA believes that levels in most homes can be reduced to about 0.02 WL (4 pCi/l).

If your results are about 1.0 WL or higher, or about 200 pCi/l or higher:

Exposures in this range are among the highest observed in homes. Residents should undertake action to reduce levels as far below 1.0 WL (200 pCi/l) as possible. We recommend that you take action within several weeks. If this is not possible, you should determine, in consultation with appropriate state or local health or radiation protection officials, if temporary relocation is appropriate until the levels can be reduced.

If your results are about 0.1 to about 1.0 WL, or about 20 to about 200 pCi/l:

Exposures in this range are considered greatly above average for residential structures. You should undertake action to reduce levels as far below 0.1 WL (20 pCi/l) as possible. We recommend that you take action within several months.

If your results are about 0.02 to about 0.1 WL, or about 4 pCi/l to about 20 pCi/l:

Exposures in this range are considered above average for residential structures. You should undertake action to lower levels to about 0.02 WL (4 pCi/l) or below. We recommend that you take action within a few years, sooner if levels are at the upper end of this range.

If your results are about 0.02 WL or lower, or about 4 pCi/l or lower:

Exposures in this range are considered average or slightly above average for residential structures. Although exposures in this range do present some risk of lung cancer, reductions of levels this low may be difficult, and sometimes impossible, to achieve.

Remember: There is increasing urgency for action at higher concentrations of radon. The higher the radon level in your home, the faster you should take action to reduce your exposure. If you find elevated radon concentrations in your home, you should take the relatively easy, short-term actions described on page 13.

ARE THERE OTHER FACTORS I SHOULD CONSIDER?

Most of the risk information given in this pamphlet, as well as the recommendations

for taking corrective action, are based on the general case. Your individual living patterns could influence your assessment of your risk, and your decisions about the need for further action. Your answers to the following questions may help you evaluate your personal risk.

Does anyone smoke in your home? Scientific evidence indicates that smoking may increase the risk of exposure to radon. In addition, smoking significantly increases your overall risk of lung cancer.

Do you have children living at home? Although there are no studies of children exposed to radon to determine whether they are more sensitive than adults, some scientific studies of other types of radiation exposure indicate that children may be more sensitive. Consequently, children could be more at risk than adults from exposure to radon.

How much time does any family member spend at home? The risk estimates given in this pamphlet assume that 75 percent of a person's time is spent at home. If you or your family spend more or less time at home, you should take this into consideration.

Does anyone sleep in your basement? Since radon concentrations tend to be greater on the lower levels of a home, a person who sleeps in the basement is likely to face a greater risk than a person who sleeps in a second-floor bedroom.

How long will you live in your home? The risk estimates in this booklet are based on the assumption that you will be exposed to the radon level found in your home for roughly 70 years. As you evaluate your potential risk, therefore, you might consider the total amount of time you expect to live in your home. But remember: other houses you have lived in—or will live in—may have the same or higher radon levels.

HOW CAN I REDUCE MY RISK FROM RADON?

Your risk of lung cancer from exposure to radon depends upon the amount of radon entering your home and the length of time it remains in your living areas. Listed below are some actions you might take to immediately reduce your risk from radon. These actions can be done quickly and with minimum expense in most cases.

Stop smoking and discourage smoking in your home. By doing so, you should reduce your family's overall chance of developing lung cancer, as well as reducing your family's risk from radon exposure.

Spend less time in areas with higher concentrations of radon, such as the basement. Whenever practical, open all windows and turn on fans to increase the air flow into and through the house. This is especially important in the basement.

If your home has a crawl space beneath, keep the crawl-space vents on all sides of the house fully open all year.

While the above actions will help reduce your risk from radon, they generally do not offer a long-term solution. You can find more information about permanent, cost-effective solutions to a radon problem in the EPA publication, *Radon Reduction Methods: A Homeowner's Guide*. A copy of this booklet may be obtained from your state radiation protection office or from your EPA regional office.

Before undertaking major modifications to your home, we recommend that you consult with your state radiation protection office to obtain whatever specific advice or assistance they may be able to provide for your particular situation.

SOURCES OF INFORMATION

If you would like further information or explanation on any of the points mentioned

in this booklet, you should contact your state radiation protection office.

If you have difficulty locating this office, you may call your EPA regional office listed below. They will be happy to provide you with the name, address, and telephone number for your appropriate state contact.

STATE—EPA REGION

Alabama—4, Alaska—10, Arizona—9, Arkansas—6, California—9, Colorado—8, Connecticut—1, Delaware—3, District of Columbia—3, Florida—4, Georgia—4, Hawaii—9, Idaho—10, Illinois—5, Indiana—5, Iowa—7, Kansas—7, Kentucky—4, Louisiana—6, Maine—1, Maryland—3, Massachusetts—1, Michigan—5, Minnesota—5, Mississippi—4, Missouri—7, Montana—8, Nebraska—7, Nevada—9, New Hampshire—1, New Jersey—2, New Mexico—6, New York—2, North Carolina—4, North Dakota—8, Ohio—5, Oklahoma—6, Oregon—10.

Pennsylvania—3, Rhode Island—1, South Carolina—4, South Dakota—8, Tennessee—4, Texas—6, Utah—8, Vermont—1, Virginia—3, Washington—10, West Virginia—3, Wisconsin—5, Wyoming—8.

EPA REGIONAL OFFICES

EPA Region 1, Room 2203, JFK Federal Building, Boston, MA 02203, (617) 223-4845.

EPA Region 2, 26 Federal Plaza, New York, NY 10278, (212) 264-2515.

EPA Region 3, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-4084.

EPA Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 881-3776.

EPA Region 5, 230 South Dearborn Street, Chicago, IL 60604, (312) 353-2205.

EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-7208.

EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 236-2803.

EPA Region 8, Suite 500, 999 18th Street, Denver, CO 80202, (303) 293-1709.

EPA Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8076.

EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-7660.

RECESS UNTIL 2:15 P.M. TODAY

Mr. LAUTENBERG. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate stand in recess until 2:15 p.m. today.

There being no objection, the Senate, at 12:02 p.m., recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

INDOOR RADON ABATEMENT REAUTHORIZATION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, the senior Senator from Pennsylvania has asked for time from time that was allotted to Senator CHAFEE, 10 minutes. I now would yield the floor to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized under the time of the Senator from Rhode Island.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the distinguished Senator from Rhode Is-

land has now come to the floor, so I would ask him for 4 minutes so that I may speak.

Mr. CHAFEE. Fine.

The PRESIDING OFFICER. The Senator is recognized for 4 minutes.

Mr. SPECTER. Mr. President, I support this legislation because I have seen firsthand the very serious problem posed by radon. In fact, it was a Pennsylvanian, Mr. Stanley Watras, who first alerted the Nation to this very significant issue.

In 1984, Mr. Watras, of Boyertown, PA, a construction engineer, walked into the Limerick nuclear power plant where he worked and immediately set off Limerick's radiation alarm. The alarm signaled that he had been contaminated by radiation beyond the level of safety.

Naturally there was quite a bit of consternation as to what had happened. Later it was found that air samples from Mr. Watras' home revealed an extraordinary concentration of radon gas.

I visited the area in Boyertown, PA, which is right adjacent to Reading, PA. That city gave us the Reading prong, which is the site where radon is located. That is a territory running from Reading, PA, and through New Jersey, New York, and up into Connecticut.

My investigation in Pennsylvania disclosed to me that radon was, indeed, a very serious problem. It is a colorless odorless gas, which emanates from decaying uranium deposits and seeps into homes from air and water. It is a leading cause of lung cancer and is estimated to be responsible for up to 20,000 deaths a year.

Following the work which I did in Pennsylvania on the issue, Senator Hunt and I introduced legislation in the 99th Congress, Senate bill 2710, on August 1, 1986; and I followed that with similar legislation in the 100th Congress, Senate bill 1067, introduced on April 22, 1987. Later that session I joined with the distinguished Senator from New Jersey, Senator LAUTENBERG, and the distinguished Senator from Rhode Island, Senator CHAFEE, and the distinguished Senator from Maine, Senator MITCHELL, in pressing for legislation which was ultimately enacted into law.

I believe that this is important legislation, Mr. President. Procedures for the protection against radon, where Federal assistance to the States to inform people what the problem is and give them information to cure the problem, is vitally important.

I will not take time now to describe the scope of the act. But I do believe it is an important piece of legislation. I am glad to lend my words of support.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Rhode Island.

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

The PRESIDING OFFICER. The Senator from Rhode Island has 7 minutes remaining.

Mr. CHAFEE. Mr. President, I would like to give 3 of those minutes to Senator DOMENICI. I do not believe he has any time reserved, has he?

The PRESIDING OFFICER. He has not.

Mr. CHAFEE. I would like to give 3 of those minutes to Senator DOMENICI. Thus I have 4 minutes.

I think if we ask the Senators on the floor what they are interested in as far as health care goes, there may be differences as to approach and different programs but I think every Senator would agree that one of the big steps we can take is in preventive medicine. In other words, keeping people healthy. Or, phrasing it another way, keeping them from getting ill.

One of the statistics that is shocking in this is the National Academy of Sciences issued a report in which the academy estimated that the annual number of lung cancer deaths in the United States attributable to radon in a single year are 16,000.

Mr. President, that is an incredible statistic. In other words, this corroborates the EPA information, which is that radon gas is the second-leading cause of lung cancer following smoking.

We are all aware of the dangers of smoking. But this Academy report points out so vividly that the annual number of lung cancer deaths, as I say, in the United States, is 16,000 a year. What can we do about it?

This legislation goes a long way, with a very modest amount of money, toward tackling this problem.

I want to pay tribute to the distinguished Senator from New Jersey, and the majority leader, Senator MITCHELL, and a member of our committee, Senator SPECTER, who has been very active in this area for many, many years, as he pointed out, and others. I have been fortunate enough to have the opportunity to participate in this likewise.

I would just like to point out a couple of features of this legislation that I believe will be of interest. The first is that potential home buyers, those who are getting a mortgage of some type, getting assistance with their financing, at the time they approach the financing institution will be provided with information about the health risk associated with radon gas. This will be a little pamphlet. It will not mandate that it has to be taken at the home. It will not require that the purchaser do anything. But it alerts the purchaser to the potential dangers that arise. Then it is up to the purchaser to work it out with the seller for a test on the property, should the purchaser so choose.

The second step we mandate in this legislation is that those firms that are in the business of radon testing—and

there are a lot of firms out there who hold themselves out as radon testers, or those firms that offer what we call radon mitigation services—those firms that will come to you, who have a home, who have gotten the little canister from the EPA, and tested—it is very easy to test the radon in your own home—when you find the levels are too high, you want to know what to do about it. So you go to a firm that holds itself out as a radon mitigation firm.

And all too often these firms do not know anything about mitigating the dangers or the hazards that arise from radon gas—how to properly install the vents, for example; how to install fans, for example, to eradicate the gas.

So this legislation provides that those firms which hold themselves out either as testers or as mitigators must receive a license from the EPA.

EPA has identified radon gas as the second leading cause of lung cancer after smoking. Last year the National Academy of Sciences issued a report in which it estimated the annual number of lung cancer deaths attributable to radon at 16,000.

The legislation before us requires that information be provided to prospective homebuyers at the time of purchase, when they are most likely to take action to test for radon. Less than a year ago, EPA estimated that only 5 percent of homes nationwide had been tested for radon, and a substantial number of these homes were tested at the time of purchase. This legislation will ensure that homeowners have the facts—that they know about the health risk associated with radon, how to test and, if necessary, where to find a reputable contractor to assist in mitigation.

The home sale transaction provides an excellent opportunity to educate and inform prospective homebuyers about radon. A major obstacle to testing among the general public is apathy. Radon is colorless and odorless, and its harmful effects are not felt, on average, for 20 years. Yet, data from the Environmental Law Institute suggests that this apathy towards testing is most likely to be overcome during the purchase of a home. Presented in the home sales context, both the home seller and home buyer's apathy can be transformed into self-protective action. Just as the home buyer tests for the presence of termites or structural flaws, he will also want to ensure the house is free from elevated levels of radon. Likewise the home seller will want to make his home desirable to prospective purchasers, and protect himself from future litigation.

In 1989, approximately 3.4 million residential mortgages were originated in the United States by various mortgage institutions, including banks and savings and loan institutions. This bill will require that each originating

mortgage institution provide prospective home buyers with concise, easy to understand information on radon. This information will be developed by EPA in consultation with real estate groups, real estate financial institutions, the Department of Housing and Urban Development, and citizen groups. Armed with this information, I believe homebuyers will take the necessary steps to rid their homes of radon, and provide a safe indoor environment for their families. I would like to point out, Mr. President, that this is not the heavy hand of Government. This is arming people with information, and allowing them to make decisions about what steps to take.

A related problem, Mr. President, is that homeowners currently do not have a great deal of confidence that radon measurement devices are providing accurate results. The General Accounting Office completed a report in August of 1990 which highlighted some of the problems with companies which produce and analyze radon measurement devices, such as the charcoal canister used to test homes. In summary, GAO concluded that many of these companies do not have an adequate quality assurance program, and that the radon measurements they report back to homeowners could have a high degree of error. Further, since most States do not have regulations covering radon mitigation, as they do for asbestos removal, the cleanups attempted by many radon companies are ineffectual, and there are few follow-up procedures to assure the radon contamination has been remedied.

Although EPA runs a voluntary proficiency testing program, GAO reported that even after companies fail EPA's test, they continue to market their products.

GAO recommended that measurement companies:

Be required to pass the EPA proficiency testing program before marketing their devices; and

Demonstrate the existence of adequate quality assurance programs as a condition of participating in the EPA proficiency testing program.

The legislation we are considering today acts on both of these recommendations, and will ensure that important, health-based decisions are made on the basis of reliable test results.

Senator MITCHELL and Senator LAUTENBERG have been very active in their support of radon legislation through the year. I commend their efforts. I hope my colleagues will join with me in supporting this worthwhile legislation.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, I wonder if Senator CHAFEE, before he leaves

the floor, might answer a question. I do not know that I need my 3 minutes.

Could I ask the Senator, with reference to this radon protection bill, first, do we know how much it is going to cost?

Mr. CHAFEE. Oh, yes. The total appropriation is, over the 3 years, \$61 million that has been authorized; over 3 years.

Mr. DOMENICI. Second, radon is there now in the country, in some homes. It might be in some new homes. Does this legislation in any way create a liability where one does not exist today?

Mr. CHAFEE. No.

Mr. DOMENICI. So if someone some years from now claims that they have contracted a disease or an ailment, be it cancer or otherwise, and say it came from radon, am I to believe that they will prove their case separate and apart from anything set forth in this legislation?

Mr. CHAFEE. That is correct. I suppose that you could follow this along. This legislation provides there shall be radon testing of the schools. I suppose somebody could say that as a result of this legislation, a school was tested and that school tested very, very high in radon; that that was brought to the attention of the school authorities, say the school board, and the school board said, "Well, we do not choose to do anything about it. Forget it." I suppose if you stretch that, there is some way in which a pupil in later years could claim, or parent could claim, that as a result of the negligence of the school board, that the child subsequently contracted lung cancer.

Mr. DOMENICI. Might I ask—and I ask this of either the chairman or Senator CHAFEE. I see the chairman standing on the floor.

Let me ask, is there any comparison at all with what might happen in our schools and in public buildings because of this radon definition and goal that might compare with the asbestos cleanup that has occurred?

Mr. CHAFEE. No; I think not. We can discuss the asbestos thing and whether the schools went way further than they were required to do, but that is a separate subject. I would say, first of all, there is a vast difference in what it takes to mitigate the damage.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from New Jersey has the remaining time.

Mr. LAUTENBERG. I thank the Chair.

I want to express my thanks to the Senator from Rhode Island. Senator CHAFEE has worked very hard on the radon issue. He and I authored the radon schools amendment which is designed to get radon, this threatening material, out of our schools.

Earlier, we heard a comment by the Senator from Idaho [Mr. SYMMS] who

cited an article by a commentator, Warren Brookes, who argued that the threat of radon is overblown.

It is the Brookes article that is overblown and full of inaccuracies.

I ask unanimous consent that a letter written by Michael Shapiro, EPA Deputy Administrator for Air and Radiation, which addresses these inaccuracies, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RADON: A VERY REAL HEALTH THREAT

DEAR EDITOR: Warren Brookes' March 8, 1990 commentary on radon, "Killer or Minimal Risk," that appeared in your paper contains many disturbing inaccurate statements and conclusions. Radon, contrary to the opinion expressed in the article, is a very real health threat. Radon is one of only a handful of substances known to cause cancer in humans. The Environmental Protection Agency (EPA) estimates that radon contributes to about 20,000 lung cancer deaths annually in the United States.

EPA's position is supported by the National Academy of Sciences, the U.S. Surgeon General, the American Medical Association, and the Centers for Disease Control. These organizations have all identified radon as a serious health threat. In addition, reports from the World Health Organization, the National Council on Radiation Protection and Measurement, and the American Lung Association confirm that radon is a serious health risk.

Mr. Brookes' commentary attempts to refute the conclusions of these organizations. However, in doing so, the commentary presents much information that is inaccurate or untrue.

The commentary cited many studies which compared regional lung cancer rates with regional radon levels. These crude calculations present many problems. Primarily, average radon levels do not reflect an individual lung cancer victim's exposure to radon. Additionally, these studies do not account for smoking habits, age, or length of exposure of the people who died of lung cancer. This is like deciding that warm weather is bad for you if you found that death rates in Florida were higher than in Maine.

The commentary also used a study of two Chinese provinces with extremely low levels of radon and only 5 lung cancer deaths. This study was used to assert that radon does not cause lung cancer and to criticize EPA's risk estimates. In fact, EPA's risk estimates are based on large studies including 700 lung cancer deaths in a population of 27,000 miners exposed to radon. Only 200 lung cancer deaths would normally be expected in this population.

The commentary also stated that lung cancer deaths only occurred in these miners at radon levels 3,000 times greater than EPA's action level in homes. This is wrong. In fact, many homes have radon levels that would expose residents of five to fifty years to more radon than miners who contracted lung cancer.

The commentary also falsely portrayed England's public health policy on radon. The commentary implied that "England was willing to wait until 1993 for the results of [a particular large] study" before taking action on the radon problem. Contrary to this assertion, England is taking fast action against radon. In fact, Great Britain's National Radiation Protection Board has just

reduced their radon action level for existing homes from 10 to 5 picocuries per liter (pCi/L). (EPA's current action level is 4 pCi/L.) Great Britain has also set a limit of less than 3 pCi/L in new homes.

The commentary also attempted to use data on radon levels in Iowa to question EPA radon risk estimates. It suggested that EPA estimates would predict 200 more lung cancer deaths in Iowa from radon alone than actually occurred from all causes in 1988. This is not true. The author incorrectly combined national and state data to estimate annual radon lung cancer deaths in Iowa. Even if this approach had been valid, the calculation was performed incorrectly. The author arrived at 1,600 annual lung cancer deaths; correct calculations would have led to 400 annual deaths. Thus, not only was an invalid procedure used, the calculations were incorrect.

There is solid scientific proof of radon's serious health effects. There is evidence of elevated radon levels in homes throughout the country. Millions of people will continue to be exposed to dangerous levels of radiation until homes with radon problems are identified. Fortunately, radon is a health hazard with a simple solution. EPA and the Surgeon General have recommended that most homes be tested for radon. Houses with high levels should be fixed. Delaying prudent public health actions until the evidence is even more compelling than now would be irresponsible.

MICHAEL H. SHAPIRO,
Deputy Assistant Administrator
for Air and Radiation,
Environmental Protection Agency.

Mr. LAUTENBERG. Mr. President, at a hearing on the radon in schools legislation that I chaired in 1990, I asked Dr. Vernon Houk of the Centers for Disease Control to characterize the evidence concerning the health threat posed by radon. This is his response:

The evidence of radon is the strongest of any environmental contaminant because our extrapolations and our estimates are based upon human observations at the level that we're talking about at risk. There is no room for debate on this issue, Senator LAUTENBERG. Anybody who tells you differently is ill-informed, deceitful, or both.

Mr. President, the National Academy of Sciences, the U.S. Surgeon General, the Centers for Disease Control, the American Medical Association, and the World Health Organization all support EPA's concern about the threat posed by exposure to radon. But despite this risk, EPA estimates that only 5 percent of our Nation's homes have been tested for radon.

Radon is a silent killer; it is odorless, tasteless, and invisible. So people are inclined to dismiss the threat, and the warnings that we hear about so often. So we have to significantly increase efforts to expand public awareness of the threat posed by radon.

When we have increased awareness and funding for other diseases, we greatly reduce their impact on our people. For example, stroke deaths related to hypertension have declined 55 percent from 1972 to 1984, and vaccines and public awareness programs surrounding measles, mumps, and rubella have reduced their incidence 99 percent since the 1960's.

S. 792 includes a number of programs to address the lack of attention given to radon.

So I urge my colleagues to vote for the bill.

Once again, I want to thank Senator BURDICK, the chairman of the Environment and Public Works Committee; Senator CHAFEE, who is the ranking member of the committee; the majority leader; and Senator DURENBERGER for their assistance in moving S. 792.

I want to thank the staff, which has worked so hard on both S. 792 and S. 455, the Indoor Air Quality Act, which the Senate passed last session. The staff people, Mike Shields and Jeff Peterson, from the Environment and Public Works Committee, majority staff; and from the minority staff, Rich Innes and Jimmie Powell; and Ric Erdheim, my able assistant from my staff.

I yield the time, Mr. President. I assume that we are ready to vote.

The PRESIDING OFFICER. All time has been yielded or used. All time has expired.

The question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time.

The PRESIDING OFFICER. The bill having been read for the third time, the question is, Shall it pass?

On the question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN], the Senator from Illinois [Mr. DIXON], the Senator from Iowa [Mr. HARKIN], the Senator from Hawaii [Mr. INOUE], and the Senator from Georgia [Mr. NUNN] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Indiana [Mr. COATS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. JEFFORDS], the Senator from Indiana [Mr. LUGAR], the Senator from Oklahoma [Mr. NICKLES], the Senator from Oregon [Mr. PACKWOOD], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

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

The result was announced—yeas 82, nays 6, as follows:

[Rollcall Vote No. 37 Leg.]

YEAS—82

Adams	Fowler	Mitchell
Akaka	Glenn	Moynihan
Baucus	Gore	Murkowski
Bentsen	Gorton	Pell
Biden	Graham	Pressler
Bond	Gramm	Pryor
Boren	Grassley	Reld
Bradley	Hatch	Riegle
Breaux	Hatfield	Robb
Brown	Heflin	Rockefeller
Bryan	Hollings	Roth
Bumpers	Johnston	Rudman
Burdick	Kassebaum	Sanford
Byrd	Kasten	Sarbanes
Chafee	Kennedy	Sasser
Cohen	Kerrey	Seymour
Conrad	Kerry	Shelby
Cranston	Kohl	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Smith
Daschle	Levin	Specter
DeConcini	Lieberman	Stevens
Dodd	Lott	Thurmond
Dole	Mack	Wellstone
Domenici	McCain	Wirth
Durenberger	McConnell	Wofford
Exon	Metzenbaum	
Ford	Mikulski	

NAYS—6

Burns	Garn	Symms
Craig	Helms	Wallop

NOT VOTING—12

Bingaman	Harkin	Nickles
Coats	Inouye	Nunn
Cochran	Jeffords	Packwood
Dixon	Lugar	Warner

So the bill (S. 792), as amended, was passed, as follows:

S. 792

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 "Indoor Radon Abatement Reauthorization Act of 1992".

SEC. 2. NATIONAL GOALS.

Section 301 of the Toxic Substances Control Act (15 U.S.C. 2661) is amended—

(1) in the heading, by striking "NATIONAL GOAL" and inserting "NATIONAL GOALS";

(2) by inserting "(a) RADON LEVELS.—" before the first sentence of the section; and

(3) by adding at the end the following new subsection:

"(b) TESTING.—It is the goal of the United States that all homes, schools, and Federal buildings be tested for radon."

SEC. 3. DEFINITIONS.

Section 302 of the Toxic Substances Control Act (15 U.S.C. 2662) is amended by adding at the end the following new paragraphs:

"(5) The term 'residential dwelling' means—

"(A) a single-family dwelling or a one-family dwelling unit in a structure containing not more than four separate residential dwelling units, each such unit used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons; or

"(B) a single-family or one-family dwelling unit on the subground, ground, or first-floor-above-ground level of a multi-unit residential structure.

"(6) The term 'multi-unit residential structure' means a building containing more than four separate residential dwelling units, each such unit used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons.

"(7) The term 'contract for the sale of residential real property' means any contract or

agreement whereby one party agrees to purchase from another party any interest in real property improved by one or more residential dwelling units used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons.

"(8) The term 'applicable mortgage loan' includes any loan (other than temporary financing such as a construction loan) that—

"(A) is secured by a first lien on residential real property (including individual units of condominiums and cooperatives); and

"(B) either—

"(i) is insured, guaranteed, made, or assisted by any agency of the Federal Government, including the Department of Housing and Urban Development, the Veterans Administration, and the Farmers Home Administration; or

"(ii) is intended to be sold by an originating mortgage institution to any federally chartered secondary mortgage market institution.

"(9) The term 'originating mortgage institution' means any lender that provides federally insured, guaranteed, made, or assisted mortgage loans, or sells mortgage loans to a federally chartered secondary mortgage market institution.

"(10) The term 'federally chartered secondary mortgage institution' means an institution chartered by Congress that buys mortgages from originating financial institutions and resells them to investors, including the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Association.

"(11) The term 'Administrator' means the Administrator of the United States Environmental Protection Agency.

"(12) The term 'business day' means any day other than a Saturday, a Sunday, a Federal holiday, a State holiday in the State in which the affected residential property is located, or a State holiday in the State or States in which the buyer or seller resides.

"(13) The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or an interstate body.

"(14) The term "direct Federal financial assistance" means assistance in financing a residential dwelling provided by the Federal Housing Administration, Farmers Home Administration, and the Department of Veterans Affairs.

"(15) The term "Federal building" means any building that—

"(A) is used primarily as an office building, school, hospital, or residence,

"(B) owned, leased, or operated by any Federal agency, and

"(C) is occupied by the Library of Congress, is part of the White House, or is the residence of the Vice President, and

"(D) is included in the definition of 'Capitol Buildings' under section 16(a) of the Act entitled 'An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes', approved July 31, 1946 (40 U.S.C. 193m)."

SEC. 4. PRIORITY RADON AREAS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) is amended—

(1) by redesignating sections 303 through 311 as sections 304 through 312, respectively; and

(2) by inserting after section 302 the following new section:

"SEC. 303. PRIORITY RADON AREAS.

"(a) DESIGNATION OF AREAS.—The Administrator shall, designate as expeditiously as possible but no later than January 1, 1992, areas as priority radon areas, and revise, as appropriate thereafter, the designations.

"(b) STANDARD FOR DESIGNATION.—The Administrator shall designate an area as a priority radon area in any case where the Administrator determines that there is a reasonable likelihood that the average indoor radon level in the area is likely to exceed the national average indoor radon level by more than a de minimis amount.

"(c) FACTORS.—In designating priority radon areas, the Administrator shall consider the most current available information at the time of such designation, including—

"(1) the national assessment of radon conducted pursuant to section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note);

"(2) surveys of school buildings conducted pursuant to section 308;

"(3) surveys of Federal buildings conducted pursuant to section 310;

"(4) surveys of work places conducted pursuant to section 318; and

"(5) any other information, including other radon measurements and geological data, as the Administrator determines to be appropriate."

SEC. 5. CITIZEN'S GUIDE.

(a) SCHEDULE.—Section 304(a) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(1) by striking "June 1, 1989," and inserting "January 1, 1992,"; and

(2) by inserting "in consultation with the Director of the Centers for Disease Control of the Department of Health and Human Services," after "Administrator" in the last sentence of the subsection.

(b) ACTION LEVELS.—Section 304(b)(1) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(1) by inserting "(A)" after "ACTION LEVELS.—"; and

(2) by adding at the end the following new subparagraphs:

"(B) The citizen's guide shall state the national goals established in this title, and shall estimate the average national ambient outdoor radon level. The guide shall also indicate the health benefits of reducing indoor radon levels to ambient outdoor levels.

"(C) The citizen's guide shall establish a target action point indicating a level of indoor radon that is, in the judgment of the Administrator, as close to the national ambient outdoor radon level as can be achieved consistently in existing, single family homes through the application of readily available and generally affordable radon mitigation technologies and practices."

(c) INFORMATION.—Section 304(b)(2) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new subparagraph:

"(F) The location of priority radon areas and the likelihood of radon levels above the target action point within and outside of priority radon areas."

SEC. 6. MODEL CONSTRUCTION STANDARDS.

(a) TECHNICAL AMENDMENTS.—(1) Section 305 of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(A) by inserting "(a) STANDARDS.—" before the first sentence of the section;

(B) by inserting "and periodically update" after "develop";

(C) by striking the second sentence of the section and inserting the following new subsection:

"(b) CONSULTATION.—In developing and updating standards and techniques pursuant to subsection (a), the Administrator shall consult with—

"(1) the Secretary of Housing and Urban Development;

"(2) organizations that are involved in establishing national building construction standards and techniques; and

"(3) national organizations that represent homebuilders and State and local housing agencies (including public housing agencies)."

(D) by inserting "(c) GEOGRAPHIC DIFFERENCES.—(1)" before the fourth sentence of the section;

(E) by striking the fifth sentence of the section; and

(F) by inserting "(d) IMPLEMENTATION.—" before the sixth sentence of the section.

(2) Section 305 of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new subsection:

"(e) SCHEDULE.—The Administrator shall publish final radon control standards and techniques for residential dwellings and make such techniques available to the public and the building industry by not later than January 1, 1992, and for multiunit residential structures and schools by not later than January 1, 1994."

(b) OBJECTIVES.—Section 305 of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end of subsection (c) (as designated by subsection (a)(1) of this section) the following new paragraph:

"(2)(A) Model standards and techniques shall indicate a range of effective radon control measures, practices, and techniques, that apply to original construction of a wide variety of building types, locations, conditions, and circumstances, and shall indicate the general range of radon control achievable by such measures individually and in combination with other measures.

"(B) At a minimum, the Administrator shall establish minimum radon reduction measures, practices, and techniques for new construction for the purpose of determining compliance with this section. Such radon standards shall be designed to require the use of reasonably available and economically achievable techniques, and to achieve indoor radon levels in homes less than the target action point established pursuant to section 304(b)(1)(C) where possible by using these techniques."

(c) FEDERALLY ASSISTED HOUSING.—Section 305 of the Toxic Substances Control Act (as redesignated by section 4 of this Act, and as amended by subsection (a)(2) of this section) is amended by adding at the end the following new subsection:

"(f) FEDERALLY ASSISTED HOUSING.—The appropriate Federal official shall require that any residential dwelling or multiunit residential structure constructed more than two years after the date of the establishment of new construction standards pursuant to this section or the date of enactment of this section, whichever is later, in an area designated by the Administrator as a priority radon area or more than two years after the designation of an area as a priority radon area, whichever is later, shall be constructed in accordance with the radon control standards established pursuant to subsection (c)(2)(B), before providing any direct Federal financial assistance."

(d) DESIGN AWARDS AND CERTIFICATION.—Section 305 of the Toxic Substances Control Act (as redesignated by section 4 of this Act, and as amended by subsection (c) of this section) is amended by adding at the end the following new subsection:

“(g) DESIGN AWARDS.—(1) The Administrator shall establish a radon design awards program.

“(2) The radon design awards program shall provide for awards for the best residential design incorporating radon control or mitigation standards in categories of residential design to be determined by the Administrator.”

(e) RELATIONSHIP TO STATE AND LOCAL STANDARDS.—Section 305 of the Toxic Substances Control Act (as redesignated by section 4 of this Act, and as amended by subsection (d) of this section) is amended by adding at the end the following new subsection:

“(h) RELATIONSHIP TO STATE AND LOCAL STANDARDS.—The standards published pursuant to this section shall not preempt the use of any State or local building standard if the State or local standard is equally effective in reducing radon levels as the standards published pursuant to this section.”

SEC. 7. TECHNICAL ASSISTANCE.

(a) ACTIVITIES.—Section 306(a) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraphs:

“(9) Development of a model State program to disseminate radon information to State and local tenant organizations.

“(10) Assistance to State agencies and other organizations concerning the assessment and mitigation of radon in public water supplies.

“(11) Assistance to State agencies and other organizations to facilitate prompt adoption and effective enforcement of new construction standards for reducing radon levels developed pursuant to section 305.

“(12) Development of testing guidelines for multiunit residential structures and multi-story buildings not later than six months after the date of enactment of this paragraph and development of mitigation guidelines not later than three years after the date of enactment of this paragraph.

“(13) Issuance of guidance to States on appropriate elements of State radon measurement and mitigation proficiency programs.”

(b) PROFICIENCY TESTING.—(1) Section 306(a)(2) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by striking “voluntary”.

(2) Section 306(e) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(A) by redesignating paragraph (2) as paragraph (2)(A); and

(B) by adding after paragraph (2)(A), as so redesignated, the following new subparagraphs:

“(B)(i) Except as otherwise provided in clause (ii), for the purposes of this paragraph, the term ‘small business’ means a corporation, partnership, or unincorporated business that—

“(I) has 150 or fewer employees; and

“(II) for the 3-year period preceding the date of the assessment, has an average annual gross revenue from radon measurement and mitigation activities in an amount that does not exceed \$40,000,000.

“(ii) If, after consultation with the Small Business Administration, the Administrator determines that a modification of the definition of ‘small business’ under clause (i) is appropriate to characterize small businesses

associated with radon measurement and mitigation, the Administrator shall, by regulation, modify the definition in such manner as the Administrator determines to be appropriate.

“(C) The Administrator shall consider reductions of such charges for small businesses pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

“(D) No charges may be imposed on State and local governments. In the case of a State which is administering a radon proficiency program pursuant to section 314(c), the State may impose charges consistent with charges which would have been imposed by the Administrator. Any amounts collected by a State as charges under this paragraph may be used as part of the non-Federal share of a grant awarded pursuant to section 307 of this title.”

SEC. 8. GRANT ASSISTANCE.

(a) APPLICATION.—Section 307(b) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraph:

“(6) A description of the State's efforts to develop a mandatory radon proficiency program consistent with sections 306(a)(2) and 314.”

(b) ELIGIBLE ACTIVITIES.—Section 307(c) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraphs:

“(11) Technical assistance to public water supply systems concerning mitigation of radon in public water supplies, and public education and information activities to assist homeowners in the assessment and mitigation of radon in private drinking water supplies.

“(12) Activities to adopt model new construction standards for reducing radon levels developed pursuant to section 305 to the State and assure the implementation of such standards in the State.

“(13) Technical and financial assistance to non-profit public interest groups to encourage radon testing and mitigation at local levels.

“(14) Targeting outreach and technical assistance activities to licensed child care facilities in priority radon areas.

“(15) Notwithstanding the limitation in subsection (j)(4), payment, in the form of grants or loans, of costs of implementing remediation measures necessary to prevent levels of radon in school buildings above the target action point identified pursuant to section 304(b)(1)(C): *Provided*, That such payments are made in consideration of the financial need of the applicant.

“(16) Payment of costs of conducting radon tests required pursuant to section 308(d): *Provided*, That such payments shall be made only in the case of a local educational agency that received assistance payment pursuant to paragraph (15).

“(17) Educational programs for members of the housing industry concerning the model construction standards and techniques published pursuant to section 305.

“(18) Financial assistance to conduct surveys to improve the precision of priority radon areas.”

(c) PREFERENCE TO CERTAIN STATES.—Section 307(d) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(1) by striking “1991” and inserting “1993”; and

(2) by inserting before the period “, or have adopted equally effective standards”.

(d) FEDERAL SHARE.—Section 307(f) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by striking “in the third year” and inserting “in each succeeding year”.

(e) ASSISTANCE TO LOCAL GOVERNMENTS.—Section 307(g) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(1) by striking “and (6)” and inserting “(6), (11), (12), (14), (15), and (16),”; and

(2) by inserting “(1)” after “GOVERNMENTS.—”; and

(3) by adding at the end the following new paragraph:

“(2) Any remediation plans for reducing radon in school buildings implemented pursuant to this section shall be reviewed for consistency with EPA guidance by the school officials responsible for authorizing these types of structural changes.”

(f) INFORMATION.—Section 307(h) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new paragraph:

“(4) Any State receiving funds under this section shall investigate consumer complaints about radon services that violate the Environmental Protection Agency or State radon proficiency program. An appropriate official of the State shall advise the Administrator of any person who violates the requirements of section 314.”

(g) AUTHORIZATION.—Section 307(j) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by striking paragraph (5).

SEC. 9. RADON IN SCHOOLS.

Section 308 of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new subsections:

“(c) GUIDELINES.—(1) Not later than one year after the date of enactment of this subsection, the Administrator shall publish guidelines on testing for and remediating radon in school buildings.

“(2) After the publication of guidelines pursuant to this subsection, testing and remediation carried out pursuant to this section shall be conducted in a manner consistent with such guidelines.

“(3) Any radon testing or remediation of school buildings conducted prior to the publication of guidelines pursuant to this subsection shall be considered to meet the requirements of this section if the testing or remediation is conducted in a manner consistent with any interim guidance published by the Administrator or by a State (in any case where the Administrator determines that such guidelines are substantially consistent with the guidelines published under this subsection).

“(d) REQUIREMENT FOR RADON TESTING.—(1) Not later than two years after the designation by the Administrator of an area as a priority radon area, each local educational agency located in whole or in part in such designated area shall conduct tests for radon in each school building owned or operated by the local educational agency.

“(2) The Administrator may extend the schedule for testing for radon pursuant to this subsection to the date two years from the date of publication of testing guidelines pursuant to subsection (c).

“(3) The results of any tests conducted pursuant to this section by a local educational agency shall be available for public review in the administrative offices of the local educational agency during normal business hours. The local educational agency shall no-

tify parent, teacher, and employee organizations of such results and shall send the results to the Administrator and the agency of the State that implements radon programs.

"(4) Any radon testing conducted pursuant to this section shall be supervised by a person who has received instruction pursuant to an Environmental Protection Agency or equivalent State approved program, as determined by the Administrator, and shall use radon measurement devices and methods approved by the radon proficiency program established pursuant to sections 306(a)(2) and 314."

SEC. 10. REGIONAL RADON TRAINING CENTERS.

Section 309(b) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new sentence: "The regional radon training centers are authorized to provide training to State and local building code officials, contractors, and others in the building community, on the model construction standards and techniques published pursuant to section 305."

SEC. 11. FEDERAL BUILDINGS.

Section 310 of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by adding at the end the following new subsection:

"(g) RADON ASSESSMENT AND MITIGATION PLAN.—(1) Not later than January 1, 1994, the Administrator shall submit to Congress a plan describing activities to be undertaken by appropriate Federal agencies to assess and mitigate radon in Federal buildings.

"(2) The Administrator shall consult with the heads of affected Federal agencies in the development of the plan required pursuant to this subsection.

"(3) The plan required pursuant to this subsection shall, at a minimum—

"(A) include a list of each Federal building and an indication of the results of any radon tests for such buildings conducted to date;

"(B) specify those Federal buildings for which assessment and mitigation will be undertaken on an expedited basis based on consideration of—

"(i) the radon levels in the buildings;

"(ii) the number of people exposed to high radon levels; and

"(iii) the susceptibility of the building to mitigation.

"(C) specify the schedule for mitigation in each building in which radon levels exceed the target action level specified in section 303(b)(1)(C); and

"(D) specify the Federal agency responsible for the building, the estimated costs of mitigation, and the source of funds for assessment and mitigation actions.

"(4) At a minimum, each Federal agency that is responsible for Federal buildings shall assure that—

"(A) all schools and residences are assessed to determine radon levels by not later than January 1, 1996;

"(B) all other Federal buildings are assessed to determine radon levels by not later than January 1, 1998; and

"(C) in the case of a Federal building with radon levels above the target action point established by the Administrator pursuant to section 304(b)(1)(C), measures designed to achieve radon levels at or below the target action point are implemented by not later than two years after the applicable deadline for assessment specified in this paragraph.

"(5) In implementing radon assessment and mitigation activities, Federal agencies shall employ as contractors private firms certified by the Administrator as proficient pursuant to section 306(a)(2).

"(6) Not later than two years after the submission of the plan required pursuant to this subsection, the Administrator shall submit to Congress a report on actions taken to implement the plan."

SEC. 12. RADON INFORMATION.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 4 of this Act) is further amended by adding at the end the following new section:

"SEC. 313. RADON-RELATED INFORMATION.

"(a) INFORMATION DOCUMENT.—(1) Not later than 180 days following the date of enactment of this section, the Administrator, in consultation with the Secretary of Housing and Urban Development, national organizations that represent State and local housing agencies (including public housing agencies), real estate groups and real estate financial institutions, citizen groups, and other groups that the Administrator determines to be appropriate, shall develop a written document containing radon-related information.

"(2) The document shall include, at a minimum—

"(A) information indicating the health risk associated with different levels of radon exposure consistent with the health information in the citizen's guide;

"(B) information regarding the advisability of undertaking measures to mitigate dangerous levels of radon;

"(C) information regarding appropriate Federal and State agencies that can provide further information on the health risk from radon, and a list of firms or other entities approved by the Environmental Protection Agency for purposes of radon detection and mitigation; and

"(D) recommended Environmental Protection Agency radon testing procedures that will provide quality and reliable measurements in conjunction with a real estate transaction.

"(3) A copy of such document shall be provided by every originating mortgage institution to each person from whom it receives or for whom it prepares a written application for an applicable mortgage loan. Such document shall be made available not later than five business days after such application is received or prepared.

"(4) No federally chartered secondary mortgage institution may purchase any mortgage loan originating twelve or more months after the date of enactment of this section unless such secondary mortgage institution requires, by contract or otherwise, that the originating mortgage institution shall comply with the radon information distribution requirements imposed under this section, in originating mortgages to be purchased by such secondary mortgage market institution.

"(5) For purposes of this section, a document may be printed and distributed by each originating mortgage institution if the form and content of the document meet the requirements of this section and the document is approved by the Administrator.

"(b) VALIDITY OF CONTRACTS AND LIENS.—Nothing in this section shall affect the validity or enforceability of any sale or contract for the sale of residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with an applicable mortgage loan.

"(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall annul, alter, affect, or exempt any person subject to this section from complying with the laws of any State with respect to the provision of radon-related information, except to the extent that the Administrator determines that any such law

is inconsistent with this section, and then only to the extent of the inconsistency."

SEC. 13. MANDATORY RADON PROFICIENCY PROGRAM.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 12 of this Act) is further amended by adding at the end the following new section:

"SEC. 314. MANDATORY RADON PROFICIENCY PROGRAM.

"(a) MANDATORY PARTICIPATION.—Effective two years after the date of the enactment of this section, no person shall offer radon measurement devices or radon measurement or mitigation services to the public unless such person has successfully completed the Environmental Protection Agency's radon proficiency program, or appropriate portions thereof.

"(b) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to apply to governmental units or nonprofit organizations that provide a radon service for their own use and do not provide that service for commercial purposes.

"(c) DELEGATION TO STATES.—(1) The Administrator shall administer the mandatory proficiency program in a manner consistent with the Guidance to States on Radon Certification of the Environmental Protection Agency.

"(2) The Administrator is authorized to enter into any agreement or other arrangement with any State for the purpose of delegating its radon proficiency program, including enforcement provisions, or any other part thereof, to such State, provided that a State program is consistent with the Federal program.

"(d) PROHIBITED ACTS.—It shall be unlawful for any person to—

"(1) fail or refuse to comply with this section, or any rule or regulation promulgated or order issued pursuant to this section; or

"(2) fail or refuse to—

"(A) establish or maintain records as required by the Administrator or by a State where the Administrator has entered into an agreement or other arrangement under subsection (c);

"(B) submit reports, notices, or other information, as required by the Administrator or by a State where the Administrator has entered into an agreement or other arrangement under subsection (c);

"(C) permit entry or inspection by the Administrator, or by a State where the Administrator has entered into an agreement or other arrangement under subsection (c); or

"(D) permit access to or copying of records by a State where the Administrator has entered into an agreement or other arrangement under subsection (c)."

SEC. 14. MEDICAL COMMUNITY OUTREACH.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 13 of this Act) is further amended by adding at the end the following new section:

"SEC. 315. MEDICAL COMMUNITY OUTREACH.

"(a) IN GENERAL.—The Administrator, in cooperation with the Secretary of Health and Human Services, shall develop and implement an outreach program to provide information about radon to the medical community.

"(b) INFORMATION.—(1) The Administrator, in consultation with the Secretary of Health and Human Services, the Surgeon General, and the Director of the Centers for Disease Control shall develop informational material concerning radon tailored to doctors in general practice and in specialties related to lung cancer. Such information shall, at a minimum—

"(A) explain the health threats posed by exposure to radon and include a summary of scientific evidence that demonstrates the human health effects of exposure to radon;

"(B) explain the association of radon with smoking and other causes of lung cancer;

"(C) identify appropriate steps to take to determine exposure to radon in the home; and

"(D) identify sources of additional information.

"(2) Not later than one year after the date of enactment of this section, the Administrator shall transmit the information developed pursuant to this section to—

"(A) doctors in the United States in general practice;

"(B) doctors in specialties related to lung cancer;

"(C) all doctors employed by the Federal Government;

"(D) all hospital administrators; and

"(E) other physicians and officials determined by the Administrator to be appropriate.

"(c) REPORT.—Not later than two years after the date of enactment of this section, the Administrator, in consultation with the Secretary of Health and Human Services, shall report to Congress concerning the implementation of this section and recommendations for measures to improve radon information dissemination to the medical community."

SEC. 15. FEDERAL HOUSING.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 14 of this Act) is further amended by adding at the end the following new section:

"SEC. 316. FEDERALLY OWNED AND ASSISTED HOMES, SCHOOLS, AND BUILDINGS.

"(a) FEDERALLY FUNDED CONSTRUCTION.—Not later than six months after the publication of priority radon areas required by section 303, or the publication of model construction standards required by section 305, whichever is later, the head of each Federal agency shall adopt such procedures as may be necessary to assure that any new Federal building or that any school constructed with Federal financial assistance, in a priority radon area, shall conform to the model construction standards required by section 305.

"(b) FEDERALLY ASSISTED HOUSING.—The Secretary of Housing and Urban Development, in cooperation with the Administrator, shall, not later than one year after the date of enactment of this Act, disseminate in priority radon areas information on the health threats posed by radon, proper methods of testing for radon, and techniques for mitigating elevated radon levels to public housing agencies and Indian housing authorities, as defined in paragraphs (6) and (11), respectively, of section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), and to owners and managers of other housing assisted under other provisions of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and the National Housing Act (12 U.S.C. 1701 et seq.).

"(c) RESEARCH.—The Secretary of Housing and Urban Development shall undertake a program of radon research, consisting of research on—

"(1) radon distribution and mitigation within multiunit residential structures in conjunction with the Administrator;

"(2) landlord liability;

"(3) predicting radon hazards in new multiunit residential structures on particular lands; and

"(4) such other research as both the Secretary of Housing and Urban Development

and the Administrator consider appropriate."

SEC. 16. NATIONAL RADON EDUCATIONAL EFFORTS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 15 of this Act) is further amended by adding at the end the following new section:

"SEC. 317. NATIONAL RADON EDUCATIONAL CAMPAIGN.

"The Administrator shall establish a national education campaign and is authorized to enter into cooperative agreements to increase public awareness about radon health risks and motivate public action to reduce radon levels, including the use of funds for the purchase and production of public educational materials."

SEC. 17. RADON IN WORK PLACES.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 16 of this Act) is further amended by adding at the end the following new section:

"SEC. 318. RADON IN WORK PLACES.

"(a) STUDY OF RADON IN WORK PLACES.—

"(1) AUTHORITY.—The Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services, in consultation with the Administrator, shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's work places.

"(2) SURVEY.—In conducting such study, the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services and the Administrator shall be jointly responsible for designing a survey that, when completed, allows Congress to characterize the extent of radon contamination in work places. The survey shall include testing from a representative sample of work places in each priority radon area and shall include additional testing, to the extent resources are available for such testing.

"(3) REPORT.—Not later than two years after the date of enactment of this Act, the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services, in consultation with the Administrator, shall submit a report setting forth the results of the study conducted pursuant to this section.

"(b) AUTHORIZATION.—For the purpose of carrying out this section there are authorized to be appropriated such sums, not to exceed \$2,000,000, as may be necessary."

SEC. 18. PREEMPTION.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 17 of this Act) is further amended by adding at the end the following new section:

"SEC. 319. PREEMPTION.

"(a) CONSTRUCTION OF PROVISIONS AS NOT PREEMPTING OTHER LAWS.—Nothing in this title shall be construed, interpreted, or applied to preempt, displace, or supplant any other Federal or State law, whether statutory or common.

"(b) AWARD OF COSTS AND DAMAGE AWARDS.—Nothing in this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the testing or mitigation of radon contamination, or a portion of such costs, at any time.

"(c) CONSTRUCTION OF PROVISIONS AS NOT PROHIBITING MORE STRINGENT STATE REQUIREMENTS.—Nothing in this title shall be construed or interpreted as preempting a State, with respect to radon within such State, from establishing any liability or more stringent requirement that is equal to

or more stringent than those included in this title.

"(d) CREATION OF CAUSE OF ACTION.—Nothing in this title creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

"(e) EFFECT OF PROVISIONS IN CIVIL ACTIONS FOR DAMAGES.—It is not the intent of Congress that this subsection, or rules, regulations, or orders issued pursuant to this subsection, be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to radon. This subsection does not affect the authority of any court to make a determination in any adjudicatory proceedings under applicable State law with respect to the admission into evidence or any other use of this title or rules, regulations, or orders issued pursuant to this title."

SEC. 19. ENFORCEMENT.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 18 of this Act) is further amended by adding at the end the following new section:

"SEC. 320. ENFORCEMENT.

"(a) CIVIL PENALTIES.—(1) Any person violating section 313 or 314 or who provides false information concerning compliance with section 305(f) to an appropriate Federal official, shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

"(2)(A) A civil penalty under this section shall be assessed by the Administrator by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order and provide such person an opportunity to request, not later than 15 days after the date the notice is received by such person, a hearing on the order.

"(B) In determining the amount of a civil penalty, the Administrator may take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"(C) The Administrator may compromise, modify, remit, with or without conditions, any civil penalty that may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the firm charged.

"(3) Any person who requested a hearing under this section respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3); or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(b) COMPLIANCE ORDERS.—(1) If the Administrator finds on the basis of information made available, that any person, firm, or organization is in violation of this Act, the Administrator shall proceed under the authority under subsection (2) of this section, or notify the person, firm, or organization in which the violation occurred. If, beyond the thirtieth day after the notification of the Administrator, the State has not commenced appropriate enforcement action, the Administrator may issue an order requiring compliance or such other relief as the Administrator may find appropriate, or bring civil action in accordance with paragraph (4) of this subsection.

"(2) If the Administrator finds, on the basis of information made available, that any person, firm, or organization is in violation of requirements of the Act, the Administrator may issue an order requiring such person, firm, or organization to comply with such requirement or such other relief as the Administrator may find appropriate, or shall bring civil action in accordance with paragraph (4) of this subsection.

"(3) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days. Such orders shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

"(4) The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, of any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States in the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain the violation and require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State."

SEC. 20. CITIZEN SUITS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) (as amended by section 19 of this Act) is further amended by adding at the end the following new section:

"SEC. 321. CITIZEN SUITS.

"(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action—

"(1) against the United States in any case where the United States is alleged to be in violation of section 305(f), 310, or 316, or any rule promulgated thereunder, to restrain such violation;

"(2) against any person who is alleged to be in violation of section 308, 313, or 314, or any rule promulgated thereunder, to restrain such violation; or

"(3) against the Administrator to compel the Administrator to perform any act or duty under this Act that is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or

in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection, process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

"(b) LIMITATION.—No civil action may be commenced—

"(1) under subsection (a)(1) to restrain a violation of this Act, or rule or order under this Act—

"(A) before the expiration of sixty days after the plaintiff has given notice of such violation—

"(i) to the Administrator; and

"(ii) to the person who is alleged to have committed such violation; or

"(B) if the Administrator has commenced and is diligently prosecuting a proceeding to require compliance with this Act or with such rule or order, or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this Act or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

"(2) under subsection (a)(2) before the expiration of sixty days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty that is the basis for such action.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

"(c) IN GENERAL.—(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

"(2) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

"(3) Nothing in this section shall restrict any right that any person (or class of persons) may have under any statute or common law to seek enforcement of this Act, or any rule or order under this Act, or to seek any other relief.

"(d) CONSOLIDATION.—When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions that is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

"(1) a district that is selected by such defendant and in which one of such actions is pending;

"(2) a district that is agreed upon by stipulation between all the parties to such actions

and in which one of such actions is pending; or

"(3) a district that is selected by the court and in which one of such actions is pending. The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending."

SEC. 21. AUTHORIZATIONS OF APPROPRIATIONS.

(a) TECHNICAL ASSISTANCE.—Section 306(f) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by striking "and 1991." and inserting "1991, 1992, 1993, 1994, and 1995."

(b) GRANT ASSISTANCE.—Section 307(j)(1) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by inserting before the period "," and "\$15,000,000 for each of fiscal years 1992, 1993, 1994, and 1995."

(c) SCHOOL REMEDIATION.—Section 307(j) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(1) by striking paragraph (5); and

(2) by adding at the end the following new paragraphs:

"(5) Of funds appropriated pursuant to this subsection for fiscal years 1992, 1993, 1994, and 1995, not more than one-third shall be used to implement radon remediation measures for local educational agencies pursuant to paragraphs (15) and (16) of subsection (c).

"(6) Of funds appropriated pursuant to this subsection for fiscal years 1992, 1993, 1994, and 1995, the Administrator may reserve an amount up to 2 percent or \$200,000, whichever is the greater, for the purposes of making grants to local educational agencies for the implementation of measures to reduce radon levels: *Provided*, That any such local educational agency is prohibited by State law from receiving grant assistance from the State: *Provided further*, That the local educational agency provides not less than 50 percent of the cost of implementing such measures from non-Federal sources."

(d) REGIONAL TRAINING CENTERS.—Section 309(f) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended by inserting before the period "," and "\$1,500,000 for each of fiscal years 1992, 1993, 1994, and 1995."

SEC. 22. TECHNICAL AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in section 1 of the Toxic Substances Control Act (15 U.S.C. 2601 note) is amended—

(1) by redesignating the items relating to sections 303 through 311 as 304 through 312, respectively;

(2) by inserting after the item relating to section 302 the following new item:

"Sec. 303. Priority radon areas."; and

(3) by adding at the end the following new items:

"Sec. 313. Radon-related information.

"Sec. 314. Mandatory radon proficiency program.

"Sec. 315. Medical community outreach.

"Sec. 316. Federally owned and assisted homes, schools, and buildings.

"Sec. 317. National radon educational campaign.

"Sec. 318. Radon in work places.

"Sec. 319. Preemption.

"Sec. 320. Enforcement.

"Sec. 321. Citizens suits.

"Sec. 322. Periodic Reassessment of Health Risks."

(b) RADON MITIGATION DEMONSTRATION PROGRAM.—Section 118(k)(2) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note) is amended—

(1) in subparagraph (A)—
(A) by inserting "develop and" after "to"; and

(B) by adding at the end of the subparagraph the following new sentence: "The demonstration program shall include the development and evaluation of innovative low-cost techniques to reduce radon concentrations in existing structures, including structures with low to moderate radon levels, and in new structures, and the development and demonstration of radon mitigation technology for multistory buildings."

(2) by striking subparagraph (B); and
(3) by redesignating subparagraph (C) as subparagraph (B).

SEC. 23. REPORT TO CONGRESS ON PROMOTING RADON TESTING.

(a) EVALUATION.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Secretary of Veterans Affairs, shall evaluate existing efforts to promote radon testing in the Nation's homes and ways to increase radon testing.

(b) REPORT.—(1) The Administrator shall report to Congress by October 1, 1993, on the effectiveness of alternative strategies to promote radon testing. The strategies shall include—

- (A) grants to support the development of radon testing strategies by States;
- (B) financial incentives to homeowners;
- (C) testing and disclosure of radon levels during real estate marketing;
- (D) public education programs;
- (E) distributing radon information during real estate marketing; and
- (F) distributing radon information with utility bills.

(2) In preparing the report, the Administrator shall consult with concerned parties including public interest groups, health officials, radon testing industries, realtors, home builders, utilities and the States.

SEC. 24. PERIODIC REASSESSMENT OF HEALTH RISKS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 322. PERIODIC REASSESSMENT OF HEALTH RISKS.

The Administrator, in consultation with the heads of the National Academy of Sciences and the Centers for Disease Control, shall conduct a program to reassess, on a periodic basis, the human health risks associated with radon exposure."

SEC. 25. RADIONUCLIDES, PRIMARY DRINKING WATER REGULATIONS.

Prior to promulgating any national primary drinking water regulation for radionuclides under the Safe Drinking Water Act, the Administrator of the Environmental Protection Agency shall conduct a multimedia risk assessment of radon considering:

- (a) the relative risk of adverse human health effects associated with various pathways of exposure to radon; (b) the relative costs of controlling or mitigating exposure to radon from each pathway; and (c) the relative costs for radon control or mitigation experienced by households, communities and other entities including the costs experienced by small communities as the result of such regulation. Such an evaluation shall consider the risks posed by the treatment or disposal of any wastes produced by water treatment.

Upon completion of this risk assessment, the Administrator shall report his findings to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce. Nothing in this section shall modify or be the basis for an extension of any statutory or court-ordered deadline for the promulgation of such regulation.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I am aware that under the prior order the Senate is now to turn to the consideration of H.R. 4210. I ask unanimous consent that the Senator from Montana be recognized to address the Senate for 6 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, first I thank the distinguished majority leader and the distinguished chairman for making this time available.

CANADA LUMBER

Mr. BAUCUS. Mr. President, the United States Commerce Department announced last week that it would begin collecting a 14.5-percent duty on lumber imports from Canada to offset Canadian lumber subsidies.

I believe this determination is a vindication of the claims that the American lumber industry has made regarding Canadian subsidies. The decision will save the jobs of thousands of lumber mill workers and keep hundreds of American mills open.

As chairman of the Senate Finance Committee's International Trade Subcommittee, I have observed the workings of American trade laws for many years.

But I have never before witnessed such an egregious effort to bring outside political pressure to bear on a quasi-judicial decision as this.

The Canadian Federal Government, the Canadian provincial governments, and the Canadian lumber industry have hired at least 12 United States law firms and several lobbying firms to present their side of this issue to the United States Government and the press. All told, it is reported that Canada has spent more than \$20 million attempting to influence this decision.

In a highly inappropriate step, Canadian officials even met with the United States Secretary of State and the President's National Security Advisor to request their intervention in the Commerce Department deliberations.

The Canadian Embassy even saw fit to hold a press briefing to blast the Commerce Department's decision before it was announced.

I cannot hope to counter this torrent of Canadian spin control, but I would like to make four simple points that I believe are central to consideration of this issue.

CANADA BROKE ITS WORD

First, this entire countervailing duty proceeding was caused by Canada's decision to unilaterally terminate a trade agreement with the United States.

From 1986 until October 1991, Canada agreed that it did extend a subsidy to lumber producers and collected an export tax on lumber shipments to the United States to offset the subsidy.

Until the day it terminated the agreement, Canada effectively conceded that Canadian subsidies were continuing by collecting export taxes on lumber shipments from three of the four lumber-producing Provinces.

Had the agreement not been terminated by Canada, this dispute would not have arisen.

CANADA SUBSIDIZES LUMBER

Second, Canada continues to extend large and increasing subsidies to its lumber industry. In 1986, the Commerce Department made a similar preliminary ruling that Canadian lumber subsidies amounted to 15 percent of the value of Canadian lumber shipped to the United States.

The U.S. industry argued at the time that this figure was low. And since that time, Canadian lumber subsidies have risen.

Canada extends two separate subsidies to its lumber industries: artificially low stumpage payments and the log export ban.

Canada sells stumpage rights—the right to cut trees from government land—at a small fraction of the market value of those rates. Stumpage rights are extended to the Canadian timber industry for as little as one-tenth the market value of the lumber. Normally, stumpage rights are sold at about one-fourth to one-half of their market value.

Even a former Canadian Minister of Forests, Mr. Jack Kempf, has stated that: "Nothing basic has changed in British Columbia.*** Payment, for stumpage rights to the provincial treasury from the forest companies, is still unacceptably low."

The effect of this subsidy is to encourage more timber cutting in Canada and to allow the Canadian lumber industry to undersell its American competition by as much as 5 to 20 percent.

The issue of the subsidy provided by Canada's export ban on logs was not included in the 1986 subsidy calculation. But a recent economic analysis concluded that log export restrictions artificially limit demand for Canadian logs, lowers log prices, and amount to a subsidy of an additional 10-30 percent.

THE U.S. ACTION IS SANCTIONED BY
INTERNATIONAL LAW

Third, the countervailing duty on Canadian lumber in no way violates United States commitments under international trade agreements.

In fact, there is a subsidy code to the General Agreement on Tariffs and Trade that explicitly defines subsidies as an unfair trade practice and sanctions the imposition of duties to offset them.

The Canadian Free-Trade Agreement also explicitly sanctions such duties. But the Canadian Free-Trade Agreement is not relevant in this dispute; United States efforts to enforce Canada's commitment to collect an export tax is explicitly exempted from the FTA by article 2009 of that agreement. The dispute settlement panels established under the FTA have no jurisdiction over the softwood lumber issue.

But while criticizing the United States for violating its international obligations, Canada has threatened to counterretaliate against the United States. If carried out, such retaliation would in itself be a blatant violation of the GATT.

CANADA'S SUBSIDIES ARE A TRADE BARRIER

Finally, it is important to remember that the real trade barrier at issue here is not the United States duty, but the Canadian subsidies.

Subsidies are every bit as much a trade barrier as tariffs or quotas. And the right—in fact, responsibility—of the U.S. Government to offset these subsidies with countervailing duties is recognized under both U.S. and international law.

As the United States lumber industry has often said, if the Canadian Government wants the duty on Canadian timber eliminated it need only allow the free market to set timber prices.

CONCLUSION

The din of rhetoric from north of the border should not be allowed to distort one simple truth: Canada's unfair subsidies are threatening the jobs of 10,000 American lumber workers.

If Canada truly wants free trade in lumber, it need only end its subsidies and the United States will end its duties. But until that time the United States has no alternative but to offset Canadian timber subsidies.

I applaud the Commerce Department for a courageous and appropriate decision in the softwood lumber case.

Mr. President, I yield the floor and again thank the distinguished chairman of the committee for making this time available.

TAX FAIRNESS AND ECONOMIC
GROWTH ACT

The PRESIDING OFFICER (Mr. LIEBERMAN). Under the previous order the Senate will now proceed to the consideration of H.R. 4210 which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4210) to amend the Internal Revenue Code of 1986 to provide incentives for increased economic growth and to provide tax relief for families.

The Senate proceeded to consider the bill, which had been reported from the Committee on Finance, with an amendment to strike all after the enacting clause, and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992".

(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) SECTION 15 NOT TO APPLY.—No amendment made by this Act shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) UNDERPAYMENT OF ESTIMATED TAX.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for the 1st required installment beginning in 1992 with respect to any underpayment to the extent such underpayment was created or increased by any amendment made by this Act. Any reduction in an installment by reason of the preceding sentence shall be recaptured by increasing the amount of the 1st succeeding required installment by the amount of such reduction.

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

Sec. 1. Short title, etc.

TITLE I—FAIR TAX TREATMENT OF
WORKING FAMILIES

Sec. 1001. Tax credit for children.

Sec. 1002. Simplification and expansion of earned income tax credit.

Sec. 1003. Extension of targeted jobs credit.

TITLE II—PROMOTION OF LONG-TERM
ECONOMIC GROWTH

Subtitle A—Increased Savings

PART I—RETIREMENT SAVINGS INCENTIVES

SUBPART A—RESTORATION OF IRA DEDUCTION

Sec. 2001. Restoration of IRA deduction.

Sec. 2002. Inflation adjustment for deductible amount.

Sec. 2003. Coordination of IRA deduction limit with elective deferral limit.

SUBPART B—NONDEDUCTIBLE TAX-FREE IRAS

Sec. 2011. Establishment of nondeductible tax-free individual retirement accounts.

PART II—PENALTY-FREE DISTRIBUTIONS

Sec. 2021. Distributions from certain plans may be used without penalty to purchase first homes or to pay higher education or financially devastating medical expenses.

Sec. 2022. Contributions must be held at least 5 years in certain cases.

Subtitle B—Improved Educational Opportunities

PART I—INCOME DEPENDENT EDUCATION
ASSISTANCE

Sec. 2101. Income dependent education assistance.

Sec. 2102. Collection of loans.

PART II—WORKFORCE TRAINING

SUBPART A—STANDARDS OF EXCELLENCE IN
WORKFORCE TRAINING

Sec. 2111. Purpose.

Sec. 2112. Amendment to Wagner-Peyser Act.
SUBPART B—YOUTH SKILLS TRAINING AND
EDUCATION PARTNERSHIPS

Sec. 2113. Short title.

Sec. 2114. Tax exemption for contributions to youth skills training and education partnerships.

Sec. 2115. Augmented deduction for youth skills training and education contributions by businesses.

SUBPART C—STUDY

Sec. 2116. Joint Labor Department and Treasury Department study.

PART III—OTHER EDUCATION INCENTIVES

Sec. 2121. Credit for interest on education loans.

Sec. 2122. Income exclusion for education bonds expanded.

Sec. 2123. Employer-provided educational assistance.

Sec. 2124. Disclosures of information for veterans benefits.

Subtitle C—Better Access to Affordable Health
Care

PART I—IMPROVEMENTS IN HEALTH INSURANCE
AFFORDABILITY FOR SMALL EMPLOYERS

Sec. 2201. Increase in deductible health insurance costs for self-employed individuals.

Sec. 2202. Grants to States for small employer health insurance purchasing programs.

Sec. 2203. Study of use of Medicare rates by private health insurance plans.

PART II—IMPROVEMENTS IN HEALTH INSURANCE
FOR SMALL EMPLOYERS

SUBPART A—STANDARDS AND REQUIREMENTS OF
SMALL EMPLOYER HEALTH INSURANCE REFORM

Sec. 2211. Standards and requirements of small employer health insurance.

SUBPART B—TAX PENALTY ON NONCOMPLYING
INSURERS

Sec. 2221. Excise tax on premiums received on health insurance policies which do not meet certain requirements.

SUBPART C—STUDIES AND REPORTS

Sec. 2231. GAO study and report on rating requirements and benefit packages for small group health insurance.

PART III—IMPROVEMENTS IN PORTABILITY OF
PRIVATE HEALTH INSURANCE

Sec. 2241. Excise tax imposed on failure to provide for preexisting condition.

PART IV—HEALTH CARE COST CONTAINMENT

Sec. 2251. Establishment of health care cost commission.

Sec. 2252. Federal certification of managed care plans and utilization review programs.

Sec. 2253. Additional funding for outcomes research.

PART V—MEDICARE PREVENTION BENEFITS

Sec. 2261. Coverage of certain immunizations.

Sec. 2262. Coverage of well-child care.

Sec. 2263. Demonstration projects for coverage of other preventive services.

Sec. 2264. OTA study of process for review of Medicare coverage of preventive services.

Sec. 2265. Financing of additional benefits.

PART VI—OZONE-DEPLETING CHEMICALS

Sec. 2271. Increased base tax rate on ozone-depleting chemicals and expansion of list of taxed chemicals.

PART VII—HEALTH CARE OF COAL MINERS

Sec. 2281. Short title.

Sec. 2282. Findings and declaration of policy.

Sec. 2283. Coal industry health benefits program.

Subtitle D—Capital Gain Provisions
PART I—PROGRESSIVE CAPITAL GAIN RATES
 Sec. 2301. Progressive capital gain rates.
 Sec. 2302. Increase in holding period required for long-term capital gain treatment.
 Sec. 2303. Recapture under section 1250 of total amount of depreciation.

PART II—SMALL BUSINESS STOCK
 Sec. 2311. 50-percent exclusion for gain from certain small business stock.

Subtitle E—Investment in Real Estate
PART I—FIRST-TIME HOMEBUYER CREDIT
 Sec. 2401. Credit for purchase of new principal residence by first-time homebuyer.

PART II—MODIFICATION OF PASSIVE LOSS RULES
 Sec. 2411. Modification of passive loss rules.

PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS
 Sec. 2421. Real estate property acquired by a qualified organization.
 Sec. 2422. Special rules for investments in partnerships.
 Sec. 2423. Title-holding companies permitted to receive small amounts of unrelated business taxable income.
 Sec. 2424. Exclusion from unrelated business tax of gains from certain property.
 Sec. 2425. Exclusion from unrelated business tax of certain fees and option premiums.
 Sec. 2426. Exclusion from unrelated business tax of certain hotel rental income.

PART IV—OTHER PROVISIONS
 Sec. 2431. Increase in recovery period for real property.
 Sec. 2432. Low-income housing credit.
 Sec. 2433. Qualified mortgage bonds.

Subtitle F—Other Incentives
PART I—SPECIAL DEPRECIATION ALLOWANCE
 Sec. 2501. Special depreciation allowance for certain equipment acquired in 1992.

PART II—MODIFICATIONS TO MINIMUM TAX
 Sec. 2502. Temporary repeal of preference for contributions of appreciated property.
 Sec. 2503. Minimum tax treatment of certain energy preferences.
 Sec. 2504. Elimination of ACE depreciation adjustment.

PART III—EXTENSION OF OTHER EXPIRING TAX PROVISIONS
 Sec. 2505. Extension of research credit.
 Sec. 2506. Extension of small issue bonds.
 Sec. 2507. Extension of energy investment credit for solar and geothermal property.
 Sec. 2508. Excise tax on certain vaccines.
 Sec. 2509. Certain transfers to Railroad Retirement Account.
 Sec. 2510. Extension of tax credit for orphan drug clinical testing expenses.

PART IV—REPEAL OF CERTAIN LUXURY EXCISE TAXES; TAX ON DIESEL FUEL USED IN NON-COMMERCIAL MOTORBOATS
 Sec. 2511. Repeal of luxury excise taxes other than on passenger vehicles.
 Sec. 2512. Tax on diesel fuel used in non-commercial motorboats.

PART V—OTHER PROVISIONS
 Sec. 2513. Treatment of employer-provided transportation benefits.
 Sec. 2514. Tariff classification of light trucks.

TITLE III—PAYMENT OF FAIR SHARE BY HIGH-INCOME TAXPAYERS
 Subtitle A—Treatment of Wealthy Individuals
 Sec. 3001. Increase in top marginal rate under section 1.

Sec. 3002. Surtax on individuals with incomes over \$1,000,000.
 Sec. 3003. Extension of overall limitation on itemized deductions for high-income taxpayers.
 Sec. 3004. Extension of phaseout of personal exemption of high-income taxpayers.
 Sec. 3005. Mark to market inventory method for securities dealers.
 Sec. 3006. Disallowance of deduction for certain employee remuneration in excess of \$1,000,000.

Subtitle B—Administrative Provisions
 Sec. 3101. Individual estimated tax provisions.
 Sec. 3102. Corporate estimated tax provisions.
 Sec. 3103. Disallowance of interest on certain overpayments of tax.

TITLE IV—SIMPLIFICATION PROVISIONS
 Subtitle A—Provisions Relating to Individuals
 Sec. 4101. Simplification of rules on rollover of gain on sale of principal residence in case of divorce.
 Sec. 4102. Payment of tax by credit card.
 Sec. 4103. Modifications to election to include child's income on parent's return.
 Sec. 4104. Simplified foreign tax credit limitation for individuals.
 Sec. 4105. Treatment of personal transactions by individuals under foreign currency rules.
 Sec. 4106. Exclusion of combat pay from withholding limited to amount excludable from gross income.
 Sec. 4107. Expanded access to simplified income tax returns.
 Sec. 4108. Treatment of certain reimbursed expenses of rural mail carriers.
 Sec. 4109. Exemption from luxury excise tax for certain equipment installed on passenger vehicles for use by disabled individuals.

Subtitle B—Pension Simplification
PART I—SIMPLIFIED DISTRIBUTION RULES
 Sec. 4201. Taxability of beneficiary of qualified plan.
 Sec. 4202. Simplified method for taxing annuity distributions under certain employer plans.
 Sec. 4203. Qualified plans must provide for transfers of certain distributions to other plans.
 Sec. 4204. Required distributions.

PART II—INCREASED ACCESS TO PENSION PLANS
 Sec. 4211. Modifications of simplified employee pensions.
 Sec. 4212. Tax exempt organizations eligible under section 401(k).
 Sec. 4213. Duties of sponsors of certain prototype plans.

PART III—NONDISCRIMINATION PROVISIONS
 Sec. 4221. Definition of highly compensated employees.
 Sec. 4222. Election to treat base pay as compensation.
 Sec. 4223. Modification of additional participation requirements.
 Sec. 4224. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.

PART IV—MISCELLANEOUS SIMPLIFICATION
 Sec. 4231. Treatment of leased employees.
 Sec. 4232. Elimination of half-year requirements.
 Sec. 4233. Modifications of cost-of-living adjustments.
 Sec. 4234. Plans covering self-employed individuals.
 Sec. 4235. Full-funding limitation of multiemployer plans.
 Sec. 4236. Alternative full-funding limitation.

Sec. 4237. Distributions under rural cooperative plans.
 Sec. 4238. Treatment of governmental plans.
 Sec. 4239. Use of excess assets of black lung benefit trusts for health care benefits.
 Sec. 4240. Reports of pension and annuity payments.
 Sec. 4241. Contributions on behalf of disabled employees.
 Sec. 4242. Affiliated employers.
 Sec. 4243. Disaggregation of union plans.
 Sec. 4244. Uniform retirement age.
 Sec. 4245. Special rules for plans covering pilots.
 Sec. 4246. National commission on private pension plans.
 Sec. 4247. Date for adoption of plan amendments.

Subtitle C—Treatment of Large Partnerships
PART I—GENERAL PROVISIONS
 Sec. 4301. Simplified flow-through for large partnerships.
 Sec. 4302. Simplified audit procedures for large partnerships.
 Sec. 4303. Due date for furnishing information to partners of large partnerships.
 Sec. 4304. Returns may be required on magnetic media.
 Sec. 4305. Effective date.

PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS
 Sec. 4311. Treatment of partnership items in deficiency proceedings.
 Sec. 4312. Partnership return to be determinative of audit procedures to be followed.
 Sec. 4313. Provisions relating to statute of limitations.
 Sec. 4314. Expansion of small partnership exception.
 Sec. 4315. Exclusion of partial settlements from 1 year limitation on assessment.
 Sec. 4316. Extension of time for filing a request for administrative adjustment.
 Sec. 4317. Availability of innocent spouse relief in context of partnership proceedings.
 Sec. 4318. Determination of penalties at partnership level.
 Sec. 4319. Provisions relating to court jurisdiction, etc.
 Sec. 4320. Treatment of premature petitions filed by notice partners or 5-percent groups.
 Sec. 4321. Bonds in case of appeals from TEFRA proceeding.
 Sec. 4322. Suspension of interest where delay in computational adjustment resulting from TEFRA settlements.

Subtitle D—Foreign Provisions
PART I—SIMPLIFICATION OF TREATMENT OF PASSIVE FOREIGN CORPORATIONS
 Sec. 4401. Repeal of foreign personal holding company rules and foreign investment company rules.
 Sec. 4402. Replacement for passive foreign investment company rules.
 Sec. 4403. Technical and conforming amendments.
 Sec. 4404. Effective date.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS
 Sec. 4411. Gain on certain stock sales by controlled foreign corporations treated as dividends.
 Sec. 4412. Authority to prescribe simplified method for applying section 960(b)(2).
 Sec. 4413. Miscellaneous modifications to subpart F.

PART III—OTHER PROVISIONS
 Sec. 4421. Exchange rate used in translating foreign taxes.

- Sec. 4422. Election to use simplified section 904 limitation for alternative minimum tax.
- Sec. 4423. Modification of section 1491.
- Sec. 4424. Modification of section 367(b).
- Subtitle E—Other Income Tax Provisions
- PART I—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS
- Sec. 4501. Determination of whether corporation has 1 class of stock.
- Sec. 4502. Authority to validate certain invalid elections.
- Sec. 4503. Treatment of distributions during loss years.
- Sec. 4504. Other modifications.
- PART II—ACCOUNTING PROVISIONS
- Sec. 4511. Modifications to look-back method for long-term contracts.
- Sec. 4512. Simplified method for capitalizing certain indirect costs.
- PART III—TAX-EXEMPT BOND PROVISIONS
- Sec. 4521. Repeal of \$100,000 limitation on unspent proceeds under 1-year exception from rebate.
- Sec. 4522. Exception from rebate for earnings on bona fide debt service fund under construction bond rules.
- Sec. 4523. Automatic extension of initial temporary period for construction issues.
- Sec. 4524. Aggregation of issues rules not to apply to tax or revenue anticipation bonds.
- Sec. 4525. Allocation of interest expense of financial institutions to tax-exempt interest.
- Sec. 4526. Tax treatment of 501(c)(3) bonds similar to governmental bonds.
- Sec. 4527. Authority to terminate required inclusion of tax-exempt interest on return.
- Sec. 4528. Repeal of expired provisions.
- Sec. 4529. Effective date.
- PART IV—ELECTION OF ALTERNATIVE TAXABLE YEARS
- Sec. 4531. Election of taxable year other than required taxable year.
- Sec. 4532. Required payments for entities electing not to have required taxable year.
- Sec. 4533. Limitation on certain amounts paid to employee-owners of personal service corporations.
- Sec. 4534. Effective date.
- PART V—COOPERATIVES
- Sec. 4541. Treatment of certain loan requirements.
- Sec. 4542. Cooperative service organizations for certain foundations.
- Sec. 4543. Treatment of certain amounts received by a cooperative telephone company.
- Sec. 4544. Tax treatment of cooperative housing corporations.
- Sec. 4545. Treatment of safe harbor leases involving rural electric cooperatives.
- PART VI—EMPLOYMENT
- Sec. 4551. Credit for portion of employer social security taxes paid with respect to employee cash tips.
- Sec. 4552. Elimination of deduction for club membership fees.
- Sec. 4553. Clarification of employment tax status of certain fisherman.
- PART VII—OTHER PROVISIONS
- Sec. 4561. Closing of partnership taxable year with respect to deceased partner.
- Sec. 4562. Repeal of special treatment of ownership changes in determining adjusted current earnings.
- Sec. 4563. Authorization for Bureau of Land Management use of Reforestation Trust Fund.
- Sec. 4564. Repeal of investment restrictions applicable to nuclear decommissioning funds.
- Sec. 4565. Modification of credit for producing fuel from a nonconventional source.
- Subtitle F—Estate And Gift Tax Provisions
- Sec. 4601. Clarification of waiver of certain rights of recovery.
- Sec. 4602. Adjustments for gifts within 3 years of decedent's death.
- Sec. 4603. Clarification of qualified terminable interest rules.
- Sec. 4604. Treatment of portions of property under marital deduction.
- Sec. 4605. Transitional rule under section 2056a.
- Sec. 4606. Opportunity to correct certain failures under section 2032a.
- Sec. 4607. Repeal of certain throwback rules applicable to domestic trusts.
- Subtitle G—Excise Tax Simplification
- PART I—FUEL TAX PROVISIONS
- Sec. 4701. Repeal of certain retail and use taxes.
- Sec. 4702. Revision of fuel tax credit and refund procedures.
- Sec. 4703. Authority to provide exceptions from information reporting with respect to diesel fuel and aviation fuel.
- Sec. 4704. Technical and conforming amendments.
- Sec. 4705. Effective date.
- PART II—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER
- Sec. 4711. Credit or refund for imported bottled distilled spirits returned to distilled spirits plant.
- Sec. 4712. Authority to cancel or credit export bonds without submission of records.
- Sec. 4713. Repeal of required maintenance of records on premises of distilled spirits plant.
- Sec. 4714. Fermented material from any brewery may be received at a distilled spirits plant.
- Sec. 4715. Repeal of requirement for wholesale dealers in liquors to post sign.
- Sec. 4716. Refund of tax to wine returned to bond not limited to unmerchantable wine.
- Sec. 4717. Use of additional ameliorating material in certain wines.
- Sec. 4718. Domestically-produced beer may be withdrawn free of tax for use of foreign embassies, legations, etc.
- Sec. 4719. Beer may be withdrawn free of tax for destruction.
- Sec. 4720. Authority to allow drawback on exported beer without submission of records.
- Sec. 4721. Transfer to brewery of beer imported in bulk without payment of tax.
- PART III—OTHER EXCISE TAX PROVISIONS
- Sec. 4731. Authority to grant exemptions from registration requirements.
- Sec. 4732. Small manufacturers exempt from firearms excise tax.
- Sec. 4733. Repeal of expired provisions.
- Subtitle H—Administrative Provisions
- PART I—GENERAL PROVISIONS
- Sec. 4801. Simplification of deposit requirements for social security, railroad retirement, and withheld income taxes.
- Sec. 4802. Simplification of employment taxes on domestic services.
- Sec. 4803. Use of reproductions of returns stored in digital image format.
- Sec. 4804. Repeal of authority to disclose whether prospective juror has been audited.
- Sec. 4805. Repeal of special audit provisions for subchapter S items.
- Sec. 4806. Clarification of statute of limitations.
- PART II—TAX COURT PROCEDURES
- Sec. 4811. Overpayment determinations of Tax Court.
- Sec. 4812. Awarding of administrative costs.
- Sec. 4813. Redetermination of interest pursuant to motion.
- Sec. 4814. Application of net worth requirement for awards of litigation costs.
- PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS
- Sec. 4821. Cooperative agreements with State tax authorities.
- TITLE V—TAXPAYER BILL OF RIGHTS
- Sec. 5000. Short Title.
- Subtitle A—Taxpayer Advocate
- Sec. 5001. Establishment of position of Taxpayer Advocate within Internal Revenue Service.
- Sec. 5002. Expansion of authority to issue taxpayer assistance orders.
- Subtitle B—Modifications to Installment Agreement Provisions
- Sec. 5101. Notification of reasons for termination or denial of installment agreements.
- Sec. 5102. Administrative review of denial of request for, or termination of, installment agreement.
- Subtitle C—Interest
- Sec. 5201. Expansion of authority to abate interest.
- Sec. 5202. Extension of interest-free period for payment of tax after notice and demand.
- Subtitle D—Joint Returns
- Sec. 5301. Requirement of separate deficiency notices in certain cases.
- Sec. 5302. Disclosure of collection activities.
- Sec. 5303. Joint return may be made after separate returns without full payment of tax.
- Sec. 5304. Representation of absent divorced or separated spouse by other spouse.
- Subtitle E—Collection Activities
- Sec. 5401. Notice of proposed deficiency.
- Sec. 5402. Modifications to lien and levy provisions.
- Sec. 5403. Offers-in-compromise.
- Sec. 5404. Notification of examination.
- Sec. 5405. Modification of certain limits on recovery of civil damages for unauthorized collection actions.
- Sec. 5406. Safeguards relating to designated summons.
- Subtitle F—Information Returns
- Sec. 5501. Phone number of person providing payee statements required to be shown on such statement.
- Sec. 5502. Civil damages for fraudulent filing of information returns.
- Sec. 5503. Requirement to verify accuracy of information returns.
- Subtitle G—Modifications to Penalty for Failure to Collect and Pay Over Tax
- Sec. 5601. Trust fund taxes.
- Sec. 5602. Disclosure of certain information where more than 1 person subject to penalty.
- Sec. 5603. Penalties under section 6672.
- Subtitle H—Awarding of Costs and Certain Fees
- Sec. 5701. Commencement date of reasonable administrative costs.
- Sec. 5702. Interim notice requirement.
- Sec. 5703. Increased limit on attorney fees.
- Sec. 5704. Failure to agree to extension not taken into account.
- Sec. 5705. Effective date.

Subtitle I—Other Provisions

- Sec. 5801. Required content of certain notices.
- Sec. 5802. Relief from retroactive application of Treasury Department regulations.
- Sec. 5803. Required notice of certain payments.
- Sec. 5804. Unauthorized enticement of information disclosure.

TITLE I—FAIR TAX TREATMENT OF WORKING FAMILIES

SEC. 1001. TAX CREDIT FOR CHILDREN.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to personal credits) is amended by inserting after section 25 the following new section:

“SEC. 25A. CREDIT FOR CHILDREN.

“(a) GENERAL RULE.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to \$300 multiplied by the number of qualifying children of the taxpayer for the taxable year.

“(b) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amount contained in subsection (a) shall be increased by an amount equal to—

“(1) such dollar amount, multiplied by

“(2) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting ‘calendar year 1991’ for ‘calendar year 1989’ in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

“(c) PHASE-OUT OF CREDIT FOR TAXPAYERS WITH INCOME OVER \$50,000.—

“(1) IN GENERAL.—In the case of an eligible individual with an adjusted gross income in excess of \$50,000 for any taxable year, the amount of the credit allowed under subsection (a) shall be reduced (but not below zero) by the amount determined under paragraph (2).

“(2) AMOUNT OF REDUCTION.—

“(A) IN GENERAL.—The amount determined under this paragraph equals the amount which bears the same ratio to the credit (determined without regard to this subsection) as—

“(i) the excess of—

“(I) the taxpayer’s adjusted gross income for such taxable, over

“(II) \$50,000, bears to

“(ii) \$20,000.

“(B) ROUNDING.—Any amount determined under this paragraph which is not a multiple of \$10 shall be rounded to the next lowest \$10.

“(3) ADJUSTED GROSS INCOME.—Adjusted gross income of any taxpayer shall be determined—

“(A) after application of sections 86 and 469, and

“(B) without regard to sections 135 and 911.

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ has the meaning given to such term by section 32(c)(1) (determined without regard to subparagraph (B)).

“(2) QUALIFYING CHILD.—The term ‘qualifying child’ has the meaning given to such term by section 32(c)(3), determined—

“(A) without regard to subparagraph (C)(ii) thereof, and

“(B) by substituting ‘16’ for ‘19’ in subparagraph (C)(iii) thereof.

“(3) CERTAIN OTHER RULES APPLY.—Subsections (d) and (e) of section 32 shall apply.”

(b) CONFORMING AMENDMENT.—The table of sections for such subpart A is amended by inserting after the item relating to section 25 the following new item:

“Sec. 25A. Credit for children.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 1002. SIMPLIFICATION AND EXPANSION OF EARNED INCOME TAX CREDIT.

(a) EARNED INCOME TAX CREDIT INCREASED.—Subparagraph (C) of section 32(b)(1) (relating to basic earned income credit) is amended to read as follows:

“(C) PERCENTAGES.—For purposes of this paragraph—

“(i) IN GENERAL.—Except as provided in clause (ii), the percentages shall be determined as follows:

“In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	23	16.43
2 or more qualifying children	26.75	19.10

“(ii) TRANSITION PERCENTAGES.—

“(I) For taxable years beginning in 1992, the percentages are:

“In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	17.6	12.57
2 or more qualifying children	20.15	14.39

“(II) For taxable years beginning in 1993:

“In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	18.5	13.21
2 or more qualifying children	21.25	15.17.”

(b) REPEAL OF INTERACTION WITH MEDICAL EXPENSE DEDUCTION.—Section 213 (relating to medical, dental, etc., expenses) is amended by striking subsection (f).

(c) REPEAL OF INTERACTION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED.—Paragraph (3) of section 162(l) is amended to read as follows:

“(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).”

(d) REPEAL OF SUPPLEMENTAL YOUNG CHILD CREDIT.—

(1) IN GENERAL.—Section 32(b)(1) (relating to supplemental young child credit) is amended by striking subparagraph (D).

(2) CONFORMING AMENDMENT.—Clause (i) of section 3507(C)(2)(B) (relating to advance amount tables) is amended by striking “(without regard to subparagraph (D) thereof)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 1003. EXTENSION OF TARGETED JOBS CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 51(c) (relating to termination) is amended by striking “June 30, 1992” and inserting “December 31, 1993”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to individuals who begin work for the employer after June 30, 1992.

TITLE II—PROMOTION OF LONG-TERM ECONOMIC GROWTH

Subtitle A—Increased Savings PART I—RETIREMENT SAVINGS INCENTIVES

Subpart A—Restoration of IRA Deduction

SEC. 2001. RESTORATION OF IRA DEDUCTION.

(a) IN GENERAL.—Section 219 (relating to deduction for retirement savings) is amended by striking subsection (g) and by redesignating subsection (h) as subsection (g).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 219 is amended by striking paragraph (7).

(2) Paragraph (5) of section 408(d) is amended by striking the last sentence.

(3) Section 408(o) is amended by adding at the end thereof the following new paragraph:

“(5) TERMINATION.—This subsection shall not apply to any designated nondeductible contribution for any taxable year beginning after December 31, 1992.”

(4) Subsection (b) of section 4973 is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2002. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT.

(a) IN GENERAL.—Section 219, as amended by section 2001, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) COST-OF-LIVING ADJUSTMENTS.—

“(1) IN GENERAL.—If the cost-of-living amount for any calendar year is equal to or greater than \$500, then each applicable dollar amount (as previously adjusted under this subsection) for any taxable year beginning in any subsequent calendar year shall be increased by \$500.

“(2) COST-OF-LIVING AMOUNT.—The cost-of-living amount for any calendar year is the excess (if any) of—

“(A) \$2,000, increased by the cost-of-living adjustment for such calendar year, over

“(B) the applicable dollar amount in effect under subsection (b)(1)(A) for taxable years beginning in such calendar year.

“(3) COST-OF-LIVING ADJUSTMENT.—For purposes of this subsection—

“(A) IN GENERAL.—The cost-of-living adjustment for any calendar year is the percentage (if any) by which—

“(i) the CPI for such calendar year, exceeds

“(ii) the CPI for 1991.

“(B) CPI FOR ANY CALENDAR YEAR.—The CPI for any calendar year shall be determined in the same manner as under section 1(f)(4).

“(4) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection, the term ‘applicable dollar amount’ means the dollar amount in effect under any of the following provisions:

“(A) Subsection (b)(1)(A).

“(B) Subsection (c)(2)(A)(i).

“(C) The last sentence of subsection (c)(2).”

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking “in excess of \$2,000 on behalf of any individual” and inserting “on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)”.

(2) Section 408(b)(2)(B) is amended by striking “\$2,000” and inserting “the dollar amount in effect under section 219(b)(1)(A)”.

(3) Section 408(j) is amended by striking “\$2,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2003. COORDINATION OF IRA DEDUCTION LIMIT WITH ELECTIVE DEFERRAL LIMIT.

(a) IN GENERAL.—Section 219(b) (relating to maximum amount of deduction) is amended by

adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH ELECTIVE DEFERRAL LIMIT.—The amount determined under paragraph (1) or subsection (c)(2) with respect to any individual for any taxable year shall not exceed the excess (if any) of—

"(A) the maximum amount of elective deferrals of the individual which are excludable from gross income for the taxable year under section 402(g)(1), over

"(B) the amount so excluded."

(b) CONFORMING AMENDMENT.—Section 219(c) is amended by adding at the end thereof the following new paragraph:

"(3) CROSS REFERENCE.—

"For reduction in paragraph (2) amount, see subsection (b)(4)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

Subpart B—Nondeductible Tax-Free IRAs

SEC. 2011. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this section, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term 'special individual retirement account' means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

"(B) the amount so allowed.

"(3) SPECIAL RULES FOR QUALIFIED TRANSFERS.—

"(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless it is a qualified transfer.

"(B) LIMIT NOT TO APPLY.—The limitation under paragraph (2) shall not apply to a qualified transfer to a special individual retirement account.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

"(iv) CONTRIBUTIONS IN SAME YEAR.—Under regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

"(C) CROSS REFERENCE.—

"For additional tax for early withdrawal, see section 72(t).

"(3) QUALIFIED TRANSFER.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred in a qualified transfer to another special individual retirement account.

"(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the special individual retirement account from which transferred.

"(4) SPECIAL RULES RELATING TO CERTAIN TRANSFERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of a qualified transfer to a special individual retirement account from an individual retirement plan which is not a special individual retirement account—

"(i) there shall be included in gross income any amount which, but for the qualified transfer, would be includible in gross income, but

"(ii) section 72(t) shall not apply to such amount.

"(B) TIME FOR INCLUSION.—In the case of any qualified transfer which occurs before January 1, 1994, any amount includible in gross income under subparagraph (A) with respect to such contribution shall be includible ratably over the 4-taxable year period beginning in the taxable year in which the amount was paid or distributed out of the individual retirement plan.

"(c) QUALIFIED TRANSFER.—For purposes of this section, the term 'qualified transfer' means a transfer to a special individual retirement account from another such account or from an individual retirement plan but only if such transfer meets the requirements of section 408(d)(3)."

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t), as amended by section 2021(c), is amended by adding at the end thereof the following new paragraph:

"(8) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

"(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution, and

"(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A)."

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end thereof the following new sentence: "For purposes of para-

graphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 408A."

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Special individual retirement accounts."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) QUALIFIED TRANSFERS IN 1992.—The amendments made by this section shall apply to any qualified transfer during any taxable year beginning in 1992.

PART II—PENALTY-FREE DISTRIBUTIONS

SEC. 2021. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES OR TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(ii)—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (6)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year."

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—

(1) IN GENERAL.—Section 72(t)(3)(A) is amended by striking "(B)".

(2) CERTAIN LINEAL DESCENDANTS AND ANCESTORS TREATED AS DEPENDENTS.—Subparagraph (B) of section 72(t)(2) is amended by striking "medical care" and all that follows and inserting "medical care determined—

"(i) without regard to whether the employee itemizes deductions for such taxable year, and

"(ii) by treating such employee's dependents as including—

"(I) all children and grandchildren of the employee or such employee's spouse, and

"(II) all ancestors of the employee or such employee's spouse."

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 72(t)(2) is amended by striking "or (C)" and inserting ", (C) or (D)".

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end thereof the following new paragraphs:

"(6) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child, or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified ac-

quisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if—

"(I) such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies, and

"(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A)(i).

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If any distribution from any individual retirement plan fails to meet the requirements of subparagraph (A) solely by reason of a delay or cancellation of the purchase or construction of the residence, the amount of the distribution may be contributed to an individual retirement plan as provided in section 408(d)(3)(A)(i) (determined by substituting '120 days' for '60 days' in such section), except that—

"(i) section 408(d)(3)(B) shall not be applied to such contribution, and

"(ii) such amount shall not be taken into account—

"(I) in determining whether section 408(d)(3)(A)(i) applies to any other amount, or

"(II) for purposes of subclause (II) of subparagraph (A)(i).

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or distributions for qualified higher education expenses (as defined in section 72(t)(7)) are made, and"

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or for the payment of qualified higher education expenses (as defined in section 72(t)(7))."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1991.

SEC. 2022. CONTRIBUTIONS MUST BE HELD AT LEAST 5 YEARS IN CERTAIN CASES.

(a) IN GENERAL.—Section 72(t), as amended by section 2011(b), is amended by adding at the end thereof the following new paragraph:

"(9) CERTAIN CONTRIBUTIONS MUST BE HELD 5 YEARS.—

"(A) IN GENERAL.—Paragraph (2)(A)(i) shall not apply to any amount distributed out of an individual retirement plan (other than a special individual retirement account) which is allocable to contributions made to the plan during the 5-year period ending on the date of such distribution (and earnings on such contributions).

"(B) ORDERING RULE.—For purposes of this paragraph, distributions shall be treated as having been made—

"(i) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(ii) then from other contributions (and earnings allocable thereto) in the order in which made.

Earnings shall be allocated to contributions in such manner as the Secretary may prescribe.

"(C) SPECIAL ACCOUNTS.—For rules applicable to special individual retirement accounts under section 408A, see paragraph (8)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1992.

Subtitle B—Improved Educational Opportunities
PART I—INCOME DEPENDENT EDUCATION ASSISTANCE

SEC. 2101. INCOME DEPENDENT EDUCATION ASSISTANCE.

(a) IN GENERAL.—Part D of title IV of the Higher Education Act (20 U.S.C. 1087 et seq.) is amended to read as follows:

"PART D—INCOME DEPENDENT EDUCATION ASSISTANCE

"SEC. 451. PURPOSE.

"It is the purpose of this part to establish a direct loan program for eligible students enrolled in institutions of higher education with income contingent repayment of such loans occurring through the Secretary of the Treasury.

"SEC. 452. PROGRAM AUTHORIZED.

"(a) IN GENERAL.—The Secretary is authorized to carry out a program that—

"(1) makes loans to eligible students at institutions of higher education to enable such students to study at such institutions; and

"(2) establishes an account for each borrower of such a loan, and collects repayments on such loans, in accordance with section 59E of the Internal Revenue Code of 1986.

"(b) DESIGNATION.—

"(1) PROGRAM.—The program assisted under this part shall be known as the 'income dependent education assistance program'.

"(2) LOANS.—Loans made under this part shall be known as 'self-reliance loans'.

"(c) PAYMENTS.—The Secretary shall make payments to a participating institution on the basis of the estimated borrowing needs (provided to the Secretary by such institution) of the students at such institution pursuant to guidelines developed by the Secretary.

"(d) RELATION TO OTHER FEDERAL PROGRAMS.—A participating institution shall continue to be eligible to participate in all other programs assisted under this title.

"SEC. 453. ELIGIBILITY.

"(a) STUDENT ELIGIBILITY.—All eligible students enrolled at a participating institution are eligible to receive self-reliance loans without regard to financial need.

"(b) NEEDS TEST FOR STUDENTS.—Notwithstanding any other provision of law, an eligible student shall not receive a self-reliance loan in any fiscal year unless such student's eligibility for assistance under section 428 and subpart I of part A has been assessed.

"(c) SELECTION OF INSTITUTIONS FOR PARTICIPATION.—

"(1) IN GENERAL.—From among institutions of higher education that have submitted applications under this part and are eligible to participate in part B loan programs, the Secretary shall select institutions of higher education for participation in the income dependent education assistance program.

"(2) SELECTION OF DIVERSE SCHOOLS.—The Secretary shall select institutions of higher education for participation in the income dependent education assistance program in a manner so as to represent a cross-section of institutions of higher education by educational sector, length of academic program, default experience, annual loan volume, highest degree offered, enrollment size, and geographic location.

"(3) INITIAL SELECTION OF INSTITUTIONS.—The Secretary shall select 500 institutions of higher education for participation in the income dependent education assistance program not later than May 1, 1993, except that the Secretary shall select institutions such that the volume of new student borrowing under this part does not exceed the amounts under paragraph (4) for any fiscal year.

"(4) OBLIGATION OF FUNDS.—The Secretary shall obligate funds as necessary to make self-reliance loans in dollar amounts which in the aggregate do not exceed \$450,000,000 in fiscal year 1994, \$550,000,000 in fiscal year 1995, \$650,000,000 in fiscal year 1996 and \$900,000,000 in fiscal year 1997.

"SEC. 454. APPLICATION AND AGREEMENT.

"(a) APPLICATION.—Each institution of higher education desiring to participate in the income dependent education assistance program shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

"(b) AGREEMENT REQUIRED.—Each institution of higher education chosen by the Secretary to participate in the income dependent education assistance program shall enter into an agreement with the Secretary for the receipt of funds under this part. Such agreement shall provide for the establishment of a self-reliance loan program at such institution under which such institution agrees to—

"(1) originate self-reliance loans to students, follow procedures specified by the Secretary in disbursing such loans, accept liability stemming from mismanagement of such loans, submit annual audit information, and participate in evaluations conducted by the Secretary or organizations chosen by the Secretary;

"(2) provide the Secretary at least once each month with a list of self-reliance loan recipients and promptly notify the Secretary of changes in the enrollment status of any such loan recipient;

"(3) comply with the provisions of part B relating to loan origination, disclosure, and other matters which the Secretary determines are not inconsistent with the provisions of this part;

"(4) transfer the promissory note and other evidence of such loan as specified by the Secretary to the Secretary or the Secretary's agent within 30 days after the origination of such loan;

"(5) comply with the reporting requirements established by the Secretary;

"(6) ensure that the note or the evidence of indebtedness on such loans shall be the property of the Secretary and that the institution will act as the agent of the Secretary for the purpose of making such loans;

"(7) counsel borrowers with regard to repayment options for self-reliance loans at the time that the borrower leaves the institution of higher education; and

"(8) contain such additional information, terms and conditions as the Secretary may prescribe to protect the fiscal interests of the United States and to ensure effective administration of the self-reliance loan program.

"SEC. 455. TERMS OF SELF-RELIANCE LOANS.

"(a) **BORROWING LIMITS.**—

"(1) **ANNUAL LIMIT.**—A student may not receive self-reliance loans in any fiscal year in excess of—

"(A) \$5,000 in the case of an undergraduate student; and

"(B) \$15,000 in the case of a graduate student.

"(2) **MAXIMUM BORROWING LIMIT.**—(A) The maximum amount of self-reliance loans—

"(i) an undergraduate student may borrow is \$25,000; and

"(ii) a graduate student may borrow is \$30,000.

"(B) The maximum amount of self-reliance loans a student may borrow shall not exceed \$30,000.

"(C) The maximum amount of loans a student may borrow under this part and parts B and E shall not exceed the applicable limitations on aggregate indebtedness contained in section 428(b)(1)(B), except that, for a student determined to be independent for purposes of section 428A, the maximum amount of loans such student may borrow under this part and parts B and E shall be increased by the amount borrowed under this part not to exceed \$10,000.

"(3) **COST OF ATTENDANCE.**—(A) No student shall receive self-reliance loans in any fiscal year in an amount which exceeds such student's cost of attendance for such year.

"(B) The amount of financial assistance a student receives under this part in any fiscal year, when combined with student financial assistance received under other parts of this title for such fiscal year, shall not exceed such student's cost of attendance for such fiscal year.

"(b) **INTEREST RATE.**—

"(1) **IN GENERAL.**—The interest rate on self-reliance loans shall be established at the time that the loan is made and shall be equal to the average market yield on 10-year and 30-year marketable obligations of the United States.

"(2) **TIMING AND FREQUENCY.**—The Secretary shall establish the interest rate for self-reliance loans at the same time and with the same frequency as the Secretary establishes interest rates for the Supplement Loans for Students program described in section 428A.

"(3) **CONSOLIDATION OF LOANS.**—In the case of a student with 2 or more self-reliance loans with respect to a continuous period of study—

"(A) the Secretary shall treat all such loans as 1 loan, and

"(B) the interest rate on such loan shall be equal to the weighted average of the interest rates for all such loans.

"SEC. 456. REPAYMENT PROVISIONS.

"(a) **IN GENERAL.**—A self-reliance loan shall be repaid through the income tax collection system in accordance with section 59E of the Internal Revenue Code of 1986.

"(b) **REPAYMENT TERMS.**—

"(1) **IN GENERAL.**—A borrower of a self-reliance loan or loans shall repay such loan or loans by devoting to repayment 7 percent of such borrower's adjusted gross income, except that the Secretary shall allow a borrower the option of devoting to repayment—

"(A) 3, 5, or 7 percent of such borrower's adjusted gross income in the case of a borrower who enters repayment with low indebtedness under this part, as determined by the Secretary; and

"(B) 5 or 7 percent of such borrower's adjusted gross income in the case of a borrower

who enters repayment with moderate indebtedness under this part, as determined by the Secretary.

"(2) **SECRETARY'S DETERMINATION OF INDEBTEDNESS LEVELS.**—The Secretary shall make the determination of low indebtedness and moderate indebtedness described in subparagraphs (A) and (B) of paragraph (1) in a manner such that the average borrower described in each such subparagraph is projected to repay self-reliance loans over a similar number of years as the average borrower with high indebtedness is projected to repay self-reliance loans under the method described in the matter preceding subparagraph (A) of paragraph (1).

"(3) **REPAYMENT STATUS.**—

"(A) **IN GENERAL.**—A borrower is in repayment status with respect to any loan for any taxable year in the repayment period.

"(B) **REPAYMENT PERIOD.**—For purposes of subparagraph (A), the repayment period is the period—

"(i) beginning with the taxable year following the taxable year in which the student first ceases (after the loan was incurred) to be enrolled in an institution of higher education on at least half-time basis, and

"(ii) ending with the earlier of—

"(I) the 24th taxable year following the taxable year described in clause (i), or

"(II) the taxable year in which the loan is repaid.

"(4) **SPECIAL RULE.**—No repayment of a self-reliance loan shall be due in any taxable year in which the borrower is not required to file a Federal income tax return under section 6012 of the Internal Revenue Code of 1986.

"(5) **DETERMINATION OF ADJUSTED GROSS INCOME.**—

"(A) **IN GENERAL.**—For purposes of this subsection, the term 'adjusted gross income' has the meaning given to such term by section 62 of the Internal Revenue Code of 1986.

"(B) **MARRIED INDIVIDUALS.**—A borrower who marries an individual who has not received a self-reliance loan, and who files a joint income tax return, shall make repayments on the basis of the adjusted gross income shown on such return.

"(C) **MARRIED FILING SEPARATELY.**—In the case of a married individual filing a separate return, adjusted gross income shall include adjusted gross income of the individual's spouse.

"(c) **PREPAYMENTS.**—A borrower may prepay all or part of a self-reliance loan to the Secretary without a penalty.

"(d) **CANCELLATION FOR DEATH AND DISABILITY.**—The Secretary shall discharge the liability to repay a self-reliance loan in the event of death or total permanent disability of a borrower.

"(e) **RULES RELATING TO BANKRUPTCY.**—

"(1) **IN GENERAL.**—A self-reliance loan shall not be dischargeable in a case under title 11 of the United States Code.

"(2) **CERTAIN AMOUNTS MAY BE POSTPONED.**—If any individual receives a discharge in a case under title 11 of the United States Code, then the Secretary may postpone any amount of the portion of the liability of such individual on any self-reliance loan which is attributable to amounts required to be paid on such loan for periods preceding the date of such discharge.

"SEC. 457. RESPONSIBILITIES OF THE SECRETARY.

"(a) **TERMS AND CONDITIONS.**—The Secretary shall promulgate the terms and conditions of a self-reliance loan not otherwise specified in this part.

"(b) **ENFORCEMENT.**—The Secretary shall have the same authority to limit, suspend or terminate an institution of higher education's ability to participate in the income dependent education assistance program as the Secretary has

to terminate an institution of higher education's participation under a part B loan program. The Secretary may specify by regulation additional criteria the Secretary shall use to monitor the performance of participating institutions.

"(c) **CENTRAL DATA SYSTEM.**—

"(1) **IN GENERAL.**—The Secretary shall develop and administer a central data system for use in administering self-reliance loans. Such data system shall—

"(A) permit borrowers to secure information on their accounts;

"(B) on at least an annual basis, provide each self-reliance borrower with a statement of account balance and information on prepayment options;

"(C) permit the processing of borrower payments received, including the generation of confirmations to borrowers, and

"(D) provide to each self-reliance borrower not later than January 31 of each calendar year the amount of interest paid on self-reliance loans during the second preceding calendar year.

"(2) **SPECIAL RULE.**—Any borrower who receives a notice under subparagraph (B) or (D) of paragraph (1) and who believes such notice contains an error of statement or omission, or asserts a debt for which the borrower is not obligated or to which the borrower desires to raise a defense or excuse, shall file an objection thereto with the Secretary within 60 days after receipt of such notice. The Secretary shall, within 30 days of receipt of such an objection, affirm, adjust, or withdraw such certification and send notice thereof to the borrower and to the Secretary of the Treasury. Such decision shall be reviewable by an appropriate district court of the United States as a final agency decision.

"(d) **STATEMENTS.**—

"(1) **IN GENERAL.**—The Secretary shall, not later than January 1 of each year, certify to the Secretary of the Treasury each borrower who is in repayment status on such date, and the percentage applicable to the borrower under section 456(a)(1).

"(2) **AMOUNTS COLLECTED.**—The Secretary of the Treasury shall certify to the Secretary the amounts collected with respect to each self-reliance borrower.

"(e) **STANDARD FORMS AND DATA FORMATS.**—The Secretary shall develop standard forms and data formats for use by institutions of higher education and borrowers regarding self-reliance loans.

"(f) **IMPLEMENTATION REPORT.**—The Secretary, in consultation with the Secretary of the Treasury, not later than 1 year after the date of enactment of this part, shall provide a report to the Congress describing the implementation of the income dependent education assistance program, especially the steps taken to implement the loan repayment provisions described in section 456, and identifying problems that require legislative action.

"(g) **ANNUAL REPORT.**—The Secretary, beginning January 1, 1995, shall provide an annual report to the Congress evaluating the implementation and administration of the income dependent education assistance program and identifying problems that require legislative action.

"(h) **EVALUATION.**—Not later than January 1, 1997, the Secretary, in consultation with the Secretary of the Treasury, shall make a report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate evaluating the income dependent education assistance program. Such report shall—

"(1) analyze the administrative burden and cost imposed on the Departments of Education and Treasury by the income dependent education assistance program;

"(2) analyze the administrative capacity of the Departments of Education and Treasury to

operate a self-reliance loan program at all institutions of higher education;

"(3) analyze the administrative and financial obstacles that may preclude all institutions of higher education from operating a self-reliance loan program and make recommendations for corrective action;

"(4) analyze the complexity of the income dependent education assistance program for institutions of higher education and students in comparison with the complexity of part B loan programs for institutions and students participating in loan programs under part B;

"(5) determine whether borrowers are better informed about their loan obligation under this part compared to other part B loan programs;

"(6) analyze the impact of the income dependent education assistance program on repayments, delinquencies, and defaults;

"(7) make any recommendations for legislative action that may be needed to facilitate the implementation of the income dependent education assistance program to all eligible institutions of higher education;

"(8) publish the cost of tuition and the cost of attendance at each participating institution and analyze changes in such costs compared to such changes occurring in institutions of higher education that do not participate in the income-dependent education assistance program;

"(9) analyze the ability of the Department of Education to serve students in accordance with the income dependent education assistance program;

"(10) analyze the effect of borrowing under the income dependent education assistance program on part B loan programs, including the effect on—

"(A) the socioeconomic status of students participating in part B loan programs;

"(B) the lenders, guarantee agencies and secondary markets participating in part B loan programs; and

"(C) the rate of defaults in part B loan programs;

"(11) analyze the feasibility of including individuals over age 50 in the program while insuring repayment before retirement;

"(12) recommend criteria to govern institutional eligibility for the program if it is continued or expanded; and

"(13) analyze the program in terms of its relative effectiveness as part of an overall program of higher education assistance which would include benefits earned through national and community service, taking into account the findings and conclusions of the Commission on National Services under the National and Community Service Act.

"(i) OVERSIGHT RESPONSIBILITY AND DELEGATION.—The Secretary shall be responsible for all oversight of participating institutions.

SEC. 458. DEFINITIONS.

"For purposes of this part—

"(1) the term 'cost of attendance' has the same meaning given to such term by section 472;

"(2) the term 'eligible student' means a student who is a United States citizen and has attained the age of 17 but not the age of 51;

"(3) the term 'institution of higher education' means an institution of higher education (as such term is defined in section 481(a)) which has demonstrated the administrative and fiscal capacity to carry out the provisions of this part; and

"(4) the term 'participating institution' means an institution of higher education having an agreement with the Secretary pursuant to section 454(b).

SEC. 459. TERMINATION.

"No loans shall be made under this part for any fiscal year beginning after September 30, 1997."

SEC. 2102. COLLECTION OF LOANS.

(a) IN GENERAL.—Subchapter A of chapter 1 (relating to determination of tax liability), as

amended by section 3002, is amended by adding at the end thereof the following new part:

"PART IX—EDUCATIONAL LOAN REPAYMENT"

"Sec. 59E. Educational loan repayment.

"SEC. 59E. EDUCATIONAL LOAN REPAYMENT.

"(a) GENERAL RULE.—If this section applies to an individual for any taxable year, there is hereby imposed for the taxable year (in addition to any other amount imposed by this title) a self-reliance loan repayment installment equal to the amount determined under subsection (c).

"(b) INDIVIDUALS TO WHOM SECTION APPLIES.—This section applies to any individual for a taxable year if—

"(1) such individual is in repayment status with respect to any self-reliance loan (as determined under section 456(b) of the Higher Education Act), and

"(2) such individual is required (without regard to this section) to file an income tax return under section 6012.

"(c) AMOUNT OF INSTALLMENT.—For purposes of this section—

"(1) IN GENERAL.—The amount of any self-reliance loan repayment installment for any taxable year shall be equal to the applicable percentage of the individual's adjusted gross income for the taxable year.

"(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any individual shall be equal to the percentage determined under section 456(b)(1) of the Higher Education Act.

"(3) ADJUSTED GROSS INCOME.—

"(A) MARRIED FILING JOINTLY.—In the case of married individuals filing a joint return, adjusted gross income shall be the amount shown on the return even if this section applies to only 1 of the individuals.

"(B) MARRIED FILING SEPARATELY.—In the case of a married individual filing separately, adjusted gross income shall include adjusted gross income of the individual's spouse.

"(d) COORDINATION WITH OTHER PROVISIONS.—

"(1) HIGHER EDUCATION ACT.—For purposes of computing interest on a self-reliance loan—

"(A) TIME WHEN PAYMENT DEEMED MADE.—Any amount paid under subsection (a) with respect to any taxable year which is paid—

"(i) on or before the due date (without regard to any extension) for filing the return for such taxable year shall be treated as having been paid on the last day of the taxable year, and

"(ii) after such due date shall be treated as paid on the last day of the following taxable year.

"(B) INTEREST UNDER THIS TITLE.—Any interest imposed under this title which is properly allocable to an amount required to be paid under subsection (a) shall be treated for purposes of the Higher Education Act (and this title) as interest paid on the self-reliance loan to which it relates. For purposes of this paragraph, any addition to tax under section 6654 shall be treated as interest.

"(2) TREATMENT AS TAX.—

"(A) SUBTITLE F.—For purposes of subtitle F, the self-reliance loan repayment installment under subsection (a) shall be treated as if it were a tax imposed by section 1.

"(B) SECTION 15 NOT TO APPLY.—Section 15 shall not apply to the self-reliance loan repayment installment under subsection (a).

"(C) NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The self-reliance loan repayment installment under subsection (a) shall not be treated as a tax imposed by this chapter for purposes of determining—

"(i) the amount of any credit allowable under this chapter, or

"(ii) the amount of the minimum tax imposed by section 55.

"(e) DEFINITIONS AND SPECIAL RULES.—

"(1) SELF-RELIANCE LOAN.—For purposes of this section, the term 'self-reliance loan' has the meaning given such term by section 452(b)(2) of the Higher Education Act.

"(2) REFERENCES TO HIGHER EDUCATION ACT.—Any reference in this section to the Higher Education Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(3) COORDINATION.—The Secretary shall enter into such agreements with the Secretary of Education as are necessary to carry out the provisions of this section."

(b) INCOME FROM DISCHARGE OF INDEBTEDNESS.—Section 108(a)(1) is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by adding at the end the following new subparagraph:

"(D) the discharge is a discharge of a self-reliance loan by reason of the expiration of the 25-taxable-year period under subsection (b)(3)(B)(i) of section 456 of the Higher Education Act."

(c) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Part IX. Educational loan repayment."

(d) OBLIGATION OF FUNDS.—

(1) EDUCATION.—The Secretary of Education shall obligate funds for administrative costs under this part which in the aggregate do not exceed zero in fiscal year 1992, \$40,000,000 in fiscal year 1993, and \$20,000,000 in each of fiscal years 1994, 1995, 1996, and 1997.

(2) TREASURY.—The Secretary of the Treasury shall obligate funds for administrative costs under this part which in the aggregate do not exceed zero in fiscal year 1992, \$1,000,000 in fiscal year 1993, \$7,500,000 in fiscal year 1994, \$4,500,000 in fiscal year 1995, \$3,600,000 in fiscal year 1996, and \$4,000,000 in fiscal year 1997.

(3) REDUCED APPROPRIATIONS.—If the level under paragraph (1) or (2) for any fiscal year exceeds the amount appropriated under such paragraph for such fiscal year, such excess may not be appropriated for any other purpose.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

PART II—WORKFORCE TRAINING

Subpart A—Standards of Excellence in Workforce Training

SEC. 2111. PURPOSE.

It is the purpose of this subpart to amend the Wagner-Peyser Act to—

(1) stimulate the adoption of a voluntary national system of occupational certification by establishing an independent national board to develop a system of industry-based, occupational proficiency standards and certifications of mastery for occupations within each major industry and occupations that involve more than 1 industry, for which no recognized training standards currently exist; and

(2) encourage the formation of youth skills training and education partnerships by establishing standards for youth skills training and education programs.

SEC. 2112. AMENDMENT TO WAGNER-PEYSER ACT.

The Wagner-Peyser Act (29 U.S.C. 49 et seq.) is amended—

(1) by inserting before section 1, the following:

"TITLE I—FEDERAL EMPLOYMENT SERVICE"

(2) by designating sections 1 through 15 as sections 101 through 115, respectively, and

(3) inserting at the end thereof, the following new title:

"TITLE II—WORKFORCE TRAINING**"Subtitle A—Professional and Technical Standards for Workforce Training****"SEC. 201. ESTABLISHMENT OF NATIONAL BOARD.**

"(a) IN GENERAL.—There is established a National Board for Professional and Technical Standards (hereafter referred to in this section as the 'National Board').

"(b) COMPOSITION.—

"(1) IN GENERAL.—The National Board shall be composed of 24 members appointed in accordance with paragraph (2)(A), of which 8 members shall be representatives of business and industry, 8 members shall be representatives of organized labor, and 8 members shall be representatives of educational institutions and technical associations the expertise of which reflects a broad cross section of industries and occupations. Representatives of organized labor shall be selected from among individuals recommended by recognized national labor federations.

"(2) MEMBERSHIP.—

"(A) APPOINTMENTS.—Members of the National Board shall be appointed as follows:

"(i) 6 members (2 from each class of appointees described in paragraph (1)) shall be appointed by the Speaker of the House of Representatives, upon the recommendations of the Majority and Minority Leaders of the House, respectively;

"(ii) 6 members (2 from each class of appointees described in paragraph (1)) shall be appointed by the President pro tempore of the Senate, upon the recommendations of the Majority and Minority Leaders of the Senate, respectively;

"(iii) 6 members (2 from each class of employees described in paragraph (1)) shall be appointed by the Secretary of Labor; and

"(iv) 6 members (2 from each class of appointees described in paragraph (1)) shall be appointed by the Secretary of Education.

"(B) EX OFFICIO MEMBERS.—The Secretary of Labor and the Secretary of Education shall serve as ex officio members of the National Board.

"(3) TERM.—Each member of the National Board shall be appointed under paragraph (2)(A) for a term of 4 years, except that of the initial members of the Board appointed under such paragraph, 12 (3 from each class of appointees described in paragraph (1)) shall be appointed for a term of 2 years in the manner prescribed in clauses (i) through (iv) of paragraph 2(A).

"(c) CHAIRPERSON AND VICE CHAIRPERSON.—The National Board shall elect a Chairperson and 2 Vice Chairpersons (each representing a different 1 of the classes of appointees described in paragraph (1)) from among its members described in subsection (b)(2)(A), each of whom shall serve for a term of 1 year. The position of Chairperson shall rotate among the classes of appointees described in subsection (c)(1).

"(d) COMPENSATION AND EXPENSES.—

"(1) COMPENSATION.—Members of the National Board who are not regular full-time employees of the United States Government shall serve without compensation.

"(2) EXPENSES.—While away from their homes or regular places of business on the business of the National Board, members of such Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

"(e) STAFF.—The National Board shall appoint an Executive Director who shall be compensated at a rate determined by the Board that shall not exceed the maximum rate of basic pay payable for GS-15 of the General Schedule, and who may appoint such staff as is necessary.

"SEC. 202. ADVISORY COMMITTEES.

"(a) ESTABLISHMENT.—The National Board shall establish advisory committees for each major industry and for major occupations that involve more than 1 industry, and shall appoint individuals to serve as members of such committees from among nominations submitted by participants in each such industry or occupation. Each such committee shall include equal numbers of representatives from each of the 3 classes of representatives described in section 201(b)(1). Representatives of organized labor shall be selected from among individuals nominated by recognized national labor organizations representing employees in such industry or occupation.

"(b) DUTIES.—Each advisory committee established under subsection (a) shall, for each major industry or occupation for which such committee is established—

"(1) develop recommendations for proficiency standards for occupations within such industry or for such occupation that are linked to internationally accepted standards, to the extent practicable;

"(2) develop assessments to measure competencies for such occupations;

"(3) develop and recommend 2- to 5-year curricula for achieving such competencies that include structured work experiences and related study programs leading to technical and professional certificates or associate degrees; and

"(4) evaluate the implementation of the proficiency standards, assessments, and curricula developed under this subsection and make recommendations for revision, where appropriate.

"(c) LIMITATION.—No advisory committee established pursuant to this section shall be authorized to develop proficiency standards, assessments, or curricula for any industry or occupation for which recognized apprenticeship standards exist.

"(d) FACA NOT APPLICABLE.—The provisions of the Federal Advisory Committee Act shall not apply to the advisory committees established under this section.

"SEC. 203. DEADLINES.

"(a) IN GENERAL.—Not later than December 31, 1993, the National Board shall identify at least 30 industrial or occupational categories and develop proficiency standards, assessments, and curricula for such industries or occupations.

"(b) COMPLETION OF CATEGORIES.—The National Board shall develop a program to ensure that the proficiency standards, assessments, and curricula for all remaining identified industrial or occupational categories are completed not later than January 1, 1997.

"SEC. 204. ATTAINMENT OF STANDARDS.

"Proficiency standards developed under this title shall be formulated in such a manner that the attainment of such standards is likely to meet the requirements for transferable credit and enable a student to continue such student's education and training, with a special emphasis on transferability among States.

"SEC. 205. AVAILABILITY.

"The proficiency standards, assessments, and curricula developed in accordance with this title for an industry or occupation shall be made available for voluntary use by institutions of postsecondary education offering professional and technical education, labor organizations, trade and technical associations, employers and labor-management organizations providing formalized training, private training providers, and any other organizations likely to benefit from such proficiency standards, assessments, and curricula.

"SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this subtitle,

\$15,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

"(b) AVAILABILITY.—Amounts appropriated under subsection (a) shall remain available until expended."

"Subtitle B—Youth Skills Training and Education Programs**"SEC. 211. YOUTH SKILLS TRAINING AND EDUCATION PROGRAMS.**

"(a) YOUTH SKILLS TRAINING AND EDUCATION PROGRAMS.—A program shall qualify as a youth skills training and education program under this subtitle for purposes of section 501(c)(26) of the Internal Revenue Code of 1986 if such program—

"(1) provides eleventh and twelfth grade students with the opportunity to voluntarily enter into a course of study that integrates academic instruction with supervised on-the-job training and instruction in the workplace in a curriculum designed to lead to a high school diploma and to qualify the student for further education or an advanced technical or professional training program;

"(2) provides each student, upon completing such program, with assistance in seeking post-program employment and further education and training in such student's program field;

"(3) is certified by a State or local educational agency as meeting the educational standards established and approved by such agency; and

"(4) is certified by a State agency responsible for occupational training as meeting the requirements of subsections (b) through (k).

"(b) TRAINING STANDARDS.—The requirements of this subsection are met if—

"(1) the program conforms with the relevant industrial or occupational proficiency standards and assessments established by the National Board for Professional and Technical Standards under subtitle A of this title, or, if such standards and assessments are not available, the program is likely to provide student participants with broad-based competencies and transferable skills suitable for career progression within the industries or trades in which the student is employed; or

"(2) the program provides training through an apprenticeship program registered with the Department of Labor, Bureau of Apprenticeship Training, or with a State apprenticeship agency recognized by such Bureau.

"(c) SCHOOL COORDINATOR.—The requirements of this subsection are met if the program provides that each participating school in such program designates a school official or counselor to coordinate the work and education aspects of each participating student's program and makes regularly scheduled visits to the work sites where participating students are employed.

"(d) WRITTEN TRAINING AGREEMENT.—The requirements of this subsection are met if the program provides that employers employing students in such program enter into written agreements signed by the student, the student's parent or guardian, the school official responsible for coordination of the program, and the employer, setting forth the type of work to be performed, the wages and benefits to be paid by the employer, the hours of work, the ratio of hours at work to hours in school, the type and amount of training to be provided by the employer, the type and amount of on-the-job supervision to be provided by the employer, the competencies and skills the student is expected to acquire, and any other goals and objectives of the training.

"(e) REVIEW AND EVALUATION.—The requirements of this subsection are met if the program provides for systematic review and evaluation of the student's progress in job performance, acquisition of work-related competencies and skills, and related academic instruction, and for the maintenance of appropriate progress records.

“(f) LABOR STANDARDS.—The requirements of this subsection are met if the program provides for the following:

“(1) WAGES.—The wage paid to participating students by the employer in the program is not less than the minimum wage prescribed by the Fair Labor Standards Act, unless a higher wage is required by other applicable Federal law, State law, respective regulations, or by a collective bargaining agreement.

“(2) BENEFITS AND WORKING CONDITIONS.—Students employed by participating employers are provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

“(3) WORKPLACE HEALTH AND SAFETY.—Students are provided with adequate and safe equipment and a safe and healthful workplace consistent with all health and safety standards established under applicable State and Federal law, and provides health and safety training for participating students on the job and in related coursework.

“(4) WORKERS’ COMPENSATION.—To the extent that a State workers’ compensation law is applicable, workers’ compensation benefits in accordance with such law are available with respect to work-related injuries suffered by participating students. To the extent that such law is not applicable, insurance coverage of injuries suffered by such participants is secured in accordance with requirements prescribed by the organization administering the program.

“(5) PROHIBITED OCCUPATIONS.—No student participating in the program is assigned to work in any occupation prohibited for minors of the student’s age under the Fair Labor Standards Act (29 U.S.C. 210 et seq.) and regulations promulgated thereunder, or any other applicable Federal, State or local law.

“(g) NONDISCRIMINATION.—The requirements of this subsection are met if the program provides that no individual is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of, or in connection with, the program because of race, color, religion, sex, national origin, age, handicap, or political affiliation, or belief.

“(h) NONDISPLACEMENT.—The requirements of this subsection are met if the program provides that employment or use of a student participating in such program does not result in the displacement of any other employed worker (including partial displacement such as a reduction in hours of work, wages, or employment benefits), nor does the student perform any services or duties or engage in activities that were previously or would otherwise be assigned to or performed by any—

“(1) employee who is on layoff or is otherwise subject to a reduction in force; or

“(2) employee who is on strike or is involved in a lockout.

“(i) RECORDS AND REPORTS.—The requirements of this subsection are met if—

“(1) the name, address, and bylaws of the organization operating the program, the name and address of each school participating in such program, the name and address of each employer contributing to such program, copies of the certifications required under paragraphs (3) and (4) of subsection (a), and a copy of the registration required under subsection (j), if applicable, is kept at the State or local educational agency office;

“(2) a copy of the written training agreement for each student participating in the program is kept at the State or local educational agency office; and

“(3) the records required under paragraphs (1) and (2) are kept for a period of 3 years and are available for inspection or transcription to rep-

resentatives of the Internal Revenue Service and to representatives of the Department of Labor, Wage and Hour Division.

“(j) NONDUPLICATION.—The requirements of this subsection are met if the program does not establish, operate, maintain, or assist a training program for any trade, skill, craft, or occupation for which there is an existing apprenticeship or training program duly registered with the United States Department of Labor, Bureau of Apprenticeship Training, for the same or similar trade, skill, craft or occupation, unless such training program conforms with apprenticeship program standards published by the Secretary of Labor and is registered with and approved by the Bureau of Apprenticeship or a State apprenticeship agency recognized by the Bureau.

“(k) QUALIFIED USE OF CONTRIBUTIONS.—The requirements of this subsection are met if the program prohibits the use of contributions to the organization administering the program for employment training expenses or compensation of student participants.”

Subpart B—Youth Skills Training and Education Partnerships

SEC. 2113. SHORT TITLE.

This subpart may be cited as the “Youth Skills Training and Education Partnerships Act.”

SEC. 2114. TAX EXEMPTION FOR CONTRIBUTIONS TO YOUTH SKILLS TRAINING AND EDUCATION PARTNERSHIPS.

(a) IN GENERAL.—Subsection (c) of section 501 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by adding at the end thereof the following new paragraph:

“(26) Any organization if—

“(A) organized and operated solely for purposes of administering a program which qualifies as a youth skills training and education program under subtitle B of title II of the Wagner-Peyser Act,

“(B) controlled by a board of directors consisting of—

“(i) representatives of employers contributing to such program;

“(ii) for each employer representative, 1 representative of such employer’s nonmanagerial, nonsupervisory employees, to be selected by the authorized bargaining representative of such employees (if any);

“(iii) representatives of schools and higher education institutions participating in the program; and

“(iv) representatives of State or local governments, and

“(C) such organization does not pay for, and prohibits the use of any contributions for employment training expenses or compensation for any student participating in such program.

The representatives described in clauses (i) and (ii) of subparagraph (B) shall not constitute more than 50 percent of the members of the board of directors.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 2115. AUGMENTED DEDUCTION FOR YOUTH SKILLS TRAINING AND EDUCATION CONTRIBUTIONS BY BUSINESSES.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) TREATMENT OF YOUTH SKILLS TRAINING AND EDUCATION CONTRIBUTIONS.—

“(1) IN GENERAL.—For purposes of this section, in the case of an eligible business, 150 percent of any amount paid in cash to a youth skills training and education partnership shall be treated as a charitable contribution.

“(2) DEFINITIONS.—

“(A) YOUTH SKILLS TRAINING AND EDUCATION PARTNERSHIP.—The term ‘youth skills training and education partnership’ means an organization described in section 501(c)(26).

“(B) ELIGIBLE BUSINESS.—The term ‘eligible business’ means any corporation or partnership.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

Subpart C—Study

SEC. 2116. JOINT LABOR DEPARTMENT AND TREASURY DEPARTMENT STUDY.

Within 3 years of the date of the enactment of this Act, the Secretary of Labor, the Secretary of Education and the Secretary of the Treasury, or their delegates, shall jointly study the effects of the amendments made by this part and shall report the results of such study and any recommendations for further legislative action to improve such effects to the Committee on Labor and Human Resources and the Committee on Finance of the Senate and the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives.

PART III—OTHER EDUCATION INCENTIVES

SEC. 2121. CREDIT FOR INTEREST ON EDUCATION LOANS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 22 the following new section:

“SEC. 23. INTEREST ON EDUCATION LOANS.

“(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of the interest paid by the taxpayer during the taxable year on any qualified education loan.

“(b) MAXIMUM CREDIT.—The credit allowed by subsection (a) for the taxable year shall not exceed \$300.

“(c) LIMITATION ON TAXPAYERS ELIGIBLE FOR CREDIT.—No credit shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual’s taxable year begins.

“(d) LIMIT ON PERIOD CREDIT ALLOWED.—

“(1) TAXPAYER AND TAXPAYER’S SPOUSE.—Except as provided in paragraph (2), a credit shall be allowed under this section only with respect to interest paid on any qualified education loan which is allocable to the first 48 months during which interest accrued on such loan. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

“(2) DEPENDENT.—If the qualified education loan was used to pay education expenses of an individual other than the taxpayer or the taxpayer’s spouse, a credit shall be allowed under this section for any taxable year with respect to such loan only if—

“(A) a deduction under section 151 with respect to such individual is allowed to the taxpayer for such taxable year, and

“(B) such individual is at least a half-time student with respect to such taxable year.

“(e) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED EDUCATION LOAN.—The term ‘qualified education loan’ means any indebtedness incurred to pay qualified higher education expenses—

“(A) which are incurred on behalf of the taxpayer, the taxpayer’s spouse, or a dependent of the taxpayer,

“(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

"(C) which are attributable to education furnished during a period during which the recipient was at least a half-time student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term 'qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

"(2) **QUALIFIED HIGHER EDUCATION EXPENSES.**—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 10 U.S.C. 1087l, as in effect on the day before the date of the enactment of this Act) of the taxpayer, the taxpayer's spouse, or a dependent of the taxpayer at an eligible educational institution. For purposes of the preceding sentence, the term 'eligible educational institution' has the same meaning given such term by section 135(c)(3), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

"(3) **HALF-TIME STUDENT.**—The term 'half-time student' means any individual who would be a student as defined in section 151(c)(4) if 'half-time' were substituted for 'full-time' each place it appears in such section.

"(4) **DEPENDENT.**—The term 'dependent' has the meaning given such term by section 152.

"(f) **SPECIAL RULES.**—

"(1) **DENIAL OF DOUBLE BENEFIT.**—No credit shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

"(2) **SELF-RELIANCE LOANS.**—For purposes of the credit allowed under this section and the deduction allowed under section 162(h)(2)(E), interest paid on a self-reliance loan (as defined in section 452(b)(2) of the Higher Education Act) shall be treated as paid in the taxable year beginning in the calendar year following the calendar year in which such interest was paid.

"(3) **MARITAL STATUS.**—Marital status shall be determined in accordance with section 7703."

(b) **OPTIONAL DEDUCTION FOR INTEREST ON EDUCATION LOANS.**—Paragraph (2) of section 163(h) (defining personal interest) is amended by striking "and" at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

"(E) any interest paid on a qualified education loan (as defined in section 23(e)) during the period described in section 23(d), unless a credit or deduction is taken with respect to such interest under any other provisions of this chapter, and."

(c) **CLERICAL AMENDMENT.**—The table of sections for such subpart A is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Interest on education loans."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to qualified education loans (as defined in section 23(e) of the Internal Revenue Code of 1986) the first payment on which is due in taxable years beginning after December 31, 1991.

SEC. 2122. INCOME EXCLUSION FOR EDUCATION BONDS EXPANDED.

(a) **IDENTIFYING INFORMATION REQUIRED.**—Section 135(b)(2) is amended to read as follows:

"(2) **IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO INDIVIDUAL FOR WHOM EXPENSES PAID.**—No amount shall be allowed as an exclusion under subsection (a) unless the taxpayer includes the name, address, and taxpayer

identification number of the person for whom qualified higher education expenses were paid on the return on which the exclusion is claimed."

(b) **ELIMINATION OF AGE RESTRICTION.**—Section 135(c)(1) (defining qualified United States savings bonds) is amended—

(1) by striking subparagraph (B),

(2) by inserting "and" at the end of subparagraph (A), and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) **EXCLUSION EXPANDED TO ALL INDIVIDUALS.**—Subparagraph (A) of section 135(c)(2) (defining qualified higher education expenses) is amended to read as follows:

"(A) **IN GENERAL.**—The term 'qualified higher education expenses' means tuition and fees required for enrollment or attendance of any individual at an eligible educational institution."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to bonds redeemed after December 31, 1991.

SEC. 2123. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) **IN GENERAL.**—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) **CONFORMING AMENDMENT.**—Paragraph (2) of section 103 of the Tax Extension Act of 1991 is hereby repealed.

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years ending after June 30, 1992.

SEC. 2124. DISCLOSURES OF INFORMATION FOR VETERANS BENEFITS.

(a) **IN GENERAL.**—Section 6103(l)(7)(D) (relating to program to which rule applies) is amended by striking "September 30, 1992" in the last sentence and inserting "September 30, 1998".

(b) **CONFORMING AMENDMENT.**—Section 5317(g) of title 38, United States Code, is amended by striking "September 30, 1992" and inserting "September 30, 1998".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on September 30, 1992.

Subtitle C—Better Access to Affordable Health Care

PART I—IMPROVEMENTS IN HEALTH INSURANCE AFFORDABILITY FOR SMALL EMPLOYERS

SEC. 2201. INCREASE IN DEDUCTIBLE HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) **IN GENERAL.**—Paragraph (1) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent" and inserting "100 percent (25 percent for taxable years beginning during 1992)".

(b) **EXTENSION.**—Paragraph (6) of section 162(l) (relating to termination) is amended by striking "June 30, 1992" and inserting "December 31, 1994".

(c) **CONFORMING AMENDMENT.**—Section 110(a) of the Tax Extension Act of 1991 is amended by striking paragraph (2).

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2202. GRANTS TO STATES FOR SMALL EMPLOYER HEALTH INSURANCE PURCHASING PROGRAMS.

(a) **IN GENERAL.**—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to States that submit applications meeting the requirements of this section for the establishment and operation of small employer health insurance purchasing programs.

(b) **USE OF FUNDS.**—Grant funds awarded under this section to a State may be used to fi-

nance administrative costs associated with developing and operating a group purchasing program for small employers, such as the costs associated with—

(1) engaging in marketing and outreach efforts to inform small employers about the group purchasing program, which may include the payment of sales commissions;

(2) negotiating with insurers to provide health insurance through the group purchasing program; or

(3) providing administrative functions, such as eligibility screening, claims administration, and customer service.

(c) **APPLICATION REQUIREMENTS.**—An application submitted by a State to the Secretary must describe—

(1) whether the program will be operated directly by the State or through one or more State-sponsored private organizations and the details of such operation;

(2) any participation requirements for small employers;

(3) the extent of insurance coverage among the eligible population, projections for change in the extent of such coverage, and the price of insurance currently available to these small employers;

(4) program goals for reducing the price of health insurance for small employers and increasing insurance coverage among employees of small employers and their dependents;

(5) the approaches proposed for enlisting participation by insurers and small employers, including any plans to use State funds to subsidize the cost of insurance for participating employers; and

(6) the methods proposed for evaluating the effectiveness of the program in reducing the number of uninsured in the State and on lowering the price of health insurance to small employers in the State.

(d) **GRANT CRITERIA.**—In awarding grants, the Secretary shall consider the potential impact of the State's proposal on the cost of health insurance for small employers and on the number of uninsured, and the need for regional variation in the awarding of grants. To the extent the Secretary deems appropriate, grants shall be awarded to fund programs employing a variety of approaches for establishing small employer health insurance group purchasing programs.

(e) **PROHIBITION ON GRANTS.**—No grant funds shall be paid to States that do not meet the requirements of title XXI of the Social Security Act with respect to small employer health insurance plans, or to States with group purchasing programs involving small employer health insurance plans that do not meet the requirements of such title.

(f) **ANNUAL REPORT BY STATES.**—States receiving grants under this section must report to the Secretary annually on the numbers and rates of participation by eligible insurers and small employers, on the estimated impact of the program on reducing the number of uninsured, and on the price of insurance available to small employers in the State.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for each of fiscal years 1993, 1994, and 1995, such sums as may be necessary for the purposes of awarding grants under this section.

(h) **SECRETARIAL REPORT.**—The Secretary shall report to Congress by no later than January 1, 1995, on the number and amount of grants awarded under this section, and include with such report an evaluation of the impact of the grant program on the number of uninsured and price of health insurance to small employers in participating States.

SEC. 2203. STUDY OF USE OF MEDICARE RATES BY PRIVATE HEALTH INSURANCE PLANS.

(a) **IN GENERAL.**—Not later than January 1, 1993, the Secretary of Health and Human Serv-

ices (hereafter in this section referred to as the "Secretary") shall study and report to the Congress on the feasibility and desirability of the Secretary establishing payment rates, based upon medicare payment rules, for optional use by private health insurers. In developing the study, the Secretary shall take into account the findings and views of the Prospective Payment Assessment Commission and the Physician Payment Review Commission.

(b) PROVISIONS OF STUDY AND REPORT.—The study and report shall evaluate—

(1) the appropriateness of using medicare payment rules to determine payments for services furnished to non-medicare populations (with particular emphasis on services furnished to children);

(2) the potential impact on private health insurance premiums, national health spending, and access to health care services (by medicare beneficiaries and others) of requiring health care providers and practitioners to accept such payment rates as payment in full if the optional use of such rates is available—

(A) to all private health insurance and employer health benefit plans, or

(B) only to private health insurance sold to small employers or small employer health benefit plans; and

(3) the advantages and disadvantages of alternative mechanisms for enforcing such rates when private insurers opt to use them.

PART II—IMPROVEMENTS IN HEALTH INSURANCE FOR SMALL EMPLOYERS

Subpart A—Standards and Requirements of Small Employer Health Insurance Reform

SEC. 2211. STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE.

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—STANDARDS FOR SMALL EMPLOYER HEALTH INSURANCE AND CERTIFICATION OF MANAGED CARE PLANS

"PART A—GENERAL STANDARDS; DEFINITIONS

"APPLICATION OF REQUIREMENTS TO SMALL EMPLOYER HEALTH INSURANCE PLANS

"SEC. 2101. (a) PLAN UNDER STATE REGULATORY PROGRAM OR CERTIFIED BY THE SECRETARY.—An insurer offering a health insurance plan to a small employer in a State on or after the effective date applicable to the State under subsection (b) shall be treated as meeting the requirements of this title if—

"(1) the Secretary determines that the State has established a regulatory program that provides for the application and enforcement of standards meeting the requirements under section 2102 to meet the requirements of part B of this title; and

"(2) if the State has not established such a program or if the program has been decertified by the Secretary under section 2102(b), the health insurance plan has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the requirements of part B of this title.

"(b) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as specified in paragraph (2) and provided in paragraph (3), the standards established under section 2102 to meet the requirements of part B of this title shall apply to health insurance plans offered, issued, or renewed to a small employer in a State on or after January 1, 1994.

"(2) EXCEPTION FOR LEGISLATION.—In the case of a State which the Secretary identifies, in consultation with the NAIC, as—

"(A) requiring State legislation (other than legislation appropriating funds) in order for insurers and health insurance plans offered to small employers to meet the standards under the program established under subsection (a), or

"(B) having a legislature which does not meet in 1993 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first regular legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular legislative session of the State legislature.

"(3) REQUIREMENTS APPLIED TO EXISTING POLICIES.—In the case of a health insurance plan in effect before the applicable effective date specified in paragraph (1) or (2), the requirements referred to in subsections (a) and (b) of section 2112 shall not apply to any such plan, or any renewal of such plan, before the date which is 2 years after such effective date.

"(c) REPORTING REQUIREMENTS OF STATES.—Each State shall submit to the Secretary, at intervals established by the Secretary, a report on the implementation and enforcement of the standards under the program established under subsection (a)(1) with respect to health insurance plans offered to small employers.

"(d) MORE STRINGENT STATE STANDARDS PERMITTED.—Except as provided in subsections (b)(8) and (c)(4) of section 2113, a State may implement standards that are more stringent than the standards established to meet the requirements of part B of this title.

"(e) LIMITED WAIVER OF RATING REQUIREMENTS.—The Secretary may waive requirements with respect to subsections (b) and (c) of section 2112 in the case of a State with equally stringent but not identical standards in effect prior to January 1, 1992.

"ESTABLISHMENT OF STANDARDS

"SEC. 2102. (a) ESTABLISHMENT OF STANDARDS.—

"(1) ROLE OF THE NAIC.—The Secretary shall request that the NAIC—

"(A) develop specific standards, in the form of a model Act and model regulations, to implement the requirements of part B of this title; and

"(B) report to the Secretary on such standards,

by not later than September 30, 1992. If the NAIC develops such standards within such period and the Secretary finds that such standards implement the requirements of part B of this title, such standards shall be the standards applied under section 2101.

"(2) ROLE OF THE SECRETARY.—If the NAIC fails to develop and report on the standards described in paragraph (1) by the date specified in such paragraph or the Secretary finds that such standards do not implement the requirements under part B of this title, the Secretary shall develop and publish such standards, by not later than December 31, 1992. Such standards shall then be the standards applied under section 2101.

"(3) STANDARDS ON GUARANTEED AVAILABILITY.—The standards developed under paragraphs (1) and (2) shall provide alternative standards for guaranteeing availability of health insurance plans for all small employers in a State as provided in section 2111(c).

"(4) GUIDELINES FOR DEMOGRAPHIC RATING FACTORS.—The standards developed under paragraphs (1) and (2) shall include guidelines with respect to rating factors used by insurers to adjust premiums to reflect demographic characteristics of a small employer group.

"(b) PERIODIC SECRETARIAL REVIEW OF STATE REGULATORY PROGRAM.—The Secretary periodically shall review State regulatory programs to determine if they continue to meet and enforce the standards referred to in subsection (a). If the Secretary initially determines that a State regulatory program no longer meets and en-

forces such standards, the Secretary shall provide the State an opportunity to adopt a plan of correction that would bring such program into compliance with such standards. If the Secretary makes a final determination that the State regulatory program fails to meet and enforce such standards and requirements after such an opportunity, the Secretary shall decertify such program and assume responsibility under section 2101(a)(2) with respect to plans in the State.

"(c) GAO AUDITS.—The Comptroller General of the United States shall conduct periodic reviews on a sample of State regulatory programs to determine their compliance with the standards and requirements of this title. The Comptroller General of the United States shall report to the Secretary and Congress on the findings of such reviews.

"DEFINITIONS

"SEC. 2103. (a) HEALTH INSURANCE PLAN.—As used in this title, the term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, health maintenance organization group contract, or a multiple employer welfare arrangement, but does not include—

"(1) a self-insured group health plan;

"(2) a self-insured multiemployer group health plan; or

"(3) any of the following offered by an insurer—

"(A) accident only, dental only, vision only, disability only insurance, or long-term care only insurance,

"(B) coverage issued as a supplement to liability insurance,

"(C) medicare supplemental insurance as defined in section 1882(g)(1),

"(D) workmen's compensation or similar insurance, or

"(E) automobile medical-payment insurance.

In the case of a multiple employer welfare arrangement that is fully insured, the requirements of this Act shall only apply to the insurer of the arrangement.

"(b) INSURER.—As used in this title the term 'insurer' means any person that offers a health insurance plan to a small employer.

"(c) GENERAL DEFINITIONS.—As used in this title:

"(1) APPLICABLE REGULATORY AUTHORITY.—The term 'applicable regulatory authority' means—

"(A) in the case of a health insurance plan offered in a State with a program meeting the requirements of part B of this title, the State commissioner or superintendent of insurance or other State authority responsible for regulation of health insurance; or

"(B) in the case of a health insurance plan certified by the Secretary under section 2101(a)(2), the Secretary.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"(5) STATE.—The term 'State' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"PART B—SMALL EMPLOYER HEALTH INSURANCE REFORM

"GENERAL REQUIREMENTS FOR HEALTH INSURANCE PLANS ISSUED TO SMALL EMPLOYERS

"SEC. 2111. (a) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—Each insurer

shall register with the applicable regulatory authority for each State in which it issues or offers a health insurance plan to small employers.

"(b) GUARANTEED ELIGIBILITY.—

"(1) IN GENERAL.—No insurer may exclude from coverage any eligible employee, or the spouse or any dependent child of the eligible employee, to whom coverage is made available by a small employer.

"(2) WAITING PERIODS.—Paragraph (1) shall not apply to any period an eligible employee is excluded from coverage under the health insurance plan solely by reason of a requirement imposed by an employer applicable to all employees that a minimum period of service with the small employer is required before the employee is eligible for such coverage.

"(c) GUARANTEED AVAILABILITY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an insurer that offers a health insurance plan to small employers located in a State must meet the standards adopted by the State described in paragraph (2).

"(2) STANDARDS ON GUARANTEED AVAILABILITY.—

"(A) IN GENERAL.—In order to implement the requirements of this title, the standards developed under paragraphs (1) and (2) of section 2102(a) shall—

"(i) require that a State adopt a mechanism for guaranteeing the availability of health insurance plans for all small employers in the State,

"(ii) specify alternative mechanisms, including at least the alternative mechanisms described in subparagraph (B), that a State may adopt, and

"(iii) prohibit marketing or other practices by an insurer intended to discourage or limit the issuance of a health insurance plan to a small employer on the basis of size, industry, geographic area, expected need for health services, or other risk factors.

"(B) ALTERNATIVE MECHANISMS.—The alternative mechanisms described in this subparagraph are:

"(i) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State or in the portion of the State established as the insurer's geographic service area (as approved by the State), and

"(II) requires the participation of all such insurers in a small employer reinsurance program established by the State.

"(ii) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State or in the portion of the State established as the insurer's geographic service area (as approved by the State), and

"(II) permits any such insurer to participate in a small employer reinsurance program established by the State.

"(iii) A mechanism under which the State requires that any insurer offering a health insurance plan to a small employer in the State shall participate in a program for assigning high-risk groups among all such insurers.

"(iv) A mechanism under which the State requires that any insurer that—

"(I) offers a health insurance plan to a small employer in the State, and

"(II) does not agree to offer the same plan to all other small employers in the State or in the portion of the State established as the insurer's geographic service area (as approved by the State),

shall participate in a program for assigning high-risk groups among all such insurers.

"(C) STATE ADOPTION OF CERTAIN STANDARDS.—A regulatory program adopted by the State under section 2101 must provide—

"(i) for the adoption of one of the mechanisms described in clauses (i) through (iv) of subparagraph (B), or

"(ii) for such other program that guarantees availability of health insurance to all small employers in the State and is approved by the Secretary.

"(D) STANDARDS FOR NONCOMPLYING STATES.—The Secretary, in consultation with the Secretary of the Treasury, shall develop requirements with respect to guaranteed availability to apply with respect to insurers located in a State that has not adopted the standards under section 2102 and who wish to apply for certification under section 2101(a)(2).

"(3) GROUNDS FOR REFUSAL TO RENEW.—

"(A) IN GENERAL.—An insurer may refuse to renew, or (except with respect to clause (iii)) may terminate, a health insurance plan under this part only for—

"(i) nonpayment of premiums,
"(ii) fraud or misrepresentation,
"(iii) failure to maintain minimum participation rates (consistent with subparagraph (B)), or

"(iv) repeated misuse of a provider network provision.

"(B) MINIMUM PARTICIPATION RATES.—An insurer may require, with respect to a health insurance plan issued to a small employer, that a minimum percentage of eligible employees who do not otherwise have health insurance are enrolled in such plan if such percentage is applied uniformly to all plans offered to employers of comparable size.

"(d) GUARANTEED RENEWABILITY.—

"(1) IN GENERAL.—An insurer shall ensure that a health insurance plan issued to a small employer be renewed, at the option of the small employer, unless the plan is terminated for a reason specified in paragraph (2) or in subsection (c)(3)(A).

"(2) TERMINATION OF SMALL EMPLOYER BUSINESS.—An insurer is not required to renew a health insurance plan with respect to a small employer if the insurer—

"(A) elects not to renew all of its health insurance plans issued to small employers in a State; and

"(B) provides notice to the applicable regulatory authority in the State and to each small employer covered under a plan of such termination at least 180 days before the date of expiration of the plan.

In the case of such a termination, the insurer may not provide for issuance of any health insurance plan to a small employer in the State during the 5-year period beginning on the date of termination of the last plan not so renewed.

"(e) NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.—

"(1) IN GENERAL.—Except as provided under paragraph (2), a health insurance plan offered to a small employer by an insurer may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.—

"(A) IN GENERAL.—Subject to the succeeding provisions of this paragraph, a health insurance plan offered to a small employer by an insurer may exclude coverage with respect to services related to treatment of a preexisting condition, but the period of such exclusion may not exceed 6 months. The exclusion of coverage shall not apply to services furnished to newborns.

"(B) CREDITING OF PREVIOUS COVERAGE.—

"(i) IN GENERAL.—A health insurance plan issued to a small employer by an insurer shall provide that if an individual under such plan is in a period of continuous coverage (as defined

in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan, any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage.

"(ii) DEFINITIONS.—As used in this subparagraph:

"(1) PERIOD OF CONTINUOUS COVERAGE.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health insurance plan, title XVIII, title XIX, or other health benefit arrangement including a self-insured plan which provides benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) PREEXISTING CONDITION.—The term 'preexisting condition' means, with respect to coverage under a health insurance plan issued to a small employer by an insurer, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage (without regard to any waiting period).

"REQUIREMENTS RELATED TO RESTRICTIONS ON RATING PRACTICES

"SEC. 2112. (a) LIMIT ON VARIATION OF PREMIUMS BETWEEN BLOCKS OF BUSINESS.—

"(1) IN GENERAL.—The base premium rate for any block of business of an insurer (as defined in section 2103(b)(1)) may not exceed the base premium rate for any other block of business by more than 20 percent.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to a block of business if the applicable regulatory authority determines that—

"(A) the block is one for which the insurer does not reject, and never has rejected, small employers included within the definition of employers eligible for the block of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claims experience, health status, industry, or occupation,

"(B) the insurer does not transfer, and never has transferred, a health insurance plan involuntarily into or out of the block of business, and

"(C) health insurance plans offered under the block of business are currently available for purchase by small employers at the time an exception to paragraph (1) is sought by the insurer.

"(b) LIMIT ON VARIATION IN PREMIUM RATES WITHIN A BLOCK OF BUSINESS.—For a block of business of an insurer, the highest premium rates charged during a rating period to small employers with similar demographic characteristics (limited to age, sex, family size, and geography and not relating to claims experience, health status, industry, occupation, or duration of coverage since issue) for the same or similar coverage, or the highest rates which could be charged to such employers under the rating system for that block of business, shall not exceed an amount that is 1.5 times the base premium rate for the block of business for a rating period (or portion thereof) that occurs in the first 3 years in which this section is in effect, and 1.35 times the base premium rate thereafter.

"(c) CONSISTENT APPLICATION OF RATING FACTORS.—In establishing premium rates for health insurance plans offered to small employers—

"(1) an insurer making adjustments with respect to age, sex, family size, or geography must apply such adjustments consistently across small employers (as provided in guidelines developed under section 2102(a)(4)), and

"(2) no insurer may use a geographic area that is smaller than a county or smaller than an area that includes all areas in which the first three digits of the zip code are identical, which-ever is smaller.

"(d) LIMIT ON TRANSFER OF EMPLOYERS AMONG BLOCKS OF BUSINESS.—

"(1) IN GENERAL.—An insurer may not transfer a small employer from one block of business to another without the consent of the employer.

"(2) OFFERS TO TRANSFER.—An insurer may not offer to transfer a small employer from one block of business to another unless—

"(A) the offer is made without regard to age, sex, geography, claims experience, health status, industry, occupation or the date on which the policy was issued, and

"(B) the same offer is made to all other small employers in the same block of business.

"(e) LIMITS ON VARIATION IN PREMIUM INCREASES.—The percentage increase in the premium rate charged to a small employer for a new rating period (determined on an annual basis) may not exceed the sum of the percentage change in the base premium rate plus 5 percentage points.

"(f) DEFINITIONS.—In this section:

"(1) BASE PREMIUM RATE.—The term 'base premium rate' means, for each block of business for each rating period, the lowest premium rate which could have been charged under a rating system for that block of business by the insurer to small employers with similar demographic or other relevant characteristics (limited to age, sex, family size, and geography and not relating to claims experience, health status, industry, occupation or duration of coverage since issue) for health insurance plans with the same or similar coverage.

"(2) BLOCK OF BUSINESS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'block of business' means, with respect to an insurer, all of the small employers with a health insurance plan issued by the insurer (as shown on the records of the insurer).

"(B) DISTINCT GROUPS.—

"(i) IN GENERAL.—Subject to clause (ii), a distinct group of small employers with health insurance plans issued by an insurer may be treated as a block of business by such insurer if all of the plans in such group—

"(I) are marketed and sold through individuals and organizations that do not participate in the marketing or sale of other distinct groups by the insurer,

"(II) have been acquired from another insurer as a distinct group, or

"(III) are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining health insurance.

"(ii) LIMITATION.—An insurer may not establish more than six distinct groups of small employers.

"(f) FULL DISCLOSURE OF RATING PRACTICES.—

"(1) IN GENERAL.—At the time an insurer offers a health insurance plan to a small employer, the insurer shall fully disclose to the employer all of the following:

"(A) Rating practices for small employer health insurance plans, including rating practices for different populations and benefit designs.

"(B) The extent to which premium rates for the small employer are established or adjusted based upon the actual or expected variation in claims costs or health condition of the employees of such small employer and their dependents.

"(C) The provisions concerning the insurer's right to change premium rates, the extent to which premiums can be modified, and the factors which affect changes in premium rates.

"(2) NOTICE ON EXPIRATION.—An insurer providing health insurance plans to small employers shall provide for notice, at least 60 days before the date of expiration of the health insurance plan, of the terms for renewal of the plan.

Such notice shall include an explanation of the extent to which any increase in premiums is due to actual or expected claims experience of the individuals covered under the small employer's health insurance plan contract.

"(g) ACTUARIAL CERTIFICATION.—Each insurer shall file annually with the applicable regulatory authority a written statement by a member of the American Academy of Actuaries (or other individual acceptable to such authority) certifying that, based upon an examination by the individual which includes a review of the appropriate records and of the actuarial assumptions of the insurer and methods used by the insurer in establishing premium rates for small employer health insurance plans—

"(1) the insurer is in compliance with the applicable provisions of this section, and

"(2) the rating methods are actuarially sound.

Each insurer shall retain a copy of such statement for examination at its principal place of business.

"REQUIREMENTS FOR SMALL EMPLOYER HEALTH INSURANCE BENEFIT PACKAGE OFFERINGS

"SEC. 2113. (a) BASIC AND STANDARD BENEFIT PACKAGES.—

"(1) IN GENERAL.—If an insurer offers any health insurance plan to small employers in a State, the insurer shall also offer a health insurance plan providing for the standard benefit package defined in subsection (b) and a health insurance plan providing for the basic benefit package defined in subsection (c).

"(2) MANAGED CARE OPTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if an insurer offers any health insurance plan to small employers in a State and also offers a managed care plan in the State or a geographic area within the State to employers that are not small employers, the insurer must offer a similar managed care plan to small employers in the State or geographic area.

"(B) SIZE LIMITS.—An insurer may cease enrolling new small employer groups in all or a portion of the insurer's service area for a managed care plan if it ceases to enroll any new employer groups within the service area or within a portion of a service area of such plan.

"(b) STANDARD BENEFIT PACKAGE.—

"(1) IN GENERAL.—

"(A) PACKAGE DEFINED.—Except as otherwise provided in this section, a health insurance plan providing for a standard benefit package shall be limited to payment for—

"(i) inpatient and outpatient hospital care, except that treatment for a mental disorder, as defined in subparagraph (B)(i), is subject to the special limitations described in clause (v)(1);

"(ii) inpatient and outpatient physician services, as defined in subparagraph (B)(ii), except that psychotherapy or counseling for a mental disorder is subject to the special limitations described in clause (v)(1);

"(iii) diagnostic tests;

"(iv) preventive services limited to—

"(I) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(II) well-child care;

"(III) Pap smears;

"(IV) mammograms; and

"(V) colorectal screening services; and

"(v)(I) inpatient hospital care for a mental disorder for not less than 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care; and

"(II) outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year provided by a provider who is acting within the scope of State law and who—

"(aa) is a physician; or

"(bb) is a duly licensed or certified clinical psychologist or a duly licensed or certified clinical

worker, a duly licensed or certified equivalent mental health professional, or a clinic or center providing duly licensed or certified mental health services.

"(B) DEFINITIONS.—For purposes of this paragraph:

"(i) MENTAL DISORDER.—The term 'mental disorder' has the same meaning given such term in the International Classification of Diseases, 9th Revision, Clinical Modification.

"(ii) PHYSICIAN SERVICES.—The term 'physician services' means professional medical services lawfully provided by a physician under State medical practice acts, and includes professional services provided by a dentist, licensed advanced-practice nurse, physician assistant, optometrist, podiatrist, or chiropractor acting within the scope of their practices (as determined under State law) if such services would be treated as physician services if furnished by a physician.

"(2) AMOUNT, SCOPE, AND DURATION OF CERTAIN BENEFITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and in paragraph (3), a health insurance plan providing for a standard benefit package shall place no limits on the amount, scope, or duration of benefits described in subparagraphs (A) through (C) of paragraph (1).

"(B) PREVENTIVE SERVICES.—A health insurance plan providing for a standard benefit package may limit the amount, scope, and duration of preventive services described in subparagraph (D) of paragraph (1) provided that the amount, scope, and duration of such services are reasonably consistent with recommendations and periodicity schedules developed by appropriate medical experts.

"(3) EXCEPTIONS.—Paragraph (1) shall not be construed as requiring a plan to include payment for—

"(A) items and services that are not medically necessary;

"(B) routine physical examinations or preventive care (other than care and services described in subparagraph (D) of paragraph (1)); or

"(C) experimental services and procedures.

"(4) LIMITATION ON PREMIUMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an insurer issuing a health insurance plan providing for a standard benefit package shall not require an employee to pay a monthly premium which exceeds 20 percent of the total monthly premium.

"(B) PART-TIME EMPLOYEE EXCEPTED.—In the case of a part-time employee, an insurer issuing a health insurance plan providing for a standard benefit package may require that such an employee pay a monthly premium that does not exceed 50 percent of the total monthly premium.

"(5) LIMITATION ON DEDUCTIBLES.—

"(A) IN GENERAL.—Except as permitted under subparagraph (B), a health insurance plan providing for a standard benefit package shall not provide a deductible amount for benefits provided in any plan year that exceeds—

"(i) with respect to benefits payable for items and services furnished to any employee with no family member enrolled under the plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, \$400; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year; and

"(ii) with respect to benefits payable for items and services furnished to any employee with a family member enrolled under the standard benefit package plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, \$400 per family member and \$700 per family; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the limitation computed under clause (i)(II) or (ii)(II) is not a multiple of \$10, it shall be rounded to the next highest multiple of \$10.

"(B) WAGE-RELATED DEDUCTIBLE.—A health insurance plan may provide for any other deductible amount instead of the limitations under—

"(i) subparagraph (A)(i), if such amount does not exceed (on an annualized basis) 1 percent of the total wages paid to the employee in the plan year; or

"(ii) subparagraph (A)(ii), if such amount does not exceed (on an annualized basis) 1 percent per family member or 2 percent per family of the total wages paid to the employee in the plan year.

"(6) LIMITATION ON COPAYMENTS AND COINSURANCE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) through (D), a health insurance plan providing for a standard health benefit package may not require the payment of any copayment or coinsurance for an item or service for which coverage is required under this section—

"(i) in an amount that exceeds 20 percent of the amount payable for the item or service under the plan; or

"(ii) after an employee and family covered under the plan have incurred out-of-pocket expenses under the plan that are equal to the out-of-pocket limit (as defined in subparagraph (E)(ii)) for a plan year.

"(B) EXCEPTION FOR MANAGED CARE PLANS.—A health insurance plan that is a managed care plan may require payments in excess of the amount permitted under subparagraph (A) in the case of items and services furnished by non-participating providers.

"(C) EXCEPTION FOR IMPROPER UTILIZATION.—A health insurance plan may provide for copayment or coinsurance in excess of the amount permitted under subparagraph (A) for any item or service that an individual obtains without complying with procedures established by a managed care plan or under a utilization program to ensure the efficient and appropriate utilization of covered services.

"(D) EXCEPTIONS FOR MENTAL HEALTH CARE.—In the case of care described in paragraph (1)(E)(ii), a health insurance plan shall not require payment of any copayment or coinsurance for an item or service for which coverage is required by this part in an amount that exceeds 50 percent of the amount payable for the item or service.

"(7) LIMIT ON OUT-OF-POCKET EXPENSES.—

"(A) OUT-OF-POCKET EXPENSES DEFINED.—As used in this section, the term 'out-of-pocket expenses' means, with respect to an employee in a plan year, amounts payable under the plan as deductibles and coinsurance with respect to items and services provided under the plan and furnished in the plan year on behalf of the employee and family covered under the plan.

"(B) OUT-OF-POCKET LIMIT DEFINED.—As used in this section and except as provided in subparagraph (C), the term 'out-of-pocket limit' means for a plan year beginning in—

"(i) a calendar year prior to 1993, \$3,000; or

"(ii) for a subsequent calendar year, the limit specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as pub-

lished by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year.

If the limit computed under clause (ii) is not a multiple of \$10, it shall be rounded to the next highest multiple of \$10.

"(C) ALTERNATIVE OUT-OF-POCKET LIMIT.—A health insurance plan may provide for an out-of-pocket limit other than that defined in subparagraph (B) if, for a plan year with respect to an employee and the family of the employee, the limit does not exceed (on an annualized basis) 10 percent of the total wages paid to the employee in the plan year.

"(8) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those specified by this subsection shall apply with respect to a health insurance plan providing for a standard benefit package offered by an insurer to a small employer. A State law or regulation requiring the coverage of newborns, adopted children or other specified categories of dependents shall continue to apply.

"(c) BASIC BENEFITS PACKAGE.—

"(1) IN GENERAL.—A health insurance plan providing for a basic benefit package shall be limited to payment for—

"(A) inpatient and outpatient hospital care, including emergency services;

"(B) inpatient and outpatient physicians' services;

"(C) diagnostic tests; and

"(D) preventive services (which may include one or more of the following services)—

"(i) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(ii) well-child care;

"(iii) Pap smears;

"(iv) mammograms; and

"(v) colorectal screening services.

Nothing in this paragraph shall prohibit a basic health benefit package from including coverage for treatment of a mental disorder.

"(2) COST-SHARING.—Each health insurance plan providing for the basic benefit package issued to a small employer by an insurer may impose premiums, deductibles, copayments, or other cost-sharing on enrollees of such plan.

"(3) OUT-OF-POCKET LIMIT.—Each health insurance plan providing for a basic benefit package shall provide for a limit on out-of-pocket expenses.

"(4) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those described in this subsection shall apply with respect to a health insurance plan providing for a basic benefit package offered by an insurer to a small employer. A State law or regulation requiring the coverage of newborns, adopted children or other specified categories of dependents shall continue to apply."

Subpart B—Tax Penalty on Noncomplying Insurers

SEC. 2221. EXCISE TAX ON PREMIUMS RECEIVED ON HEALTH INSURANCE POLICIES WHICH DO NOT MEET CERTAIN REQUIREMENTS.

(a) IN GENERAL.—Chapter 47 (relating to taxes on group health plans) is amended by adding at the end thereof the following new section:

"SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE.

"(a) GENERAL RULE.—In the case of any person issuing a health insurance plan to a small employer, there is hereby imposed a tax on the failure of such person to meet at any time during any taxable year the applicable require-

ments of title XXI of the Social Security Act. The Secretary of Health and Human Services shall determine whether any person meets the requirements of such title.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 25 percent of the gross premiums received during such taxable year with respect to all health insurance plans issued to a small employer by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) DEFINITIONS.—For purposes of this section:

"(1) HEALTH INSURANCE PLAN.—The term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, health maintenance organization group contract, or a multiple employer welfare arrangement, but does not include—

"(A) a self-insured group health plan;

"(B) a self-insured multiemployer group health plan; or

"(C) any of the following:

"(i) accident only, dental only, vision only, disability only, or long-term care only insurance,

"(ii) coverage issued as a supplement to liability insurance,

“(iii) medicare supplemental insurance as defined in section 1882(g)(1),

“(iv) workmen’s compensation or similar insurance, or

“(v) automobile medical-payment insurance. In the case of a multiple employer welfare arrangement that is fully insured, this Act shall only apply to the insurer of the arrangement.

“(2) **SMALL EMPLOYER.**—The term ‘small employer’ means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term ‘employee’ includes a self-employed individual.

“(3) **ELIGIBLE EMPLOYEE.**—The term ‘eligible employee’ means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

“(4) **PERSON.**—The term ‘person’ means any person that offers a health insurance plan to a small employer, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, or in States which have distinct insurance licensure requirements, a multiple employer welfare arrangement.”

(b) **NONDEDUCTIBILITY OF TAX.**—Paragraph (6) of section 275(a) (relating to nondeductibility of certain taxes) is amended by inserting “47,” after “46.”

(c) **CLERICAL AMENDMENTS.**—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

“Sec. 5000A. Failure to satisfy certain standards for health insurance.”

(d) **EFFECTIVE DATES.**—
 (1) **IN GENERAL.**—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) **NONDEDUCTIBILITY OF TAX.**—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1991.

Subpart C—Studies and Reports

SEC. 2231. GAO STUDY AND REPORT ON RATING REQUIREMENTS AND BENEFIT PACKAGES FOR SMALL GROUP HEALTH INSURANCE.

(a) **IN GENERAL.**—The Comptroller General of the United States shall study and report to the Congress by no later than January 1, 1995, on—

(1) the impact of the standards for rating practices for small group health insurance established under section 2112 of the Social Security Act and the requirements for benefit packages established under section 2113 of such Act on the availability and price of insurance offered to small employers, differences in available benefit packages, the number of small employers choosing standard or basic packages, and the impact of the standards on the number of small employers offering health insurance to employees through a self-funded employer welfare benefit plan; and

(2) differences in State laws and regulations affecting the availability and price of health insurance plans sold to individuals and the impact of such laws and regulations, including the extension of requirements for health insurance plans sold to small employers in the State to individual health insurance and the establishment of State risk pools for individual health insurance.

(b) **RECOMMENDATIONS.**—The Comptroller General shall include in the report to Congress under this section recommendations with respect to adjusting rating standards under section 2112 of the Social Security Act—

(1) to eliminate variation in premiums charged to small employers resulting from adjustments for such factors as claims experience and health status, and

(2) to eliminate variation in premiums associated with age, sex, and other demographic factors.

PART III—IMPROVEMENTS IN PORTABILITY OF PRIVATE HEALTH INSURANCE

SEC. 2241. EXCISE TAX IMPOSED ON FAILURE TO PROVIDE FOR PREEXISTING CONDITION.

(a) **IN GENERAL.**—Chapter 47 (relating to taxes on group health plans), as amended by section 2221, is amended by adding at the end thereof the following new section:

“SEC. 5000B. FAILURE TO SATISFY PREEXISTING CONDITION REQUIREMENTS OF GROUP HEALTH PLANS.

“(a) **GENERAL RULE.**—There is hereby imposed a tax on the failure of—

“(1) a group health plan to meet the requirements of subsection (e), or

“(2) any person to meet the requirements of subsection (f), with respect to any covered individual.

“(b) **AMOUNT OF TAX.**—

“(1) **IN GENERAL.**—The amount of the tax imposed by subsection (a) on any failure with respect to a covered individual shall be \$100 for each day in the noncompliance period with respect to such failure.

“(2) **NONCOMPLIANCE PERIOD.**—For purposes of this section, the term ‘noncompliance period’ means, with respect to any failure, the period—

“(A) beginning on the date such failure first occurs, and

“(B) ending on the date such failure is corrected.

“(3) **CORRECTION.**—A failure of a group health plan to meet the requirements of subsection (e) with respect to any covered individual shall be treated as corrected if—

“(A) such failure is retroactively undone to the extent possible, and

“(B) the covered individual is placed in a financial position which is as good as such individual would have been in had such failure not occurred.

For purposes of applying subparagraph (B), the covered individual shall be treated as if the individual had elected the most favorable coverage in light of the expenses incurred since the failure first occurred.

“(c) **LIMITATIONS ON AMOUNT OF TAX.**—

“(1) **TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.**—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

“(2) **TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.**—No tax shall be imposed by subsection (a) on any failure if—

“(A) such failure was due to reasonable cause and not to willful neglect, and

“(B) such failure is corrected during the 30-day period beginning on the first date any of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

“(3) **WAIVER BY SECRETARY.**—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

“(d) **LIABILITY FOR TAX.**—

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

“(A) In the case of a group health plan other than a self-insured group health plan, the issuer.

“(B)(i) In the case of a self-insured group health plan other than a multiemployer group health plan, the employer.

“(ii) In the case of a self-insured multiemployer group health plan, the plan.

“(C) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the group health plan, health insurance plan, or other health benefit arrangement (including a self-insured plan) and whose act or failure to act caused (in whole or in part) the failure.

“(2) **SPECIAL RULES FOR PERSONS DESCRIBED IN PARAGRAPH (1)(C).**—A person described in subparagraph (C) (and not in subparagraphs (A) and (B)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

“(e) **NO DISCRIMINATION BASED ON HEALTH STATUS FOR CERTAIN SERVICES.**—

“(1) **IN GENERAL.**—Except as provided under paragraph (2), group health plans may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

“(2) **TREATMENT OF PREEXISTING CONDITION EXCLUSIONS FOR ALL SERVICES.**—

“(A) **IN GENERAL.**—Subject to the succeeding provisions of this paragraph, group health plans may exclude coverage with respect to services related to treatment of a preexisting condition, but the period of such exclusion may not exceed 6 months. The exclusion of coverage shall not apply to services furnished to newborns.

“(B) **CREDITING OF PREVIOUS COVERAGE.**—

“(i) **IN GENERAL.**—A group health plan shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(1)) with respect to particular services as of the date of initial coverage under such plan (determined without regard to any waiting period under such plan), any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage without regard to any waiting period.

“(ii) **DEFINITIONS.**—As used in this subparagraph:

“(1) **PERIOD OF CONTINUOUS COVERAGE.**—The term ‘period of continuous coverage’ means, with respect to particular services, the period beginning on the date an individual is enrolled under a health insurance plan, title XVIII or XIX of the Social Security Act, or other health benefit arrangement (including a self-insured plan) which provides benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

“(II) **PREEXISTING CONDITION.**—The term ‘preexisting condition’ means, with respect to coverage under a group health plan, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage without regard to any waiting period.

“(f) **DISCLOSURE OF COVERAGE, ETC.**—Any person who has provided coverage (other than under title XVIII or XIX of the Social Security Act) during a period of continuous coverage (as defined in subsection (e)(2)(B)(i)(1)) with respect to a covered individual shall disclose, upon the request of a group health plan subject to the requirements of subsection (e), the coverage provided the covered individual, the period of such coverage, and the benefits provided under such coverage.

“(g) **DEFINITIONS.**—For purposes of this section—

"(1) COVERED INDIVIDUAL.—The term 'covered individual' means—

"(A) an individual who is (or will be) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)), and

"(B) the spouse or any dependent child of such individual.

"(2) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term by section 5000(b)(1)."

(b) CLERICAL AMENDMENT.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

"Sec. 5000B. Failure to satisfy preexisting condition requirements of group health plans."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1992.

PART IV—HEALTH CARE COST CONTAINMENT

SEC. 2251. ESTABLISHMENT OF HEALTH CARE COST COMMISSION.

(a) IN GENERAL.—There is hereby established a Health Care Cost Commission (in this subtitle referred to as the "Commission"). The Commission shall be composed of 11 members, appointed by the President by and with the advice and consent of the Senate. The membership of the Commission shall include individuals with nationally recognized expertise in health insurance, health economics, health care provider reimbursement, and related fields. The President shall provide for appointment of individuals to the Commission within 6 months of the date of enactment of this Act and in appointing such individuals to the Commission, the President shall assure representation of consumers of health services, large and small employers, State and local governments, labor organizations, health care providers, health care insurers, and experts on the development of medical technology.

(b) TERMS.—

(1) CHAIRMAN.—The term of the Chairman shall be coincident with the term of the President.

(2) OTHER MEMBERS OF THE COMMISSION.—Except as provided in paragraph (1), members of the Commission shall be appointed to serve for terms of 3 years, except that the terms of the members first appointed shall be staggered so that the terms of no more than 4 members expire in any year.

(3) VACANCIES.—Individuals appointed to fill a vacancy created in the Commission shall be appointed only for the unexpired portion of the term for which the individual's predecessor was appointed.

(c) DUTIES.—

(1) ANNUAL REPORT.—

(A) IN GENERAL.—The Commission shall report annually to the President and the Congress on national health care costs. Such report shall be made by March 30 of each year and shall include information on—

(i) levels and trends in public and private health care spending by type of health care service, geographic region of the country, and public and private sources of payment;

(ii) levels and trends in the cost of private health insurance coverage for individuals and groups;

(iii) sources of high and rising health care costs, including inflation in input prices, demographic changes and the utilization, supply and distribution of health care services; and

(iv) comparative trends in other countries and reasons for any differences from trends in the United States.

(B) ASSESSMENT AND RECOMMENDATIONS.—The report shall also analyze and assess the impact of public and private efforts to reduce growth in health care spending, and shall include recommendations for cost containment efforts.

(2) NATIONAL UNIFORM CLAIMS FORMS AND REPORTING STANDARDS.—

(A) IN GENERAL.—As part of its first annual report, the Commission shall, taking into account recommendations by the Secretary of Health and Human Services, recommend—

(i) a national uniform claims form for use by health care providers and individuals in submitting claims to private health insurers and the medicare and medicaid programs;

(ii) national standards for reporting of insurance information including coverage benefits, copayments, and deductibles;

(iii) national standards for uniform reporting by health care providers of information including clinical diagnoses, services provided, and costs of services; and

(iv) a strategy and schedule for implementing national use of such claims forms and reporting standards by January 1, 1996.

(B) RELEVANT FACTORS.—In developing its recommendations, the Commission shall consider—

(i) the potential use of electronic cards or other technology that allows expedited access to medical records, insurance, and billing information;

(ii) the need for patient confidentiality; and

(iii) special implementation issues including those concerning providers in rural and inner-city areas.

(C) REPORT.—The Commission shall report annually and make recommendations with respect to—

(i) the progress made toward national implementation of uniform claims forms and reporting standards; and

(ii) other approaches to minimize the impact of administrative costs on national health spending.

(3) STANDARDS FOR MANAGED CARE.—The Commission shall make recommendations to the Secretary of Health and Human Services for the development and ongoing review of standards for managed care plans and utilization review programs (as defined under section 2114 of title XXI of the Social Security Act).

(d) MISCELLANEOUS.—

(1) AUTHORITY.—The Commission may—

(A) employ and fix compensation of an Executive Director and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(C) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)); and

(D) make advance, progress, and other payments which relate to the work of the Commission.

(2) COMPENSATION.—While serving on the business of the Commission (including travel-time), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from the member's home and regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same man-

ner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (1) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

(3) ACCESS TO INFORMATION, ETC.—The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies. The Commission shall be subject to periodic audit by the General Accounting Office.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 2252. FEDERAL CERTIFICATION OF MANAGED CARE PLANS AND UTILIZATION REVIEW PROGRAMS.

Title XXI of the Social Security Act, as added by title II of this Act, is amended by adding at the end thereof the following part:

"PART C—FEDERAL CERTIFICATION OF MANAGED CARE PLANS

"FEDERAL CERTIFICATION OF MANAGED CARE PLANS AND UTILIZATION REVIEW PROGRAMS

"SEC. 2114. (a) VOLUNTARY CERTIFICATION PROCESS.—

"(1) CERTIFICATION.—The Secretary shall establish a process for certification of managed care plans meeting the requirements of subsection (b)(1) and of utilization review programs meeting the requirements of subsection (b)(2).

"(2) QUALIFIED MANAGED CARE PLAN.—For purposes of this title, the term 'qualified managed care plan' means a managed care plan that the Secretary certifies, upon application by the program, as meeting the requirements of this section.

"(3) QUALIFIED UTILIZATION REVIEW PROGRAM.—For purposes of this title, the term 'qualified utilization review program' means a utilization review program that the Secretary certifies, upon application by the program, as meeting the requirements of this section.

"(4) UTILIZATION REVIEW PROGRAM.—For purposes of this title, the term 'utilization review program' means a system of reviewing the medical necessity, appropriateness, or quality of health care services and supplies covered under a health insurance plan or a managed care plan using specified guidelines. Such a system may include preadmission certification, the application of practice guidelines, continued stay review, discharge planning, preauthorization of ambulatory procedures, and retrospective review.

"(5) MANAGED CARE PLAN.—

"(A) IN GENERAL.—For purposes of this title the term 'managed care plan' means a plan operated by a managed care entity as described in subparagraph (B), that arranges for the financing and delivery of health care services to persons covered under such plan through—

"(i) arrangements with participating providers to furnish health care services;

"(ii) explicit standards for the selection of participating providers;

"(iii) organizational arrangements for ongoing quality assurance and utilization review programs; and

"(iv) financial incentives for persons covered under the plan to use the participating providers and procedures provided for by the plan.

"(B) MANAGED CARE ENTITY DEFINED.—For purposes of this title, a managed care entity includes a licensed insurance company, hospital or medical service plan, health maintenance organization, an employer, or employee organization, or a managed care contractor as described in subparagraph (C), that operates a managed care plan.

“(C) **MANAGED CARE CONTRACTOR DEFINED.**—For purposes of this title, a managed care contractor means a person that—

“(i) establishes, operates or maintains a network of participating providers;

“(ii) conducts or arranges for utilization review activities; and

“(iii) contracts with an insurance company, a hospital or medical service plan, an employer, an employee organization, or any other entity providing coverage for health care services to operate a managed care plan.

“(6) **PARTICIPATING PROVIDER.**—The term ‘participating provider’ means a physician, hospital, pharmacy, laboratory, or other appropriately licensed provider of health care services or supplies, that has entered into an agreement with a managed care entity to provide such services or supplies to a patient covered under a managed care plan.

“(7) **REVIEW AND RECERTIFICATION.**—The Secretary shall establish procedures for the periodic review and recertification of qualified managed care plans and qualified utilization review programs.

“(8) **TERMINATION OF CERTIFICATION.**—The Secretary shall terminate the certification of a qualified managed care plan or a qualified utilization review program if the Secretary determines that such plan or program no longer meets the applicable requirements for certification. Before effecting a termination, the Secretary shall provide the plan notice and opportunity for a hearing on the proposed termination.

“(9) **CERTIFICATION THROUGH ALTERNATIVE REQUIREMENTS.**—

“(A) **CERTAIN ORGANIZATIONS RECOGNIZED.**—An eligible organization as defined in section 1876(b), shall be deemed to meet the requirements of subsection (b) for certification as a qualified managed care plan.

“(B) **RECOGNITION OF ACCREDITATION.**—If the Secretary finds that a State licensure program or a national accreditation body establishes a requirement or requirements for accreditation of a managed care plan or utilization review program that are at least equivalent to a requirement or requirements established under subsection (b), the Secretary may, to the extent he finds it appropriate, treat a managed care plan or a utilization review program thus accredited as meeting the requirement or requirements of subsection (b) with respect to which he made such finding.

“(b) **REQUIREMENTS FOR CERTIFICATION.**—

“(1) **MANAGED CARE PLANS.**—The Secretary, in consultation with the Health Care Cost Commission, shall establish Federal standards for the certification of qualified managed care plans, including standards related to—

“(A) the qualification and selection of participating providers;

“(B) the number, type, and distribution of participating providers necessary to assure that all covered items and services are available and accessible to persons covered under a managed care plan in each service area;

“(C) the establishment and operation of an ongoing quality assurance program, which includes procedures for—

“(i) evaluating the quality and appropriateness of care;

“(ii) using the results of quality evaluations to promote and improve quality of care; and

“(iii) resolving complaints from enrollees regarding quality and appropriateness of care;

“(D) the provision of benefits for covered items and services not furnished by participating providers if the items and services are medically necessary and immediately required because of an unforeseen illness, injury, or condition;

“(E) the qualifications of individuals performing utilization review activities;

“(F) procedures and criteria for evaluating the necessity and appropriateness of health care services;

“(G) the timeliness with which utilization review determinations are to be made;

“(H) procedures for the operation of an appeals process which provides a fair opportunity for individuals adversely affected by a managed care review determination to have such determination reviewed;

“(I) procedures for ensuring that all applicable Federal and State laws designed to protect the confidentiality of individual medical records are followed; and

“(J) payment of providers for the expenses associated with responding to requests for information needed to conduct a utilization review.

“(2) **QUALIFIED UTILIZATION REVIEW PROGRAMS.**—The Secretary, in consultation with the Health Care Cost Commission, shall establish Federal standards for the certification of qualified utilization review programs, including standards related to—

“(A) the qualifications of individuals performing utilization review activities;

“(B) procedures and criteria for evaluating the necessity and appropriateness of health care services;

“(C) the timeliness with which utilization review determinations are to be made;

“(D) procedures for the operation of an appeals process which provides a fair opportunity for individuals adversely affected by a utilization review determination to have such determination reviewed;

“(E) procedures for ensuring that all applicable Federal and State laws designed to protect the confidentiality of individual medical records are followed; and

“(F) payment of providers for the expenses associated with responding to requests for information needed to conduct a utilization review.

“(3) **APPLICATION OF STANDARDS.**—

“(A) **IN GENERAL.**—Standards shall first be established under this subsection by not later than 24 months after the date of the enactment of this section. In developing standards under this subsection, the Secretary shall—

“(i) review standards in use by national private accreditation organizations and State licensure programs;

“(ii) recognize, to the extent appropriate, differences in the organizational structure and operation of managed care plans; and

“(iii) establish procedures for the timely consideration of applications for certification by managed care plans and utilization review programs.

“(B) **REVISION OF STANDARDS.**—The Secretary shall periodically review the standards established under this subsection, taking into account recommendations by the Health Care Cost Commission, and may revise the standards from time to time to assure that such standards continue to reflect appropriate policies and practices for the cost-effective and medically appropriate use of services within managed care plans and utilization review programs.

“(c) **LIMITATION ON STATE RESTRICTIONS ON QUALIFIED MANAGED CARE PLANS AND UTILIZATION REVIEW PROGRAMS.**—

“(1) **IN GENERAL.**—No requirement of any State law or regulation shall—

“(A) prohibit or limit a qualified managed care plan from including financial incentives for covered persons to use the services of participating providers;

“(B) prohibit or limit a qualified managed care plan from restricting coverage of services to those—

“(i) provided by a participating provider; or

“(ii) authorized by a designated participating provider;

“(C) subject to paragraph (2)—

“(i) restrict the amount of payment made by a qualified managed care plan to participating providers for items and services provided to covered persons; or

“(ii) restrict the ability of a qualified managed care plan to pay participating providers for items and services provided to covered persons on a per capita basis;

“(D) prohibit or limit a qualified managed care plan from restricting the location, number, type, or professional qualifications of participating providers;

“(E) prohibit or limit a qualified managed care plan from requiring that items and services be authorized by a primary care physician selected by the covered person from a list of available participating providers;

“(F) prohibit or limit the use of utilization review procedures or criteria by a qualified utilization review program or a qualified managed care plan;

“(G) require a qualified utilization review program or a qualified managed care plan to make public utilization review procedures or criteria;

“(H) prohibit or limit a qualified utilization review program or a qualified managed care plan from determining the location or hours of operation of a utilization review, provided that emergency services furnished during the hours in which the utilization review program is not open are not subject to utilization review;

“(I) require a qualified utilization review program or a qualified managed care plan to pay providers for the expenses associated with responding to requests for information needed to conduct utilization review, other than as provided in standards for qualified managed care plans and qualified utilization review programs;

“(J) restrict the amount of payment made to a qualified utilization review program or a qualified managed care plan for the conduct of utilization review;

“(K) restrict access by a qualified utilization review program or a qualified managed care plan to medical information or personnel required to conduct utilization review;

“(L) define utilization review as the practice of medicine or another health care profession; or

“(M) require that utilization review be conducted (i) by a resident of the State in which the treatment is to be offered or by an individual licensed in such State, or (ii) by a physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered.

“(2) **EXCEPTIONS TO CERTAIN REQUIREMENTS.**—

“(A) **SUBPARAGRAPH (C).**—Subparagraph (C) shall not apply where the amount of payments with respect to a block of services or providers is established under a statewide system applicable to all non-Federal payors with respect to such services or providers.

“(B) **SUBPARAGRAPHS (L) AND (M).**—Nothing in subparagraphs (L) or (M) shall be construed as prohibiting a State from (i) requiring that utilization review be conducted by a licensed health care professional or (ii) requiring that any appeal from such a review be made by a licensed physician or by a licensed physician in any particular specialty or with any board certified specialty of the same medical specialty as the provider whose services are being rendered.

“(3) **RELATIONSHIP TO MEDICAID PROGRAM.**—Nothing in paragraph (1) shall be construed as prohibiting a State from imposing requirements on managed care plans or utilization review programs that are necessary to conform with the requirements of title XIX of the Social Security Act with respect to services provided to, or with respect to, individuals receiving medical assistance under such title.”.

SEC. 2253. ADDITIONAL FUNDING FOR OUTCOMES RESEARCH.

Section 1142(i) of the Social Security Act is amended—

(1) in paragraph (1), to read as follows:

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

- "(A) \$175,000,000 for fiscal year 1992;
 "(B) \$225,000,000 for fiscal year 1993;
 "(C) \$275,000,000 for fiscal year 1994; and
 "(D) \$300,000,000 for fiscal year 1995.";
- (2) in paragraph (2), by striking out "70 percent" and inserting in lieu thereof "50 percent".

PART V—MEDICARE PREVENTION BENEFITS

SEC. 2261. COVERAGE OF CERTAIN IMMUNIZATIONS.

(a) IN GENERAL.—Section 1861(s)(10) of the Social Security Act (42 U.S.C. 1395x(s)(10)) is amended—

(1) in subparagraph (A), by striking "and, subject to section 4071 of the Omnibus Budget Reconciliation Act of 1987, influenza vaccine and its administration; and" and inserting a comma; and

(2) by adding at the end the following new subparagraphs:

"(C) influenza vaccine and its administration, and

"(D) tetanus-diphtheria booster and its administration.";

(b) LIMITATION ON FREQUENCY.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

(2) in subparagraph (F), by striking the semicolon at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(G) in the case of an influenza vaccine, which is administered within the 11 months after a previous influenza vaccine, and, in the case of a tetanus-diphtheria booster, which is administered within the 119 months after a previous tetanus-diphtheria booster;"

(c) CONFORMING AMENDMENT.—Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)) is amended by striking "and paragraph (1)(B) or under paragraph (1)(F)" and inserting "or under subparagraph (B), (F), or (G) of paragraph (1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to influenza vaccines administered on or after October 1, 1992, and tetanus-diphtheria boosters administered on or after January 1, 1993.

SEC. 2262. COVERAGE OF WELL-CHILD CARE.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by striking the semicolon at the end of subparagraph (P) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(Q) well-child services (as defined in subsection (1)(1)) provided to an individual entitled to benefits under this title who is under 7 years of age;"

(b) SERVICES DEFINED.—Section 1861 of such Act (42 U.S.C. 1395x) is amended—

(1) by redesignating the subsection (jj) added by section 4163(a)(2) of the Omnibus Budget Reconciliation Act of 1990 as subsection (kk); and

(2) by inserting after subsection (kk) (as so redesignated) the following new subsection:

"WELL-CHILD SERVICES

"(1)(1) The term 'well-child services' means well-child care, including routine office visits, routine immunizations (including the vaccine itself), routine laboratory tests, and preventive dental care, provided in accordance with the periodicity schedule established with respect to the services under paragraph (2).

"(2) The Secretary, in consultation with the American Academy of Pediatrics, the Advisory Committee on Immunization Practices, and other entities considered appropriate by the Secretary, shall establish a schedule of periodicity which reflects the appropriate frequency with which the services referred to in paragraph (1) should be provided to healthy children."

(c) CONFORMING AMENDMENTS.—(1) Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)), as amended by section 2261(b), is amended—

(A) in subparagraph (F), by striking "and" at the end;

(B) in subparagraph (G), by striking the semicolon at the end and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(H) in the case of well-child services, which are provided more frequently than is provided under the schedule of periodicity established by the Secretary under section 1861(1)(2) for such services;"

(2) Section 1862(a)(7) of such Act (42 U.S.C. 1395y(a)(7)), as amended by section 2261(c), is amended by striking "or (G)" and inserting "(G), or (H)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to well-child services provided on or after January 1, 1993.

SEC. 2263. DEMONSTRATION PROJECTS FOR COVERAGE OF OTHER PREVENTIVE SERVICES.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (hereafter referred to as the "Secretary") shall establish and provide for a series of ongoing demonstration projects under which the Secretary shall provide for coverage of the preventive services described in subsection (c) under the medicare program in order to determine—

(1) the feasibility and desirability of expanding coverage of medical and other health services under the medicare program to include coverage of such services for all individuals enrolled under part B of title XVIII of the Social Security Act; and

(2) appropriate methods for the delivery of those services to medicare beneficiaries.

(b) SITES FOR PROJECT.—The Secretary shall provide for the conduct of the demonstration projects established under subsection (a) at the sites at which the Secretary conducts the demonstration program established under section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and at such other sites as the Secretary considers appropriate.

(c) SERVICES COVERED UNDER PROJECTS.—The Secretary shall cover the following services under the series of demonstration projects established under subsection (a):

(1) Glaucoma screening.

(2) Cholesterol screening and cholesterol-reducing drug therapies.

(3) Screening and treatment for osteoporosis, including tests for bone-mass measurement and hormone replacement therapy.

(4) Screening services for pregnant women, including ultrasound and chlamydial testing and maternal serum alpha-protein.

(5) One-time comprehensive assessment for individuals beginning at age 65 or 75.

(6) Prostate-specific antigen (PSA) testing.

(7) Other services considered appropriate by the Secretary.

Not more than one such service shall be covered at each site.

(d) REPORTS TO CONGRESS.—Not later than October 1, 1994, and every 2 years thereafter, the Secretary shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives describing findings made under the demonstration projects conducted pursuant to subsection

(a) during the preceding 2-year period and the Secretary's plans for the demonstration projects during the succeeding 2-year period.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Supplementary Medical Insurance Trust Fund for expenses incurred in carrying out the series of demonstration projects established under subsection (a) the following amounts:

(1) \$4,000,000 for fiscal year 1993.

(2) \$4,000,000 for fiscal year 1994.

(3) \$5,000,000 for fiscal year 1995.

(4) \$5,000,000 for fiscal year 1996.

(5) \$6,000,000 for fiscal year 1997.

SEC. 2264. OTA STUDY OF PROCESS FOR REVIEW OF MEDICARE COVERAGE OF PREVENTIVE SERVICES.

(a) STUDY.—The Director of the Office of Technology Assessment (hereafter referred to as the "Director") shall, subject to the approval of the Technology Assessment Board, conduct a study to develop a process for the regular review for the consideration of coverage of preventive services under the medicare program, and shall include in such study a consideration of different types of evaluations, the use of demonstration projects to obtain data and experience, and the types of measures, outcomes, and criteria that should be used in making coverage decisions.

(b) REPORT.—Not later than 2 years after the date of the enactment of this section, the Director shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives on the study conducted under subsection (a).

SEC. 2265. FINANCING OF ADDITIONAL BENEFITS.

(a) PREMIUMS FOR 1993-1995.—Section 1839(e)(1)(B) of the Social Security Act (42 U.S.C. 1395r(e)(1)(B)) is amended—

(1) in clause (iii) by striking "\$36.60" and inserting "\$36.70";

(2) in clause (iv) by striking "\$41.10" and inserting "\$41.20"; and

(3) in clause (v) by striking "\$46.10" and inserting "\$46.20".

(b) PREMIUMS FOR 1996-1997.—(1) Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended by adding at the end the following new subsection:

"(g) Except as provided in subsections (b) and (f), the monthly premium otherwise determined, without regard to this subsection, for each individual enrolled under this part shall be increased by 10 cents for each month in 1996 and 1997."

(2) Section 1839 of such Act (42 U.S.C. 1395r) is amended—

(A) in subsection (a)(2), by striking "(b) and (e)" and inserting "(b), (e), and (g)";

(B) in subsection (a)(3), by striking "subsection (e)" and inserting "subsections (e) and (g)"; and

(C) in subsection (b), by striking "determined under subsection (a) or (e)" and inserting "otherwise determined under this section (without regard to subsection (f))".

PART VI—OZONE-DEPLETING CHEMICALS

SEC. 2271. INCREASED BASE TAX RATE ON OZONE-DEPLETING CHEMICALS AND EXPANSION OF LIST OF TAXED CHEMICALS.

(a) IN GENERAL.—Paragraph (1) of section 4631(b) (relating to amount of tax) is amended to read as follows:

"(B) BASE TAX AMOUNT.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical is the amount determined under the following table for such calendar year:

Calendar year:	Base Tax Amount:
1992	\$1.85
1993	2.75
1994	3.65
1995	4.55

(b) CONFORMING AMENDMENTS.—

(1) RATES RETAINED FOR CHEMICAL USED IN RIGID FOAM INSULATION.—The table in subparagraph (B) of section 4682(g)(2) (relating to chemicals used in rigid foam insulation) is amended—

(A) by striking "15" and inserting "13.5", and (B) by striking "10" and inserting "9.6".

(2) FLOOR STOCK TAXES.—

(A) Subparagraph (C) of section 4682(h)(2) (relating to other tax-increase dates) is amended by striking "1993, and 1994" and inserting "1993, 1994, and 1995, and July 1, 1992".

(B) Paragraph (3) of section 4682(h) (relating to due date) is amended—

(i) by inserting "or July 1" after "January 1", and

(ii) by inserting "or December 31, respectively," after "June 30".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable chemicals sold or used on or after July 1, 1992.

PART VII—HEALTH CARE OF COAL MINERS

SEC. 2281. SHORT TITLE.

This part may be cited as the "Coal Industry Retiree Health Benefit Act of 1991".

SEC. 2282. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) coal provides a significant portion of the energy used in the United States;

(2) the production, transportation and use of coal affects interstate and foreign commerce and the national public interest;

(3) a significant portion of the national work force has been employed in the production of coal for interstate and foreign commerce and in the national interest;

(4) the Government of the United States has regulated the coal industry, employment in the industry, and the provision of retirement benefits within the industry;

(5) the continued well-being and security of employees, retirees and their dependents within the coal industry are directly affected by the provision of health benefits to retirees and their dependents;

(6) for many decades, the provision of adequate health care for retirees has been an essential element in maintaining a stable and strong coal industry as an important component in a strong United States economy;

(7) an important element in the privately maintained benefit plans now experiencing financial difficulty has been the provision of health benefits for retirees of companies no longer in business; and

(8) withdrawals of contributing employers from privately maintained benefit plans under collective bargaining agreements derived from an agreement with the United States, covering retirees within the coal industry, result in substantially increased funding burdens for employers that continue to contribute to such plans, adversely affect labor-management relations and the stability and strength of the coal industry, and impair the provision of health care to retirees.

(b) ADDITIONAL FINDINGS.—The Congress further finds that—

(1) it is necessary to modify and reform the current private benefit plan structure for retirees within the coal industry in order to stabilize the provision of health care benefits to such retirees; and

(2) it is necessary to supplement the current private benefit plan structure with a benefit protection program that will assure continued funding and contain program costs.

(c) DECLARATION OF POLICY.—It is hereby declared to be the policy of this part—

(1) to remedy problems that discourage the provision, funding, and delivery of health care to coal industry retirees;

(2) to provide reasonable protection for the health benefits of coal industry retirees;

(3) to require use of state-of-the-art cost containment and managed care measures as part of the overall package of health care delivery and financing; and

(4) to provide a financially self-sufficient program for the provision of retiree health benefits in the coal industry.

SEC. 2283. COAL INDUSTRY HEALTH BENEFITS PROGRAM.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subtitle:

"Subtitle J—Coal Industry Health Benefits"

"CHAPTER 99. Coal industry health benefits."

"CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS"

"SUBCHAPTER A. Coal Industry Retiree Health Benefits Corporation."

"SUBCHAPTER B. Eligibility for and payment of benefits."

"SUBCHAPTER C. Other provisions."

"Subchapter A—Coal Industry Retiree Health Benefit Corporation"

"Sec. 9701. Establishment of the Corporation.

"Sec. 9702. Directors of Corporation.

"Sec. 9703. Powers; tax status.

"Sec. 9704. Operation of Corporation.

"SEC. 9701. ESTABLISHMENT OF THE CORPORATION.

"There is hereby created the Coal Industry Retiree Health Benefit Corporation (hereafter in this chapter referred to as the 'Corporation'), which shall be a governmental body corporate under the direction of a board of directors. Within the limitations of law and regulation, the board of directors shall determine the general policies that govern the operations of the Corporation. The principal office of the Corporation shall be in the District of Columbia or at any other place determined by the Corporation.

"SEC. 9702. DIRECTORS OF CORPORATION.

"(a) APPOINTMENT.—The board of directors of the Corporation shall consist of 5 persons, who shall be appointed by the Secretary of Labor. The board shall at all times have the following as members:

"(1) 2 persons from employers in the coal-mining industry (only 1 of whom shall be from an entity that is or was a settlor of a plan described in section 404(c));

"(2) 1 person from an organization that represents coal industry employees (and that is or was a settlor of a plan described in section 404(c));

"(3) 1 person from another labor organization representing employees (whether or not in the coal industry); and

"(4) 1 other person who shall serve as the chairman.

"(b) TERMS OF OFFICE, SUCCESSORS.—Each director shall be appointed for a term of 3 years, except for the initial term. The initial terms of the directors shall be as follows:

"Coal industry employee representative (section 404(c) settlor)	4 years
"Coal-mining industry employer (section 404(c) settlor)	3 years
Other employee representative	3 years
Other coal-mining industry employer	2 years

Chairman 1 year.
A vacancy on the board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term. A director may serve after the expiration of a term until a successor has taken office.

"(c) QUORUMS.—Vacancies on the board shall not impair the powers of the board to execute the functions of the Corporation so long as there are 3 members in office. The presence of 3 members shall constitute a quorum for the transaction of the business of the board.

"(d) INDEPENDENT AUDIT.—The Corporation shall annually employ an independent certified or licensed public accountant who shall examine and audit the books and financial transactions of the Corporation. The Corporation shall, not later than June 30 of each year, submit to the Congress a report describing the activities of the Corporation under this chapter.

"(e) ADOPTION OF BYLAWS; AMENDMENT; ALTERATION; PUBLICATION IN THE FEDERAL REGISTER.—As soon as practicable, but not later than 180 days after the date of the enactment of this chapter, the board shall adopt initial bylaws and rules relating to the conduct of the business of the Corporation. Thereafter, the board may alter, supplement or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. Any bylaw or rule relating to the conduct or business of the Corporation shall be adopted in compliance with the Administrative Procedure Act, including the notice and comment provisions thereof.

"SEC. 9703. POWERS; TAX STATUS.

"(a) POWERS OF CORPORATION.—The Corporation shall have power—

"(1) to adopt, alter, and use a corporate seal;

"(2) to have succession until dissolved by Act of Congress;

"(3) to make and enforce such bylaws, rules, and regulations as may be necessary or appropriate to carry out the purposes or provisions of this chapter;

"(4) to make and perform contracts, agreements, and commitments;

"(5) to prescribe and impose fees and charges for services by the Corporation;

"(6) to settle, adjust, and compromise, and with or without consideration or benefit to the Corporation, to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the Corporation;

"(7) to sue and be sued, complain and defend, in any State, Federal, or other court;

"(8) to acquire, take, hold, and own, and to deal with and dispose of any property;

"(9) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and to appoint, employ, and fix and provide for the compensation and benefits of officers, employees, attorneys, and agents;

"(10) to borrow funds from the United States Treasury for startup and operating costs;

"(11) to collect delinquent accounts; and

"(12) to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the Corporation by this chapter.

"(b) EXEMPTION FROM TAXATION.—The Corporation, its property, its franchise, capital, reserves, surplus, and its income (including but not limited to, any income of any fund established under section 9704(f)), shall be exempt from all taxation now or hereafter imposed by

the United States (other than taxes imposed under chapter 21, relating to the Federal Insurance Contributions Act and chapter 23, relating to the Federal Unemployment Tax Act) or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the Corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

"(c) CORPORATION AS AGENCY.—Notwithstanding section 1349 of title 28 or any other provision of law—

"(1) the Corporation shall be deemed to be an agency included in sections 1345 and 1442 of such title 28;

"(2) all civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and

"(3) any civil or other action, case or controversy in a court of a State, or any court other than a district court of the United States, to which the Corporation is a party may at any time before the trial thereof be removed by the Corporation to the United States district court for the district and division embracing the place where the same is pending, or if there is no such district court, to the district court of the United States for the district in which the principal office of the Corporation is located, by following any procedure for removal of causes in effect at the time of such removal. No attachment or execution shall be issued against the Corporation or any of its property before final judgment in any State, Federal, or other court.

"(d) REPORT TO CONGRESS.—No later than 5 years after the effective date of this chapter, the Corporation shall present a report to Congress on its activities, including an evaluation of the effectiveness of the Corporation in achieving its goals, and recommending any changes to this chapter as it considers beneficial. At such time, Congress shall review the activities and operations of the Corporation.

"SEC. 9704. OPERATION OF CORPORATION.

"(a) INVESTIGATORY AUTHORITY.—

"(1) The Corporation may make such investigations as it deems necessary to enforce any provision of this chapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated.

"(2) The Corporation shall keep strictly confidential all information received relating to—

"(A) trade secrets or financial or commercial information pertaining specifically to a given person, the disclosure of which could cause competitive injury to such person, or

"(B) personnel or medical data or similar data, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

unless the portions containing such matters, information, or data have been excised, but may use such information to the extent necessary to enforce the premium obligation imposed under subsection (g).

"(b) DISCOVERY POWERS VESTED IN BOARD OR DESIGNATED OFFICERS.—For the purpose of any investigation described in subsection (a), or any other proceeding under this chapter, the board or any officer designated by the board, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda or other records which the Corporation deems relevant or material to the inquiry.

"(c) CONTEMPT.—In case of contumacy by, or refusal to obey, a subpoena issued to any person, the Corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on (or where such person resides or carries on business) in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda and other records. The court may issue an order requiring such person to appear before the Corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

"(d) COOPERATION WITH GOVERNMENTAL AGENCIES.—In order to avoid unnecessary expense and duplication of functions among government agencies, the Corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this chapter as is practicable and consistent with law. The Corporation may utilize the facilities or services of any department, agency or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency or establishment. The head of each department, agency or establishment of the United States shall cooperate with the Corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this chapter.

"(e) CIVIL ACTIONS.—

"(1) Civil actions may be brought by the Corporation for appropriate relief, legal or equitable or both, to enforce the provisions of this chapter.

"(2) Except as otherwise provided in this chapter, if an action is brought in a district court of the United States, it may be brought in the district where the Corporation is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

"(3) The district courts of the United States shall have jurisdiction of actions brought by the Corporation under this chapter without regard to the amount in controversy in any such action.

"(4)(A) An action under this subsection may not be brought after the later of—

"(i) 6 years after the date on which the cause of action arose; or

"(ii) 3 years after the applicable date specified in subparagraph (B).

"(B) The applicable date specified in this subparagraph is the earliest date on which the Corporation acquired or should have acquired actual knowledge of the existence of such cause of action.

"(C) For purposes of this paragraph, in an action by the Corporation to collect premiums due under this chapter, the cause of action shall be treated as having arisen no earlier than the date on which the premium was due.

"(5) In any action brought under this chapter, whether to collect premiums, penalties (in the amount determined by the Corporation, which shall be no greater than the greater of interest on the unpaid premium or 20 percent of the amount of the unpaid premium), or interest (at the rate determined by the Corporation) or for any other purpose, in which a judgment in favor of the Corporation is awarded, the court shall award the Corporation its costs and reasonable counsel fees.

"(f) ESTABLISHMENT OF COAL INDUSTRY RETIREE BENEFIT FUND.—

"(1) Except as provided in paragraph (2), the Corporation shall establish a Coal Industry Retiree Benefit Fund (hereafter in this chapter referred to as the 'Fund'). All amounts received by the Corporation shall be deposited in the Fund, and all expenditures made by the Corporation shall be made out of the Fund.

"(2) The Corporation shall transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury of the United States any portion of the premiums received under subsection (g) which are allocable to the portion of such premiums which are imposed to offset Federal revenue losses by reason of deductions being allowed under chapter 1 with respect to such premiums.

"(3) Except as otherwise provided in this chapter, the balance of the Fund shall at any time consist of the aggregate at such time of the following items:

"(A) Cash on hand or on deposit.

"(B) Amounts invested in United States Government or agency securities.

"(g) IMPOSITION OF PREMIUM PAYMENT OBLIGATION.—

"(1)(A) There is hereby imposed on each person that produces bituminous coal for use or for sale the obligation to pay to the Corporation an hourly premium equal to—

"(i) in the case of bituminous coal produced in an eastern State, 99 cents on each hour worked in coal production work by such person's employees, or

"(ii) in the case of bituminous coal produced in a western State, 15 cents on each hour worked in coal production work by such person's employees.

"(B)(i) There is hereby imposed on bituminous coal imported to the United States, for use or for sale, a per-ton premium obligation to be paid to the Corporation. Such premium is intended to be equivalent to the premium imposed on domestically produced bituminous coal.

"(ii) The amount of the per-ton premium shall be the tonnage equivalent of the hourly premium imposed pursuant to subparagraph (A). The initial amount of the per-ton premium shall be 25 cents per ton of coal imported to the United States for use or sale.

"(iii) For purposes of this subparagraph, the 'tonnage equivalent' shall mean a premium rate assessed upon each ton of coal imported to the United States that is equivalent to the hourly premium, based upon typical productivity as determined under rules established by the Corporation. Prior to the establishment of such rules, the tonnage equivalent to the hourly premium shall be the percentage of the hourly premium specified by the Corporation.

"(iv) In the event an importer of bituminous coal has reason to believe that the amount of the tonnage equivalent determined pursuant to the preceding clauses does not accurately reflect the actual productivity involved in producing coal, such importer may provide evidence to the Corporation demonstrating such inaccuracies. The Corporation shall reevaluate the tonnage equivalent premium amount for the complaining importer, and shall take such evidence into account.

"(v) For purposes of this subparagraph, the term 'ton' means 2,000 pounds, and the term 'United States' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

"(C)(i) In addition to the amounts specified in subparagraphs (A) and (B), each last signatory operator and each other employer referred to in this subparagraph shall pay to the Corporation an annual per beneficiary premium. The

amount of the annual per beneficiary premium shall be product of the total number of orphan miners, spouses, surviving spouses, and dependents (determined under section 9711) attributable to such last signatory operator or employer and the per beneficiary premium as calculated in clause (iii).

"(ii) For purposes of this subparagraph, an orphan miner (and his spouse, surviving spouse and dependents) shall be attributable—

"(I) to an employer if his employment with such employer resulted in his eligibility under section 9711(b)(1)(E); or

"(II) to a last signatory operator meeting the conditions described in section 9723(6) with respect to such orphan miner.

"(iii)(I) The Corporation shall establish the amount of the per beneficiary premium each year, which shall be equal to the quotient of the projected cost of operating the Corporation during the succeeding year divided by the total number of orphan miners, spouses, surviving spouses, and dependents receiving benefits during the current year. In projecting the cost of operating the Corporation, the anticipated benefit experience and administrative expenses as a whole, and amounts needed to eliminate any accumulated deficit, shall be taken into account.

"(II) The Corporation shall have the power to adjust the amount of the annual per beneficiary premium where necessary to take into account unanticipated changes in the cost of the operating the Corporation, unanticipated changes in the number of orphan miners, spouses, surviving spouses, and dependents attributable to the last signatory operator or employer, or both.

"(III) As of the date any per beneficiary premium obligation is due under this subparagraph, the persons described in section 9723(5) (B) and (C) with respect to any last signatory operator or employer shall be treated as such last signatory operator or employer, and shall be jointly and severally liable for such obligation.

"(iv) A last signatory operator shall have no liability under this subparagraph if—

"(I) as of November 5, 1990, and for all periods thereafter, such last signatory operator, and the persons described in section 9723(5) (B) and (C) with respect to such last signatory operator, have ceased all involvement in the mining, production, preparation, marketing, sale, distribution, transportation, leasing or licensing of coal; and

"(II) such last signatory operator, and the persons described in section 9723(5) (B) and (C) with respect to such last signatory operator, were, in the aggregate, involved in the production of fewer than 50,000 tons of coal during each of the 3 years immediately preceding the cessation of such involvement.

The limitation of liability set forth in the preceding sentence shall cease to apply at any time that a last signatory operator, or any persons described in section 9723(5) (B) and (C) with respect to such last signatory operator, ceases to meet the conditions described in subclause (I).

"(v) The annual per beneficiary premium shall be payable in equal monthly installments, due by the tenth day of each month. In no event shall a last signatory operator be obligated to pay a per beneficiary premium for an individual for any month for which the last signatory operator has paid its required assessment for such individual under section 9713(d).

"(vi) A last signatory operator shall have no liability under this subparagraph if as of January 1, 1992, and for all periods thereafter, such last signatory operator and the persons described in section 9723(5) (B) and (C) with respect to such last signatory operator, have ceased all involvement in the production, sale, distribution, transportation, or use in processes for producing products of the operator and such persons, of bituminous or sub-bituminous coal

(other than the sale or leasing of any interest in coal reserves).

"(2)(A) In the event that a person required to make payments under paragraph (1) fails to do so, the Corporation shall assess liability against the person, based upon the Corporation's estimate of the person's liability.

"(B) No later than 90 days after the assessment of liability by the Corporation, the person may request administrative review of the Corporation's assessment, in accordance with procedures adopted by the Corporation.

"(C) Notwithstanding the pendency of administrative review of any assessment of liability, the person shall, no later than 30 days after the assessment of such liability, pay all amounts required by the assessment in accordance with any payment schedule applied by the Corporation. In the event a person fails to make such payments, all amounts owed by the person shall become immediately due and payable.

"(D) In the event the person that has made payments in accordance with subparagraph (C) is ultimately determined, in accordance with subparagraph (B), to have paid in excess of the amounts actually due, the person shall receive a refund of such excess amounts, with interest.

"(3) The Corporation shall have the power to adjust the amount of the premiums imposed under subparagraphs (A)(i) and (B) of paragraph (1) where necessary to enable the provision of benefits under section 9712. Any such adjustment shall reflect the reduction in Federal revenues by reason of deductions being allowed under chapter 1 with respect to such premiums.

"(4) Premiums owed under subparagraphs (A) and (B) of paragraph (1) shall be due on the tenth day of each calendar month immediately following the month in which the coal is produced or imported, and shall be paid to the Corporation in accordance with forms and schedules promulgated by the Corporation.

"(5) The premium obligation imposed under this section shall take effect on the date of the enactment of this chapter. Premiums paid under this section shall be deemed to be fully deductible under this title without regard to any limitation on deductibility set forth in this title.

"(6) For purposes of this subsection—
"(A) the term 'bituminous coal' means coal classified as bituminous coal according to the publication of the American Society for Testing and Materials under the title 'Standard Classification of Coals by Rank' (ASTM D 388-91a), as in effect on the date of the enactment of this chapter, and

"(B) the term 'Eastern States' includes Alabama, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin; and

"(C) the term 'Western States' includes Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

"Subchapter B—Eligibility for and Payment of Benefits

"Sec. 9711. Eligibility; orphan miners.

"Sec. 9712. Payment of benefits.

"Sec. 9713. Establishment of Coal Industry 1991 Benefit Fund.

"Sec. 9714. Obligation of last signatory operator to provide benefits to retirees.

"Sec. 9715. Transition benefits; premium non-payment; transfers between 1991 Fund and Corporation.

"SEC. 9711. ELIGIBILITY; ORPHAN MINERS.

"(a) IN GENERAL.—Any person who is an orphan miner, as defined in subsection (b), or who meets the conditions set forth in subsection (c), shall be eligible to receive benefits provided by the Corporation pursuant to section 9712, except that no person shall be eligible to receive benefits from the Corporation because of a failure to receive benefits resulting from a temporary labor dispute.

"(b) ORPHAN MINER STATUS.—For purposes of this section—

"(1) An orphan miner is any person who—

"(A)(i) as of the date of enactment of this chapter, was eligible to receive benefits as a retiree from a plan described in section 9721(d) (or, but for the enactment of this chapter, would be eligible to receive benefits as a retiree from the plan described in section 9721(d)(2)(A)), and

"(ii) is not receiving benefits as a retiree from a plan described in section 9721(d) or from the plan established pursuant to section 9713;

"(B) is not described in subparagraph (A), but was eligible to receive benefits as a retiree from the plan established pursuant to section 9713 and is not receiving benefits from such plan;

"(C)(i) is receiving a pension from the defined benefit pension plan maintained pursuant to the agreement described in section 9723(7) (other than the plan described in section 9721(c)),

"(ii) but for the enactment of this chapter, would be eligible to receive medical benefits as a retiree as of February 1, 1993, from the plan described in section 9721(d)(2)(B), and

"(iii) is not receiving medical benefits as a retiree from the plan described in section 9721(d)(2)(B) or from any other plan;

"(D)(i) is receiving a pension from the defined benefit pension plan maintained pursuant to the agreement described in section 9723(7) (other than the plan described in section 9721(c));

"(ii) as of February 1, 1993, had earned 20 years of credited service under such plan;

"(iii) is at any time after beginning to receive such pension not receiving retiree medical benefits equal to the benefits in effect at that time under the plans described in section 9712(b)(3); and

"(iv) meets the eligibility requirements for retiree medical benefits then in effect under such plans; or

"(E)(i) was eligible as a result of coal production work performed in the bituminous, sub-bituminous or lignite coal industry to receive retiree medical benefits from a health care plan that met the requirements of subparagraphs (D) and (E) of paragraph (2);

"(ii) initially ceased to receive retiree medical benefits on or after the date of enactment of this chapter, despite continued eligibility therefore;

"(iii) had been receiving such benefits from a plan that had been in existence for at least 3 years prior to the cessation of benefits; and

"(iv) was included in a category of retirees that had been eligible to receive benefits for at least 3 years prior to the cessation of benefits.

"(2) For purposes of paragraph (1)(E), the following rules shall apply:

"(A) Eligibility is continuing where benefits ceased incident to an employer's cessation of operations, but is not continuing where benefits ceased pursuant to a lawful termination or modification of a plan (under circumstances other than a cessation of operations).

"(B) In the case of any individual who has 20 years of credited service under a defined benefit pension plan maintained pursuant to the agreement described in section 9723(7), or who was otherwise eligible to receive retiree medical benefits from a single employer health care plan pursuant to a coal wage agreement, all health care plans in which such individual was a participant during a period of such credited service or during such period of eligibility shall be taken

into account in determining whether the 3-year tests have been met.

"(C) In the case of an employer that established a new health care plan as a replacement for a prior plan, such prior plan shall be taken into account in determining whether the 3-year tests have been met.

"(D) A health care plan meets the requirements of this subparagraph if the employer maintaining the plan, a labor organization representing the employees of the employer, or an employee of the employer submits a copy of the plan to the Corporation within 180 days from the later of—

"(i) the date of establishment of the plan; or
 "(ii) the date of enactment of this chapter.

"(E) A health care plan meets the requirements of this subparagraph if the employer maintaining the plan, a labor organization representing the employees of the employer, or an employee of the employer submits a copy of any amendment or modification to the plan to the Corporation within 180 days from the later of—

"(i) the date of such amendment or modification; or
 "(ii) the date of enactment of this chapter.

"(C) ELIGIBILITY OF SPOUSES AND DEPENDENTS.—

"(1) A spouse, surviving spouse or dependent of an orphan miner or a deceased coal miner meets the conditions of this section if such individual was eligible to receive benefits from a plan described in section 9721(d) as of the date of enactment of this chapter, and is not receiving benefits from that plan or from the plan established pursuant to section 9713.

"(2) A spouse, surviving spouse or dependent of an orphan miner or a deceased coal miner meets the conditions of this section if such individual is not described in paragraph (1), but was eligible to receive benefits from the plan established pursuant to section 9713 and is not receiving benefits from such plan.

"(3) In the case of any spouse, surviving spouse or dependent of an orphan miner described in subsection (b)(1)(A) or (b)(1)(C) of this section, eligibility shall be based upon the rules set forth in the plans described in section 9721(d) as of the date of enactment of this chapter. In the case of any spouse, surviving spouse or dependent of an orphan miner described in subsection (b)(1)(D), eligibility shall be based upon the rules set forth in individual employer plans maintained pursuant to the agreement described in section 9723(7) on the date that the orphan miner first became eligible for benefits from the Corporation. In all other cases, eligibility shall be based upon the rules of the plan that was or would have been applicable to the orphan miner or deceased coal miner for the 3-year period preceding eligibility for benefits from the Corporation. The Corporation is authorized to promulgate regulations consistent with this paragraph establishing the eligibility of other spouses, surviving spouses and dependents of orphan miners or deceased coal miners for health benefits.

"(d) REENROLLMENT OF ORPHAN MINERS AND BENEFICIARIES.—The Corporation and the joint board of trustees of the plan established pursuant to section 9713 shall cooperate to review the eligibility of individuals under this section. Pending such review, any individual receiving benefits from a plan described in section 9721(d) as of the date of enactment of this chapter shall be presumed to meet the first part of the eligibility tests of subsections (b)(1)(A) and (c)(1). However, no individual shall be considered eligible to receive benefits provided by the Corporation unless a determination is made that such individual in fact met or meets all eligibility requirements necessary to receive benefits as required under subsection (b) or (c). No individual shall be eligible under subsection (b)(1)(A) or

(c)(1) if such individual was finally determined to be ineligible to receive benefits from a plan described in section 9721(d) prior to the date of enactment of this chapter.

"SEC. 9712. PAYMENT OF BENEFITS.

"(a) IN GENERAL.—The Corporation shall provide medical benefits to orphan miners, their spouses, surviving spouses and dependents, who meet the eligibility requirements of section 9711, and shall provide coverage for death benefits to orphan miners eligible for such benefits. The board shall establish schedules of benefits applicable to classes of orphan miners, their spouses, surviving spouses and dependents, in accordance with this section. All benefit obligations of the Corporation shall be contingent upon the continued imposition of an hourly premium payment obligation as specified in section 9704(g)(1)(A).

"(b) BENEFIT LEVELS.—

"(1) An orphan miner eligible for benefits pursuant to section 9711(b)(1)(A) or 9711(b)(1)(C) shall be entitled to benefit coverage that is substantially the same as (but not exceeding) the coverage provided by the plans described in section 9721(d) as of the date of enactment of this chapter, and shall be subject to all limitations of such coverage. Such orphan miner shall also be eligible for death benefits, which shall be equal to the death benefits provided as of the date of enactment of this chapter under the plan described in section 9721(c).

"(2) An orphan miner eligible for benefits pursuant to section 9711(b)(1)(B) or 9711(b)(1)(E) shall be entitled to a level of benefits and benefit coverage that is substantially the same as (but not exceeding) the retiree benefit coverage applicable to him immediately preceding his eligibility for benefits from the Corporation, and shall be subject to all limitations of such coverage. Notwithstanding the foregoing, the following rules shall apply:

"(A) The level of benefits and benefit coverage provided under this paragraph shall not exceed that which is provided under paragraph (1) of this subsection.

"(B) In determining the retiree benefit coverage applicable to an orphan miner for purposes of this paragraph, the Corporation shall disregard any increases or decreases in benefits or benefit coverage that were in effect for fewer than 3 years preceding the orphan miner's eligibility for benefits from the Corporation, except that—

"(i) any death benefit applicable to an orphan miner as a result of 1991 amendments to the agreement described in section 9723(7) shall not be disregarded; and

"(ii) increases or decreases in benefits or benefit coverage that were the subject of a collective bargaining agreement shall not be disregarded.

"(3) An orphan miner eligible for benefits pursuant to section 9711(b)(1)(D) shall be entitled to a level of benefits and benefit coverage equivalent to the level of benefits and benefit coverage, if any, provided under individual employer plans maintained pursuant to the agreement described in section 9723(7) on the date that the orphan miner first became eligible for benefits from the Corporation, and shall be subject to all limitations of such coverage.

"(4) An individual eligible for benefits pursuant to section 9711(c) shall be entitled to medical benefit coverage that does not exceed the medical benefit coverage that is or would have been applicable to the coal miner through whom the individual claims eligibility, and the individual shall be subject to all limitations of such coverage.

"(5) The Corporation may make increases to its schedules of benefits that are desirable for efficiency of administration, except that such adjustments to benefits may not result in an increase in cost to the Corporation or an increase in any premium under section 9704(g).

"(6) Notwithstanding any other provision of law, to the extent a participant or beneficiary who is eligible for benefits from the Corporation is also eligible for benefits under title XVIII or XIX of the Social Security Act, or under any other plan maintained by a State or the Federal Government or any agency or subdivision thereof, or pursuant to any State or Federal law in existence on the date of enactment of this chapter or thereafter enacted, benefits under such titles or under such other plan shall be considered to be primary to benefits provided by the Corporation, and shall be provided without regard to any benefits provided by the Corporation. In such case, the benefits provided by the Corporation shall be reduced so that the total benefits paid from all sources shall not exceed the total allowable expense for the covered good or service.

"(c) MANDATORY MANAGED CARE.—The Corporation shall develop managed care rules which shall be applicable to the payment of benefits under this section. The rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules shall include, but not be limited to—

"(1) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use;

"(2) obtaining a unit price discount in exchange for patient volume and preferred provider status, with the amount of the potential discount varying by geographic region;

"(3) limiting benefit payments to physicians to the Medicare allowable charge, while protecting beneficiaries from balance billing by providers;

"(4) utilizing Medicare's 'appropriateness of service' protocols in the claims payment function where they are more stringent;

"(5) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries;

"(6) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network; and

"(7) utilizing a managed care network provider system as practiced in the health care industry at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this section.

Any managed care or cost containment program shall have as its primary goal the provision of quality medical care. In no event shall any such program result in the reduction of the quality of care provided to participants and beneficiaries consistent with sound medical practice.

"(d) EFFECTIVE DATE.—Benefits shall be payable under this section as of January 1, 1992. Pursuant to section 9715, the Corporation shall pay the trustees of the plans described in section 9721(d) and the plan established pursuant to section 9713 for all benefit and administrative costs expended with respect to eligible orphan miners, spouses, surviving spouses and dependents, from the effective date to the date that such individuals are transferred to the Corporation.

"(e) ELECTIVE COVERAGE.—

"(1) An employer may elect to provide retirement health coverage to its employees by meeting the following conditions:

"(A) The employer must employ workers in the coal industry.

"(B) The employer agrees to pay an annual premium, as determined by the Corporation, sufficient to provide retirement health coverage to all of its employees who perform classified work as determined under the agreement described in section 9723(7), or any successor agreement, who

have worked a total of 20 years, including both service with that employer, service for any other employer described in this subsection, and service for any other employer that is credited for purposes of eligibility by a plan described in section 404(c).

"(C) The employer is not currently obligated by a collective bargaining agreement to make contributions to the plan established pursuant to section 9713.

"(D) The employer's election, once made, is irrevocable.

"(2) Upon the retirement of an employee of an employer described in paragraph (1), with 20 or more years of service, upon such terms and conditions as established by the Corporation, such employee and his or her dependents shall receive benefits, upon such terms and conditions as determined by the Corporation.

"SEC. 9713. ESTABLISHMENT OF UNITED MINE WORKERS OF AMERICA 1991 BENEFIT FUND.

"(a) MERGER OF RETIREE BENEFIT PLANS.—

"(1) As soon as practicable after the enactment of this chapter, and in no event later than 60 days, the settlors of the plans described in section 9721(d) shall cause such plans to be merged, and shall appoint a joint board of trustees to manage the operation and administration of the merged plan. The merged plan shall be known as the United Mine Workers of America 1991 Benefit Fund (hereinafter referred to as the '1991 Fund'). The 1991 Fund shall be an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)) and a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

"(2) The settlors shall design the structure and administration of the 1991 Fund. The settlors may at any time and for any reason change the number and identity of the members comprising the board of trustees of the 1991 Fund.

"(b) ELIGIBILITY.—

"(1) The following individuals shall be eligible to receive benefits from the 1991 Fund:

"(A) Any individual who, as of the date of enactment of this chapter, was eligible to receive benefits from the plan described in section 9721(d)(2)(A) (or who, but for the enactment of this chapter, would be eligible for benefits from such plan), and with respect to whom the last signatory operator is and remains signatory to an agreement that is described in section 9723(7) or that contains provisions relating to pension and health care benefits that are the same as those contained in such agreement.

"(B) Any individual who retired from classified employment under an agreement that is described in section 9723(7) or that contains provisions relating to pension and health care benefits that are the same as those contained in such agreement, and any spouse, surviving spouse or dependent of such retiree, with respect to whom the last signatory operator makes an election prior to February 1, 1993, to pay premiums to the 1991 Fund for such benefits and is and remains signatory to an agreement that is described in section 9723(7) or that contains provisions relating to pension and health care benefits that are the same as those contained in such agreement. Any election made pursuant to this subparagraph must cover, at a minimum, all of the last signatory operator's retirees who retired from classified employment as of February 1, 1993.

"(2) No individual shall be eligible under subparagraph (A) of paragraph (1) unless the joint board of trustees of the 1991 Fund determines that such individual in fact met all eligibility requirements of the plan described in section 9721(d)(2)(A) as of the date of enactment of this chapter. Any individual who was finally deter-

mined to have been ineligible for benefits from a plan described in section 9721(d)(2)(A) prior to such date of enactment shall be ineligible under subparagraph (A) of paragraph (1).

"(c) BENEFITS.—

"(1) Except as otherwise provided in this subsection, health care benefits provided under the 1991 Fund shall be identical to the benefits provided under the plans described in section 9721(d). The 1991 Fund shall provide coverage for death benefits to retirees, equal to the death benefits provided under the plan described in section 9721(c).

"(2) The joint board of trustees of the 1991 Fund shall develop managed care rules, subject to section 9714(b), which shall be applicable to the payment of benefits under this section. The rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. The board of trustees shall permit any last signatory operator subject to section 9714 to utilize the managed care and cost containment rules and programs developed pursuant to this paragraph, at the election of such last signatory operator. Major elements of such rules shall include, but not be limited to—

"(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use;

"(B) obtaining a unit price discount in exchange for patient volume and preferred provider status, with the amount of the potential discount varying by geographic region;

"(C) limiting benefit payments to physicians to the Medicare allowable charge, while protecting beneficiaries from balance billing by providers;

"(D) utilizing Medicare's 'appropriateness of service' protocols in the claims payment function where they are more stringent;

"(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries;

"(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network; and

"(G) utilizing a managed care network provider system as practiced in the health care industry at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this section.

Any managed care or cost containment program shall have as its primary goal the provision of quality medical care. In no event shall any such program result in the reduction of the quality of care provided to participants and beneficiaries consistent with sound medical practice.

"(3) Notwithstanding any other provision of law, to the extent a participant or beneficiary who is eligible for benefits from the 1991 Fund is also eligible for benefits under title XVIII or XIX of the Social Security Act, or under any other plan maintained by a State or the Federal Government or any agency or subdivision thereof, or pursuant to any State or Federal law in existence on the date of enactment of this chapter or thereafter enacted, benefits under such titles or under such other plan shall be considered to be primary to benefits provided by the 1991 Fund and shall be provided without regard to any benefits provided by the 1991 Fund. In such case, the benefits provided by the 1991 Fund shall be reduced so that the total benefits paid from all sources shall not exceed the total allowable expense for the covered good or service.

"(d) ASSESSMENTS.—

"(1) As of November 30 of each plan year, the joint board of trustees of the 1991 Fund shall set a monthly assessment for each person required

to pay assessments pursuant to paragraph (2). The monthly assessment for each such person shall be equal to 1/12 of the product of—

"(A) the projected cost of operating the 1991 Fund during the succeeding plan year (less any assets received from a plan described in section 9721(c) and any other surplus assets) divided by the number of participants and beneficiaries for the current plan year; and

"(B) the projected number of the 1991 Funds' eligible participants and beneficiaries attributable to such person, determined as of the nearest November 1.

In projecting the cost of operating the 1991 Fund, the board of trustees shall take into account the anticipated benefit experience and administrative expenses of the 1991 Fund as a whole, and amounts needed to eliminate any accumulated deficit. The monthly assessment determined under this paragraph shall be verified by an independent auditor, and shall continue in effect for each month of the succeeding plan year, except that the joint board of trustees shall determine a monthly assessment for any new contributor or other person for whom a monthly assessment has not been established, and a revised monthly assessment for any last signatory operator that makes the election described in subsection (b)(1)(B) and with respect to which new participants and beneficiaries become eligible for benefits. Any new monthly assessment or revised monthly assessment shall be based upon the number of projected participants and beneficiaries attributable to the contributor as of the date the new or revised assessment is made. Each person required to pay assessments pursuant to paragraph (2) shall continue to pay to the plans described in section 9721(d) the contributions required under the applicable coal wage agreement, until the first month for which the assessment described in this paragraph is set. In no event shall a person required to pay assessments pursuant to paragraph (2) be required to make any payment to the 1991 Fund for the same period for which a contribution to a plan described in section 9721(d) is required.

"(2) Each last signatory operator with respect to any person described in subsection (b)(1)(A), and each last signatory operator with respect to any person described in subsection (b)(1)(B) that has agreed to provide benefits coverage through the 1991 Fund, shall pay to the 1991 Fund for each month the assessment determined by the joint board of trustees pursuant to paragraph (1). The assessments paid under this section shall be deemed to be fully deductible under this title without regard to any limitation on deductibility set forth in this title.

"(3) Either of the settlors shall have the right to audit the accounts, books and records, and operation of the 1991 Fund, at any time and for any reason, upon reasonable notice to the joint board of trustees. The joint board of trustees shall cooperate fully with the settlors in connection with any such audit and shall make available appropriate personnel and records deemed necessary by the auditors for inspection and copying at reasonable times and places.

"(4) Each last signatory operator obligated to pay assessments to the 1991 Fund pursuant to paragraph (2) shall be bound by all of the provisions of the plan and trust documents establishing and governing the 1991 Fund.

"(5) As of the date any assessment owed under this subsection is due, the persons described in section 9723(5) (B) or (C) with respect to any last signatory operator shall be treated as such last signatory operator and shall be jointly and severally liable for such assessment.

"(e) EXCLUSIVE OBLIGATION.—Except as provided in this chapter, no employer that was a signatory to the 1978 or any subsequent coal wage agreement and that had an obligation to provide health care benefits to coal mine retirees

shall be obligated to provide benefits to individuals covered by the plans described in section 9721(d), or to make contributions to any plan described in section 9721(d), or to the 1991 Fund, with respect to work performed or coal mined after the date of enactment of this chapter, or to pay withdrawal liability to a plan described in section 9721(d) as a result of the change in the contribution obligation required by this chapter.

"SEC. 9714. OBLIGATION OF LAST SIGNATORY OPERATOR TO PROVIDE BENEFITS TO RETIREES.

"(a) DURATION OF OBLIGATION.—The last signatory operator of any individual receiving retiree health care benefits as of February 1, 1993 (including retiree, spouse, surviving spouse and dependent benefits) from an individual employer plan maintained pursuant to a coal wage agreement (or who has applied for such benefits as of February 1, 1993, and has met every eligibility requirement for such benefits as of such date) shall provide retiree health care benefits to such individual equal to the benefits required to be provided by such last signatory operator's individual employer plan as of January 1, 1992, as limited by any managed care or cost containment rules of the type described in sections 9712(c) and 9713(c)(2), and subject to subsection (b), for as long as the last signatory operator remains in business. The existence, level and duration of benefits provided to a last signatory operator's former employees (and their spouses, surviving spouses and dependents), other than those described in this subsection, who are or were covered by a coal wage agreement, shall only be as determined by and subject to collective bargaining or lawful unilateral action, except that this subsection shall not be construed to impair the eligibility of any individual described in section 9711(b)(1)(D) for the benefit coverage described in section 9712(b)(3).

"(b) MANAGED CARE PROVIDER SYSTEM QUALITY CONTROL.—Any managed care provider system adopted by a last signatory operator as permitted under subsection (a), or by the joint board of trustees of the 1991 Fund, pursuant to section 9713(c)(2), shall be subject to the following requirements of this subsection:

"(1) The settlors shall establish a medical peer review panel, which shall determine standards of quality for managed care provider systems. Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending upon the nature of the medical need. Each settlor shall have the power to appoint and remove 2 individuals who shall serve on the panel. A panel member shall be either a medical practitioner knowledgeable in managed care, or an individual who is expert in managed care.

"(2) Each last signatory operator and the joint board of trustees of the 1991 Fund shall submit a description of any managed care provider system to the panel prior to implementation of the system, and shall, on the same date or prior to such submission, provide notice of the submission to the participants of the affected employee benefit plan or plans. The last signatory employer or the joint board of trustees may implement the proposed system on a provisional basis on or after the 120th day after the submission to the panel, unless the panel issues a preliminary determination that the system has not been shown to meet the requisite standards. The requirements of this paragraph shall not apply to a last signatory operator electing to utilize the managed care provider system established by the 1991 Fund if the panel has issued a favorable determination for such system.

"(3)(A) Upon receipt of a submission by a last signatory operator or by the joint board of trustees, the panel shall conduct a preliminary examination of the managed care provider system. In the event that the preliminary review reveals a

failure to show compliance with established standards such that provisional implementation by a last signatory operator or by the joint board of trustees may be detrimental to participants subject to the system, the panel shall, within 120 days of the submission, issue a preliminary determination that the system has not been shown to meet the requisite standards.

"(B) Within 240 days from the date of any submission, the panel shall issue a final determination of whether the system has been shown to meet the established standards of quality. In the event of a negative determination, the panel shall list specific steps that may be taken by the last signatory operator or by the joint board of trustees to qualify the system under the established standards.

"(C) The first-named settlor in section 9723(8) shall have the authority to review submissions made under paragraph (2), and to designate the order in which such submissions shall be considered by the panel.

"(D) In the event that the members of the panel deadlock on a determination to be made under this paragraph, they shall, by majority vote, appoint a neutral person, who would be qualified to serve as a panel member, to break such deadlock.

"(4) In the event of a negative determination by the panel, the last signatory operator shall have the options described in subparagraph (A), (B), or (C), and the joint board of trustees shall have the options described in subparagraphs (A) and (B):

"(A) implementing the specific steps outlined by the panel pursuant to paragraph (3);

"(B) consistent with the requirements of this subsection, establishing a new managed care provider system that meets the requisite standards; or

"(C) electing to utilize the managed care provider system established by the 1991 Fund if the panel has issued a favorable determination for such system.

"(5) The panel shall develop rules for the periodic review of determinations made, except that reviews shall be no more frequent than once every 3 years; and for the reconsideration of any prior determination upon a showing that the managed care provider system does not or has ceased to meet the established standards. The panel may take into account written complaints received from affected participants and beneficiaries, but the authority of the panel shall be limited to determining the continued qualification of a managed care provider system under the established standards, and shall not extend to resolving claims of medical malpractice or any other issue.

"(6) The panel shall withhold from all persons not connected with the conduct of a reconsideration or review described in paragraph (5) (other than the first-named settlor in section 9723(8)) all information relating to the subject of any written complaint received by an affected participant or beneficiary; and may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such information. Notwithstanding the foregoing, the panel shall provide the last signatory operator or the joint board of trustees of the 1991 Fund with a copy of any written complaint relating to a managed care provider system maintained by such last signatory operator or joint board of trustees.

"(7)(A) The panel, any person acting as a member or staff to the panel, any person under a contract or other formal agreement with the panel, and any person who participates with or assists the panel with respect to any action taken pursuant to this subsection, shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preced-

ing sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) and the Civil Rights Acts (42 U.S.C. 1981 et seq.). Nothing in this subparagraph shall prevent the United States or any attorney general of a State from bringing an action, where such an action is otherwise authorized.

"(B) Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to the panel regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

"(8) The joint board of trustees of the 1991 Fund and each last signatory operator that makes a submission pursuant to subsection (b)(2) shall be liable for reasonable fees assessed by the panel in connection with the review of managed care provider systems.

"(c) SATISFACTION OF OBLIGATIONS.—Subject to the provisions of sections 9711 and 9713, the obligations of a last signatory operator under this section may be satisfied for any period with respect to any individual by payment of the required assessment under section 9713(d) or the premium under section 9704(g)(1)(C), or by the provision of the required benefits under an individual employer plan.

"(d) CONTROL GROUP LIABILITY.—As of the date that any benefit obligation owed pursuant to this section is due, the persons described in section 9723(5) (B) and (C) with respect to any last signatory operator shall be treated as such last signatory operator, and shall be jointly and severally liable for such benefit obligation.

"SEC. 9715. TRANSITION BENEFITS; PREMIUM NONPAYMENT; TRANSFERS BETWEEN 1991 FUND AND CORPORATION.

"(a) PAYMENT OF BENEFITS TO ORPHAN MINERS.—The plans described in section 9721(d) and the 1991 Fund shall continue to provide benefits to orphan miners, spouses, surviving spouses and dependents described in section 9711 (b) and (c), until the end of the second month beginning after the effective date of section 9712(d). Such orphan miners, spouses, surviving spouses and dependents shall be transferred to the Corporation as of the first day of the third month following the effective date of section 9712(d). The defined benefit pension plans maintained pursuant to the agreement described in section 9723(7) shall, on behalf of the Corporation and the 1991 Fund, continue to provide death benefits to orphan miners described in section 9711(b) and to retirees described in section 9713(b)(1) until the end of the second month beginning after the effective date of section 9712(d). Such pension plans shall have no liability for death benefits for the orphan miners described in section 9711(b), or for the retirees described in section 9713(b)(1), as of the first day of the third month following the effective date of section 9712(d). The Corporation may elect to pay the plans described in section 9721(d), the 1991 Fund, or the defined benefit pension plans maintained pursuant to the agreement described in section 9723(7) to continue to provide transition benefits after the end of the second month beginning after the effective date of section 9712(d), and for a period not to exceed 6 months. If the Corporation so elects, it shall pay such plans all amounts necessary to enable the provision of benefits and to cover all costs of administration associated with the provision of benefits. The schedule for such payments shall be determined by the boards of trustees of the plans, and may require advance

payments. Amounts paid pursuant to this subsection shall not be included in the amounts to be reimbursed pursuant to subsection (b).

"(b) REIMBURSEMENT OF COST FOR TRANSITION BENEFITS.—No later than the first day of the fourth month after the effective date of section 9712(d), the Corporation shall reimburse the plans described in section 9721(d) and the 1991 Fund, with interest, for the amounts of benefits paid and administrative expenses incurred pursuant to subsection (a). No later than the first day of the fourth month after the effective date of section 9712(d), the Corporation and the 1991 Fund shall reimburse the defined benefit pension plans maintained pursuant to the agreement described in section 9723(7), with interest, for the amount of death benefits paid and administrative expenses incurred pursuant to subsection (a).

"(c) ACCESS TO RECORDS.—The joint boards of trustees of the plans described in section 9721(d) and the 1991 Fund shall share with the Corporation all records, files and documents related to the orphan miners, spouses, surviving spouses and dependents transferred to the Corporation, to the extent necessary for the Corporation to administer the payment of benefits to such individuals.

"(d) PREMIUM NONPAYMENT.—
 "(1) No individual shall be eligible for benefits from the 1991 Fund during any month for which the assessments required under section 9713(d) have not been paid by such individual's last signatory operator. Such individual shall be immediately eligible to receive benefits from the Corporation and the Corporation shall have a cause of action against such individual's last signatory operator for the per beneficiary premium imposed under section 9704(g)(1)(C).

"(2) The 1991 Fund shall continue to treat an individual described in paragraph (1) as if he or she were eligible for benefits until the end of the third month for which an assessment due has not been paid. If the last signatory operator with respect to such individual has not paid its assessments due by the end of such month (with such interest and liquidated damages imposed by the board of trustees in their discretion, up to the amounts provided in section 9722(d)(2) (B) and (C)), the 1991 Fund shall notify the Corporation that the individual is transferred to the Corporation pursuant to paragraph (1), and the Corporation shall reimburse the 1991 Fund, with interest, for any benefits paid to or on behalf of such individual for all months for which assessments have not been paid.

"Subchapter C—Other Provisions

"Sec. 9721. Determination and disposition of excess assets.

"Sec. 9722. Civil enforcement.

"Sec. 9723. Definitions.

"Sec. 9724. Sham transactions.

"SEC. 9721. DETERMINATION AND DISPOSITION OF EXCESS PENSION ASSETS.

"(a) DETERMINATION OF EXCESS PENSION ASSETS.—

"(1) Within 30 days after the enactment of this chapter, the joint board of trustees of the plan described in subsection (c) shall, through the independent actuaries of the plan, calculate the amount of the excess pension assets. The trustees of the plan described in subsection (c) shall recalculate the excess pension assets at any time that they are directed to do so by the settlers.

"(2) Immediately following the calculation (or recalculation) of the excess pension assets, the trustees of the plan described in subsection (c) shall segregate the excess pension assets from the remaining assets of such plan. The segregated excess pension assets (including all earnings thereon) shall be held in the plan until disbursed pursuant to subsection (b).

"(b) DISPOSITION OF EXCESS PENSION ASSETS.—Notwithstanding any other provision of law, the excess pension assets (including all earnings thereon) shall be expended in the following order:

"(1) Fifty million dollars shall be added to the general assets of the Corporation.

"(2) The deficits in the plans described in subsection (d) as of the date of enactment of this chapter shall be reduced to zero.

"(3) Fifty million dollars shall be added to the general assets of the 1991 Fund.

"(4) The remainder of the excess pension assets, if any, shall be added to the general assets of the 1991 Fund, at such times and in such amounts as may be directed by the settlors.

"(c) PLAN CONTAINING EXCESS PENSION ASSETS.—A plan is described in this subsection if it is a pension plan and—

"(1) it is a plan described in section 404(c) or a continuation thereof; and

"(2) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

"(d) RELATED WELFARE PLANS.—A plan is described in this subsection if—

"(1) it is a plan described in section 404(c) or a continuation thereof; and

"(2) it provides health benefits to retirees and beneficiaries of the industry which maintained the plan described in subsection (c); and

"(A) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976; or

"(B) participation in the plan is substantially limited to individuals who retired on or after January 1, 1976.

"(e) TAX TREATMENT, VALIDITY OF TRANSFER OF EXCESS PENSION ASSETS.—

"(1) No deduction shall be allowed under this title with respect to the expenditure of excess pension assets pursuant to subsection (a), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers or amounts hereafter contributed by employers to the plans described in subsection (c) or (d), or to the 1991 Fund.

"(2) The expenditure of excess pension assets pursuant to subsection (b)—

"(A) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

"(B) shall not be includible in the gross income of any employer maintaining a plan described in subsection (c).

"(3) Neither the segregation of excess pension assets pursuant to subsection (a)(2), the expenditure of excess pension assets pursuant to subsection (b), nor any direction made by the settlors pursuant to subsection (a)(1) or (b)(4) shall be deemed to violate or be prohibited by any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject to taxes, fines, or penalties of any kind whatsoever.

"SEC. 9722. CIVIL ENFORCEMENT.

"(a) Civil actions may be brought by the 1991 Fund for appropriate relief, legal or equitable or both, to enforce the provisions of this chapter.

"(b) Except as otherwise provided in this chapter, where such an action is brought in a district court of the United States, it may be brought in the district where the 1991 Fund is administered, in the district where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

"(c) The district courts of the United States shall have jurisdiction of actions brought by the 1991 Fund under this chapter without regard to the amount in controversy in any such action.

"(d)(1) In any action brought under subsection (a) (other than an action described in

paragraph (2)), the court in its discretion may award to the 1991 Fund all or a portion of the costs of litigation, including reasonable attorneys' fees, incurred by the 1991 Fund in connection with such action.

"(2) In any action by the 1991 Fund to enforce section 9713(d)(2), in which a judgment in favor of the 1991 Fund is awarded, the court shall award the 1991 Fund—

"(A) the unpaid assessments;

"(B) interest on the unpaid assessments;

"(C) an amount equal to the greater of—

"(i) interest on the unpaid assessments; or

"(ii) liquidated damages in the amount of 20 percent of the amount determined by the court under subparagraph (A);

"(D) reasonable attorneys' fees and costs of the action, to be paid by the defendant; and

"(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid assessments shall be determined by using the rate provided under the rules of the 1991 Fund, or, if none, the rate prescribed under section 6621.

"(e)(1) Except as provided in paragraph (2), an action under this subsection may not be brought after the later of—

"(A) 6 years after the date on which the cause of action arose; or

"(B) 3 years after the earliest date on which the 1991 Fund acquired or should have acquired actual knowledge of the existence of such cause of action.

"(2) In the case of fraud or concealment, the period described in paragraph (1)(b) shall be extended to 6 years after the applicable date.

"(f) Any person who is an employer, a last signatory operator, a person described in section 9723(5) (B) or (C) with respect to an employer or last signatory operator, a bituminous coal industry retiree, or any spouse, surviving spouse or dependent of a bituminous coal industry retiree, and is adversely affected by any act or omission of any party under this chapter, or who is an employee organization of which such a coal industry retiree is a member, or an employer association of which such an employer is a member, may bring an action for appropriate equitable relief in the appropriate court.

"(1) During the pendency of any proceeding under this subsection by an employer, employer association, last signatory operator, or person described in section 9723(5) (B) or (C) with respect to an employer or last signatory operator, all potentially affected retirees, spouses, surviving spouses and dependents eligible for benefits from the 1991 Fund shall be transferred to the Corporation, which shall—

"(A) provide such benefits as would have been provided from the 1991 Fund, and

"(B) have and exercise all of the rights and obligations of the 1991 Fund with respect to—

"(i) the collection of assessments relating to such retirees and spouses, surviving spouses and dependents, and

"(ii) the defense of the proceeding.

"(2) In the event that a last signatory operator or other person pays to the 1991 Fund the assessments required pursuant to section 9713(d) for any month during the pendency of a proceeding described in paragraph (1), the 1991 Fund, and not the Corporation, shall be responsible for providing any benefits required to be paid for that month to eligible individuals under section 9713(b).

"(g) In any action brought under subsection (f), the court may award all or a portion of the costs and expenses, including reasonable attorneys' fees, incurred in connection with such action to any party that prevails or substantially prevails in such action.

"(h) This subsection shall be the exclusive means for bringing actions against the Corporation or the 1991 Fund under this chapter.

"(i)(1) Except as provided in paragraph (2), an action under this subsection may not be brought after the later of—

"(A) 6 years after the date on which the cause of action arose; or

"(B) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

"(2) In the case of fraud or concealment, the period described in paragraph (1)(B) shall be extended to 6 years after the applicable date.

"(j) The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"(k) In any suit, action or proceeding in which the 1991 Fund is a party, in any State court, the 1991 Fund may, without bond or security, remove such suit, action, or proceeding from the State court to the United States district court for the district or division in which such suit, action or proceeding is pending by following any procedure for removal now or hereafter in effect.

"SEC. 9723. DEFINITIONS.

"For purposes of this chapter—

"(1) The term 'coal production work' shall mean work in which an individual engages in physical operations consisting of the mining, preparation, handling, processing, cleaning and loading of coal, including removal of overburden and coal waste, the transportation of coal (except by waterway or rail not owned by an employer engaged in the production of coal), repair and maintenance work normally performed at a mine site or central shop of an employer engaged in the production of coal, maintenance of gob piles and mine roads, construction of mine or mine-related facilities including the erection of mine tipples and sinking of mine shafts or slopes performed by employees of the employer engaged in the production of coal, and work of the type customarily related to the foregoing; except that the term shall not mean managerial, supervisory, warehouse, clerical or technical work, unless such work is performed subject to a coal wage agreement binding the employer engaged in the production of coal.

"(2) The term 'coal wage agreement' shall mean—

"(A) the National Bituminous Coal Wage Agreement;

"(B) any agreement substantially identical or substantially similar to such agreement, but only if, as of the date of enactment of this chapter, such agreement provided for contributions to be made to the plans described in section 9721(d); or

"(C) any other agreement entered into between an employer in the bituminous coal industry and the United Mine Workers of America that requires the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan.

"(3) The term 'credited service' shall have the same meaning as determined under the applicable defined benefit pension plan, but only if such service was of the type used to determine eligibility under the plan described in section 9721(d)(2)(B).

"(4) The term 'excess pension assets' shall mean the excess of the current value of plan assets (as defined in section 3(26) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(26))) of the plan described in section 9721(c) over the actuarial present value of all benefits for all plan participants under such plan, determined as of the date of enactment, in accordance with the actuarial assumptions and methods which reflect the plan actuary's best estimate of anticipated experience under such

plan, except that where excess pension assets are recalculated as required under section 9721(a)(1), the amount of excess pension assets shall be determined as of the July 1 next preceding the date of the recalculation.

"(5) A last signatory operator shall be considered to be in business for purposes of this chapter if any of the following conducts or derives revenue from any business, whether or not within the coal industry—

"(A) such last signatory operator;

"(B) any member of the controlled group of corporations (within the meaning of section 414(b)) of such last signatory operator; or

"(C) any trade or business which is under common control (as determined under section 414(c)) with such last signatory operator.

If a last signatory operator is no longer in business and there is no successor, the relationships described in paragraphs (2) and (3) shall be determined at the time it ceased to be in business.

"(6)(A) The term 'last signatory operator' shall mean, with respect to any orphan miner or other coal industry retiree eligible for medical benefits, a person that meets or at one time met the following conditions:

"(i) A person meets the conditions of this clause if such person is—

"(I) an owner, lessee or other person who operates, controls or supervises a coal mine;

"(II) an independent contractor who operates, controls or supervises a coal mine; or

"(III) in the event a person described in (I) or (II) is no longer in business, any successor to such person, except that a purchaser shall not be considered to be a successor with respect to any orphan miner or other coal industry retiree eligible for medical benefits, if responsibility for the medical benefits of such orphan miner or other coal industry retiree was retained by the seller in the purchase and sale transaction.

"(ii) A person meets the conditions of this clause if such person or, in the case of a person described in clause (i)(III), such person's predecessor—

"(I) was a signatory to a 1978 coal wage agreement, or any subsequent coal wage agreement; and

"(II) was the last coal industry employer of such orphan miner or other retiree.

"(B) Notwithstanding subparagraph (A), if, as of the date of enactment of this chapter, a person has assumed or retained responsibility for retiree medical benefit obligations for individuals who retired from employment under a coal wage agreement, then such person shall be treated as the last signatory operator with respect to such individuals for purposes of this chapter, and any person from whom such responsibility was assumed shall not be treated as the last signatory operator.

"(C) For purposes of this chapter, the last signatory operator of any orphan miner or other coal industry retiree shall be considered to be the last signatory operator with respect to such orphan miner's or other coal industry retiree's spouse, surviving spouse and dependents, if any.

"(7) The term 'National Bituminous Coal Wage Agreement' shall mean the collective bargaining agreement negotiated by the settlors.

"(8) The term 'settlers' means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (hereinafter referred to as the 'BCOA'), except that if the BCOA ceases to exist, members of the BCOA representing more than 50 percent of the tonnage membership of BCOA on the date of enactment of this Act shall collectively be considered a settlor.

"SEC. 9724. SHAM TRANSACTIONS.

"If a principal purpose of any transaction is to evade or avoid liability under this chapter, this chapter shall be applied (and liability shall

be imposed) without regard to such transaction. A bona fide, arm's-length sale of an entity subject to liability under this chapter to an unrelated party (within the meaning of section 4204(d) of the Employee Retirement Income Security Act of 1974, as amended), shall not by itself be sufficient to establish a principal purpose to evade or avoid liability within the meaning of this section."

(b) CONFORMING AMENDMENT.—The table of subtitles for the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subtitle:

"Subtitle J. Coal Industry health benefits."

Subtitle D—Capital Gain Provisions PART I—PROGRESSIVE CAPITAL GAIN RATES

SEC. 2301. PROGRESSIVE CAPITAL GAIN RATES.

(a) IN GENERAL.—Section 1(h) (relating to maximum capital gains rate) is amended to read as follows:

"(h) PROGRESSIVE CAPITAL GAINS RATE.—

"(1) IN GENERAL.—If a taxpayer has qualified capital gain for any taxable year, then the tax imposed by this section shall be equal to the sum of—

"(A) a tax computed at the rates and in the same manner as if this subsection had not been enacted on taxable income reduced by the amount of qualified capital gain, plus

"(B) the excess (if any) of—

"(i) a tax computed under the substitute table on taxable income, over

"(ii) a tax computed under the substitute table on taxable income reduced by the amount of qualified capital gain.

"(2) SUBSTITUTE TABLES.—

"(A) IN GENERAL.—In the case of any taxable year ending after January 31, 1992, the Secretary shall prescribe a substitute table for each of the tables under subsections (a), (b), (c), (d), and (e).

"(B) METHOD OF PRESCRIBING TABLES.—The tables under subparagraph (A) for any taxable year shall be the tables in effect without regard to this subsection, adjusted by—

"(i) substituting the capital gain rates for the rates of tax contained therein, and

"(ii) modifying the amounts setting forth the tax to the extent necessary to reflect the adjustments under clause (i).

"(C) CAPITAL GAIN RATES.—For purposes of subparagraph (B)(i), the capital gain rates shall be determined as follows:

If the rate of tax is:	The capital gain rate is:
15 percent	5 percent
28 percent	19 percent
31 percent	23 percent
36 percent	28 percent

"(3) QUALIFIED CAPITAL GAIN.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified capital gain' means net capital gain determined without regard to any gain taken into account in computing the exclusion under section 1202 (relating to gain from sale of small business stock).

"(B) TRANSITION RULE.—In the case of any taxable year beginning before February 1, 1992, and ending on or after such date, qualified capital gain shall be equal to the lesser of—

"(i) net capital gain, or

"(ii) net capital gain determined by taking into account only gain or loss properly taken into account for the portion of the taxable year after January 31, 1992.

If the amount under clause (i) exceeds the amount under clause (ii) for such taxable year, the rate of tax under this section shall not exceed 28 percent with respect to such excess.

"(C) SPECIAL RULE FOR PASS-THRU ENTITIES.—

"(i) IN GENERAL.—In applying subparagraph (B) with respect to any pass-thru entity, the de-

termination of when gain is properly taken into account shall be made at the entity level.

"(ii) **PASS-THRU ENTITY DEFINED.**—For purposes of clause (i), the term 'pass-thru entity' means—

- "(I) a regulated investment company,
- "(II) a real estate investment trust,
- "(III) an S corporation,
- "(IV) a partnership,
- "(V) an estate or trust, and
- "(VI) a common trust fund."

(b) **TREATMENT OF COLLECTIBLES.**—

(1) **IN GENERAL.**—Section 1222 is amended by inserting after paragraph (11) the following new paragraph:

"(12) **SPECIAL RULE FOR COLLECTIBLES.**—

"(A) **IN GENERAL.**—Any gain or loss from the sale or exchange of a collectible shall be treated as a short-term capital gain or loss (as the case may be), without regard to the period such asset was held. The preceding sentence shall apply only to the extent the gain or loss is taken into account in computing taxable income.

"(B) **TREATMENT OF CERTAIN SALES OF INTEREST IN PARTNERSHIP, ETC.**—For purposes of subparagraph (A), any gain from the sale or exchange of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles held by such entity shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751(f) shall apply for purposes of the preceding sentence.

"(C) **COLLECTIBLE.**—For purposes of this paragraph, the term 'collectible' means any capital asset which is a collectible (as defined in section 408(m) without regard to paragraph (3) thereof)."

(2) **CHARITABLE DEDUCTION NOT AFFECTED.**—

(A) Paragraph (1) of section 170(e) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)."

(B) Clause (iv) of section 170(b)(1)(C) is amended by inserting before the period at the end thereof the following: "and section 1222 shall be applied without regard to paragraph (12) thereof (relating to special rule for collectibles)".

(c) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall apply to taxable years ending after January 31, 1992.

(2) **COLLECTIBLES.**—The amendments made by subsection (b) shall apply to dispositions after January 31, 1992.

SEC. 2302. INCREASE IN HOLDING PERIOD REQUIRED FOR LONG-TERM CAPITAL GAIN TREATMENT.

(a) **IN GENERAL.**—

(1) **CAPITAL GAIN.**—Paragraphs (1) and (3) of section 1222 (relating to other terms relating to capital gains and losses) are each amended by striking "1 year" and inserting "2 years".

(2) **CAPITAL LOSSES.**—Paragraphs (2) and (4) of section 1222 are each amended by striking "1 year" and inserting "2 years".

(b) **CONFORMING AMENDMENTS.**—The following provisions are each amended by striking "1 year" each place it appears and inserting "2 years":

- (1) Section 166(d)(1)(B).
- (2) Section 422(a)(1).
- (3) Section 423(a)(1).
- (4) Section 584(c).
- (5) Subsections (a), (b), and (c) of section 631.
- (6) Section 642(c)(3).
- (7) Paragraphs (1) and (2) of section 702(a).
- (8) Section 818(b)(1).
- (9) Section 852(b)(3)(B).
- (10) Section 856(c)(4)(A).
- (11) Section 857(b)(3)(B).

(12) Paragraphs (11) and (12) of section 1223.

(13) Subsections (b), (d), and subparagraph (A) of subchapter (e)(4) of section 1233.

(14) Section 1234(b)(1).

(15) Section 1235(a).

(16) Subsections (b) and (g)(2)(C) of section 1248.

(c) **TECHNICAL AMENDMENTS.**—

(1) Section 7518(g)(3)(B) is amended by striking "6 months" and inserting "2 years".

(2) Section 1231 (b)(3)(B) is amended by striking "12 months" and inserting "24 months".

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 2303. RECAPTURE UNDER SECTION 1250 OF TOTAL AMOUNT OF DEPRECIATION.

(a) **GENERAL RULE.**—Subsections (a) and (b) of section 1250 (relating to gain from disposition of certain depreciable realty) are amended to read as follows:

"(a) **GENERAL RULE.**—Except as otherwise provided in this section, if section 1250 property is disposed of, the lesser of—

"(1) the depreciation adjustments in respect of such property, or

"(2) the excess of—

"(A) the amount realized (or, in the case of a disposition other than sale, exchange, or involuntary conversion, the fair market value of such property), over

"(B) the adjusted basis of such property, shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(b) **DEPRECIATION ADJUSTMENTS.**—For purposes of this section, the term 'depreciation adjustments' means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed."

(b) **MAXIMUM RATE ON RECAPTURE AMOUNT.**—Section 1 (relating to tax imposed) is amended by adding at the end the following new section:

"(i) **MAXIMUM RATE OF TAX ON SECTION 1250 RECAPTURE AMOUNTS.**—If a taxpayer has any amount treated as ordinary income under section 1250 for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(A) taxable income reduced by the amount treated as ordinary income under section 1250, or

"(B) the amount of taxable income taxed at a rate below 31 percent, plus

"(2) a tax of 31 percent of the amount of taxable income in excess of the amount determined under paragraph (1)."

(c) **LIMITATION IN CASE OF INSTALLMENT SALES.**—Subsection (i) of section 453 is amended—

(1) by striking "1250" the first place it appears and inserting "1250 (as in effect on December 31, 1991)", and

(2) by striking "1250" the second place it appears and inserting "1250 (as so in effect)".

(d) **CONFORMING AMENDMENTS.**—

(1) Subparagraph (E) of section 1250(d)(4) is amended—

(A) by striking "additional depreciation" and inserting "amount of the depreciation adjustments", and

(B) by striking "ADDITIONAL DEPRECIATION" in the subparagraph heading and inserting "DEPRECIATION ADJUSTMENTS".

(2) Subparagraph (B) of section 1250(d)(6) is amended to read as follows:

"(B) **DEPRECIATION ADJUSTMENTS.**—In respect of any property described in subparagraph (A), the amount of the depreciation adjustments attributable to periods before the distribution by the partnership shall be—

"(i) the amount of gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

"(ii) the amount of such gain to which section 751(b) applied."

(3) Subsection (d) of section 1250 is amended by striking paragraph (10).

(4) Section 1250 is amended by striking subsections (e) and (f) and by redesignating subsections (g) and (h) as subsections (e) and (f), respectively.

(5) Paragraph (4) of section 50(c) is amended to read as follows:

"(4) **RECAPTURE OF REDUCTION.**—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation."

(6) Clause (i) of section 267(e)(5)(D) is amended by striking "section 1250(a)(1)(B)" and inserting "section 1250(a)(1)(B) (as in effect on December 31, 1991)".

(7)(A) Subsection (a) of section 291 is amended by striking paragraph (1) and redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively.

(B) Subsection (c) of section 291 is amended to read as follows:

"(c) **SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.**—Section 168 shall apply with respect to that portion of the basis of any property not taken into account under section 169 by reason of subsection (a)(4)."

(C) Section 291 is amended by striking subsection (d) and redesignating subsection (e) as subsection (d).

(D) Paragraph (2) of section 291(d) (as redesignated by subparagraph (C)) is hereby repealed.

(E) Subparagraph (A) of section 265(b)(3) is amended by striking "291(e)(1)(B)" and inserting "291(d)(1)(B)".

(F) Subsection (c) of section 1277 is amended by striking "291(e)(1)(B)(ii)" and inserting "291(d)(1)(B)(ii)".

(8) Subsection (d) of section 1017 is amended to read as follows:

"(d) **RECAPTURE OF DEDUCTIONS.**—For purposes of sections 1245 and 1250—

"(1) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

"(2) any reduction under this section shall be treated as a deduction allowed for depreciation."

(9) Paragraph (5) of section 7701(e) is amended by striking "(relating to low-income housing)" and inserting "(as in effect on December 31, 1991)".

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to dispositions after January 31, 1992, in taxable years ending after such date.

PART II—SMALL BUSINESS STOCK
SEC. 2311. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

(a) **GENERAL RULE.**—Part I of subchapter P of chapter 1 (relating to capital gains and losses) is

amended by adding at the end thereof the following new section:

"SEC. 1202. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

"(a) **GENERAL RULE.**—Gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(b) **QUALIFIED SMALL BUSINESS STOCK.**—For purposes of this section—

"(1) **IN GENERAL.**—Except as otherwise provided in this section, the term 'qualified small business stock' means any stock in a corporation which is originally issued on or after February 1, 1992, if—

"(A) as of the date of issuance, such corporation is a qualified small business, and

"(B) except as provided in subsections (d) and (e), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

"(i) in exchange for money or other property (not including stock), or

"(ii) as compensation for services (other than services performed as an underwriter of such stock).

"(2) **ACTIVE BUSINESS REQUIREMENT.**—Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (d).

"(3) **CERTAIN PURCHASES BY CORPORATION OF ITS OWN STOCK.**—

"(A) **IN GENERAL.**—Stock issued by a corporation shall not be treated as qualified small business stock if such corporation has purchased or purchases any of its stock within the 2-year period beginning 1 year before the date of the issuance of such stock.

"(B) **EXCEPTION WHERE BUSINESS PURPOSE.**—Subparagraph (A) shall not apply where the issuing corporation establishes that there was a business purpose for the purchase of the stock and such purchase is not inconsistent with the purposes of this section.

"(C) **MEMBERS OF AFFILIATED GROUP.**—For purposes of this paragraph, the purchase by any corporation which is a member of the same affiliated group (within the meaning of section 1504) as the issuing corporation of any stock in any corporation which is a member of such group shall be treated as a purchase by the issuing corporation of its stock.

"(c) **QUALIFIED SMALL BUSINESS.**—For purposes of this section—

"(1) **IN GENERAL.**—The term 'qualified small business' means any domestic corporation if—

"(A) the aggregate capitalization of such corporation (or any predecessor thereof) at all times on or after February 1, 1992, and before the issuance did not exceed \$100,000,000, and

"(B) the aggregate capitalization of such corporation immediately after the issuance (determined by taking into account amounts to be received in the issuance) does not exceed \$100,000,000.

"(2) **AGGREGATE CAPITALIZATION.**—For purposes of paragraph (1), the term 'aggregate capitalization' means the excess of—

"(A) the amount of cash and the aggregate adjusted bases of other property held by the corporation, over

"(B) the aggregate amount of the short-term indebtedness of the corporation.

For purposes of the preceding sentence, the term 'short-term indebtedness' means any indebtedness which, when incurred, did not have a term in excess of 1 year.

"(3) **LOOK-THRU IN CASE OF SUBSIDIARIES.**—In determining whether a corporation meets the requirements of this subsection—

"(A) stock and debt of any subsidiary (as defined in subsection (d)(4)(C)) held by such corporation shall be disregarded, and

"(B) such corporation shall be treated as holding its ratable share of the assets of such subsidiary and as being liable for its ratable share of the indebtedness of such subsidiary.

"(d) **ACTIVE BUSINESS REQUIREMENT.**—For purposes of this section—

"(1) **IN GENERAL.**—For purposes of subsection (b)(2), the requirements of this subsection are met for any period if during such period—

"(A) the corporation is engaged in the active conduct of a trade or business,

"(B) substantially all of the assets of such corporation are used in the active conduct of a trade or business, and

"(C) such corporation is an eligible corporation.

"(2) **SPECIAL RULE FOR CERTAIN ACTIVITIES.**—For purposes of paragraph (1), if, in connection with any future trade or business, a corporation is engaged in—

"(A) start-up activities described in section 195(c)(1)(A),

"(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

"(C) activities with respect to in-house research expenses described in section 41(b)(4), such corporation shall be treated with respect to such activities as engaged in (and assets used in such activities shall be treated as used in) the active conduct of a trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

"(3) **ELIGIBLE CORPORATION.**—For purposes of this subsection—

"(A) **IN GENERAL.**—The term 'eligible corporation' means any domestic corporation; except that such term shall not include—

"(i) any corporation predominantly engaged in a disqualified business,

"(ii) any corporation the principal activity of which is the performance of personal services,

"(iii) a DISC,

"(iv) a corporation with respect to which an election under 936 is in effect,

"(v) any regulated investment company, real estate investment trust, or REMIC,

"(vi) any cooperative, and

"(vii) in the case of a corporate shareholder, any corporation which at any time was a subsidiary (as defined in paragraph (4)(C)) of such corporate shareholder.

"(B) **DISQUALIFIED BUSINESS.**—The term 'disqualified business' means—

"(i) any banking, insurance, financing, or similar business,

"(ii) any farming business (other than the business of raising or harvesting trees), and

"(iii) any business of operating a hotel, motel, or restaurant or similar business.

"(4) **STOCK IN OTHER CORPORATIONS.**—

"(A) **LOOK-THRU IN CASE OF SUBSIDIARIES.**—For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

"(B) **PORTFOLIO STOCK OR SECURITIES.**—A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consist of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (5)).

"(C) **SUBSIDIARY.**—For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in

value of all outstanding stock, of such corporation.

"(5) **WORKING CAPITAL.**—For purposes of paragraph (1)(B), any assets which—

"(A) are held for investment, and

"(B) are to be used to finance future research and experimentation or working capital needs of the corporation, shall be treated as used in the active conduct of a trade or business.

"(6) **MAXIMUM REAL ESTATE HOLDINGS.**—A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets is real property which is not used in the active conduct of a trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a trade or business.

"(7) **COMPUTER SOFTWARE ROYALTIES.**—For purposes of paragraph (1), rights to computer software which produces income described in section 543(d) shall be treated as an asset used in the active conduct of a trade or business.

"(e) **STOCK ACQUIRED ON CONVERSION OF PREFERRED STOCK.**—If any stock is acquired through the conversion of other stock which is qualified small business stock in the hands of the taxpayer—

"(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

"(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

"(f) **TREATMENT OF PASS-THRU ENTITIES.**—

"(1) **IN GENERAL.**—Any amount included in income by reason of holding an interest in a pass-thru entity shall be treated as gain described in subsection (a) if such amount meets the requirements of paragraph (2).

"(2) **REQUIREMENTS.**—An amount meets the requirements of this paragraph if—

"(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity and which was held by such entity for more than 5 years, and

"(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

"(3) **LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.**—Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

"(4) **PASS-THRU ENTITY.**—For purposes of this subsection, the term 'pass-thru entity' means—

"(A) any partnership,

"(B) any S corporation,

"(C) any regulated investment company, and

"(D) any common trust fund.

"(g) **CERTAIN TAX-FREE AND OTHER TRANSFERS.**—For purposes of this section—

"(1) **IN GENERAL.**—In the case of a transfer of stock to which this subsection applies, the transferee shall be treated as—

"(A) having acquired such stock in the same manner as the transferor, and

"(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

"(2) **TRANSFERS TO WHICH SUBSECTION APPLIES.**—This subsection shall apply to any transfer—

"(A) by gift,
 "(B) at death,
 "(C) from a partnership to a partner of stock with respect to which the requirements of subsection (f) are met at the time of the transfer (without regard to the 5-year holding requirement), or

"(D) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of section 334(b), but only if requirements similar to the requirements of subsection (f) are met with respect to the stock.

"(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

"(4) INCORPORATIONS AND REORGANIZATIONS INVOLVING NONQUALIFIED STOCK.—

"(A) IN GENERAL.—In the case of a transaction described in section 351 or a reorganization described in section 368, if a qualified small business stock is transferred for other stock, such transfer shall be treated as a transfer to which this subsection applies solely with respect to the person receiving such other stock.

"(B) LIMITATION.—This section shall apply to the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain (if any) which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time.

"(C) SUCCESSIVE APPLICATION.—For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which subparagraph (A) applied.

"(D) CONTROL TEST.—Except in the case of a transaction described in section 368, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was transferred.

"(h) BASIS RULES.—
 "(1) STOCK EXCHANGED FOR PROPERTY.—For purposes of this section, in the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

"(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

"(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

"(2) BASIS OF S CORPORATION STOCK.—For purposes of this section, the adjusted basis of stock in an S corporation shall in no event be less than its adjusted basis determined without regard to any adjustment to the basis of such stock under section 1367.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups or otherwise."

(b) EXCLUSION TREATED AS PREFERENCE FOR MINIMUM TAX.—

(1) IN GENERAL.—Subsection (a) of section 57 (relating to items of tax preference) is amended by adding at the end thereof the following new paragraph:

"(8) EXCLUSION FOR GAINS ON SALE OF CERTAIN SMALL BUSINESS STOCK.—An amount equal to the amount excluded from gross income for the taxable year under section 1202."

(2) CONFORMING AMENDMENT.—Subclause (II) of section 53(d)(2)(B)(ii) is amended by striking "and (6)" and inserting "(6), and (8)".

(c) CONFORMING AMENDMENTS.—
 (1)(A) Section 172(d)(2) (relating to modifications with respect to net operating loss deduction) is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation—

"(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includable on account of gains from sales or exchanges of capital assets; and

"(B) the exclusion provided by section 1202 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) is amended by inserting ", (2)(B)," after "paragraph (1)".

(2) Paragraph (4) of section 642(c) is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(3) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The exclusion under section 1202 shall not be taken into account."

(4) Paragraph (4) of section 691(c) is amended by striking "1201, and 1211" and inserting "1201, 1202, and 1211".

(5) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 and" after "except that".

(6) The table of sections for part I of subchapter P of chapter I is amended by adding after the item relating to section 1201 the following new item:

"Sec. 1202. 50-percent exclusion for gain from certain small business stock."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock issued on or after February 1, 1992.

Subtitle E—Investment in Real Estate
PART I—FIRST-TIME HOMEBUYER CREDIT
SEC. 2401. CREDIT FOR PURCHASE OF NEW PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter I (relating to nonrefundable personal credits), as amended by section 2121, is amended by inserting after section 23 the following new section:

"SEC. 24. PURCHASE OF NEW PRINCIPAL RESIDENCE BY FIRST-TIME HOMEBUYER.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of a first-time homebuyer, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to 10 percent of the purchase price of an eligible principal residence purchased by the taxpayer during a portion of the taxable year which occurs within the eligibility period.

"(2) MAXIMUM CREDIT.—The credit allowed by subsection (a) to the taxpayer shall not exceed \$5,000.

"(b) ELIGIBLE PRINCIPAL RESIDENCE.—For purposes of subsection (a), the term 'eligible principal residence' means a principal residence—

"(1) the original use of which begins with the taxpayer, and

"(2) which is the first principal residence purchased by the taxpayer during the eligibility period.

"(c) FIRST-TIME HOMEBUYER.—For purposes of this section—

"(1) IN GENERAL.—The term 'first-time homebuyer' means any individual unless such individual or such individual's spouse had a present ownership interest in any principal residence at any time during the 3-year period ending on the date of the purchase of the residence referred to in subsection (a).

"(2) UNMARRIED JOINT OWNERS.—An individual shall not be treated as a first-time homebuyer with respect to any residence unless all the individuals purchasing such residence with such individual are first-time homebuyers.

"(3) ALLOCATION OF LIMITS.—All individuals purchasing a residence shall be treated as 1 individual for purposes of determining the maximum credit under subsection (a), and such maximum credit shall be allocated among such individuals under regulations prescribed by the Secretary.

"(4) CERTAIN INDIVIDUALS INELIGIBLE.—The term 'first-time homebuyer' shall not include any individual if, on the date of the purchase of the residence, the period of time specified in section 1034(a) is suspended under subsection (h) or (k) of section 1034 with respect to such individual.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) ELIGIBILITY PERIOD.—

"(A) IN GENERAL.—The term 'eligibility period' means the period beginning after January 31, 1992, and ending before January 1, 1994.

"(B) BINDING CONTRACTS.—A residence shall be treated as purchased during the eligibility period if—

"(i) during the eligibility period, the purchaser enters into a binding contract to purchase the residence, and

"(ii) the purchaser purchases and occupies the residence before the close of the 90-day period beginning on the date the contract was entered into.

For purposes of clause (i), a contract shall not fail to be treated as binding merely because it is contingent on financing or on the condition of the residence.

"(2) PURCHASE.—The term 'purchase' means any acquisition of property, but only if—

"(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b), and

"(B) the basis of the property in the hands of the person acquiring it is not determined—

"(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

"(ii) under section 1014(a) (relating to property acquired from a decedent).

"(3) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(4) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the residence on the date of its acquisition.

"(e) CARRYOVER OF UNUSED CREDIT.—

"(1) IN GENERAL.—If—
 "(A) the credit allowable under subsection (a) exceeds

"(B) the limitation imposed by section 26(a) reduced by the sum of the credits allowable under sections 21, 22, and 23,

such excess shall be carried to the succeeding taxable year and shall be allowable under subsection (a) for such succeeding taxable year.

"(2) 5-YEAR LIMIT ON CARRYFORWARD.—No amount may be carried under paragraph (1) to any taxable year after the 5th taxable year after the taxable year in which the residence is purchased.

"(f) RECAPTURE OF CREDIT FOR CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), if the taxpayer disposes of

property with respect to the purchase of which a credit was allowed under subsection (a) and such disposition occurs at any time within 36 months after the date the taxpayer acquired the property as his principal residence, then the tax imposed under this chapter for the taxable year in which the disposition occurs is increased by an amount equal to the amount allowed as a credit for the purchase of such property.

"(2) ACQUISITION OF NEW RESIDENCE.—If, in connection with a disposition described in paragraph (1) and within the applicable period prescribed in section 1034, the taxpayer purchases a new principal residence, then paragraph (1) shall not apply and the tax imposed by this chapter for the taxable year in which the new principal residence is purchased is increased to the extent the amount of the credit that could be claimed under this section on the purchase of the new residence (were such residence the first residence purchased during the eligibility period) is less than the amount of credit claimed by the taxpayer under this section.

"(3) DEATH OF OWNER; CASUALTY LOSS; INVOLUNTARY CONVERSION; ETC.—Paragraph (1) shall not apply to—

"(A) a disposition of a residence made on account of the death of any individual having a legal or equitable interest therein occurring during the 36-month period referred to in paragraph (1),

"(B) a disposition of the old residence if it is substantially or completely destroyed by a casualty described in section 165(c)(3) or compulsorily or involuntarily converted (within the meaning of section 1033(a)), or

"(C) a disposition pursuant to a settlement in a divorce or legal separation proceeding where the residence is sold or the other spouse retains the residence as a principal residence."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1, as amended by section 2121, is amended by inserting after the item relating to section 23 the following new item:

"Sec. 24. Purchase of new principal residence by first-time homebuyer."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after February 1, 1992.

PART II—MODIFICATION OF PASSIVE LOSS RULES

SEC. 2411. MODIFICATION OF PASSIVE LOSS RULES.

(a) GENERAL RULE.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (l) and (m) as subsections (m) and (n), respectively, and by inserting after subsection (k) the following new subsection:

"(l) SPECIAL RULES FOR REAL ESTATE ACTIVITIES.—

"(1) CERTAIN ACTIVITIES TREATED AS NOT PASSIVE.—

"(A) IN GENERAL.—If the taxpayer meets the requirements of paragraph (2) for the taxable year, all—

"(i) activities consisting of the performance of qualified real estate services, and

"(ii) rental activities with respect to qualified real property, shall be treated as a single activity which is not a passive activity.

"(B) EXCEPTION.—

"(i) IN GENERAL.—Paragraph (1) shall not apply with respect to any activity with respect to any real property originally placed in service after March 3, 1992 (whether or not by the taxpayer).

"(ii) SUBSTANTIAL RENOVATIONS.—For purposes of clause (i), any real property substantially renovated after March 3, 1992, shall be

treated as originally placed in service after such date. For purposes of this clause, property shall be treated as substantially renovated if, during any 24-month period beginning after such date, additions to basis with respect to the property exceed an amount equal to the adjusted basis of the property at the beginning of the 24-month period.

"(C) LIMITATION ON INCOME WHICH RENTAL ACTIVITY LOSSES OR CREDITS MAY OFFSET.—The aggregate losses from all activities described in subparagraph (A)(i) for which a deduction is allowed for any taxable year shall not exceed the sum of—

"(i) the aggregate income from such activities, plus

"(ii) the net income from passive activities to which this subsection does not apply, plus

"(iii) an amount equal to 80 percent of the lesser of—

"(I) the net income from activities described in subparagraph (A)(i), or

"(II) the taxable income of the taxpayer determined without regard to any item of income, gain, loss, or deduction allocable to activities described in subparagraph (A)(i).

Any passive activity credits from activities described in subparagraph (A)(ii) shall not be allowed to the extent such credits exceed the regular tax liability of the taxpayer allocable to the amounts described in clauses (i), (ii), and (iii).

"(D) TREATMENT OF SUSPENDED LOSSES AND CREDITS.—In the case of any unused deductions or credits from activities described in subparagraph (A)(i)—

"(i) subsection (f) shall not apply, but

"(ii) such deductions or credits shall be treated as from such activities for purposes of applying subparagraph (C).

"(2) REQUIREMENTS.—A taxpayer meets the requirements of this paragraph for any taxable year if the taxpayer materially participates during such taxable year in activities referred to in subparagraphs (A) and (B) of paragraph (1) (as determined under subsection (h) by treating all of such activities as a single activity).

"(3) QUALIFIED REAL ESTATE SERVICES.—For purposes of this subsection, the term 'qualified real estate services' means services in the construction, substantial renovation, and management of real property or in the lease-up and sale of qualified real property.

"(4) QUALIFIED REAL PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified real property' means any real property if during the taxable year the taxpayer actively participates in rental activities with respect to such property.

"(B) ACTIVE PARTICIPATION.—For purposes of subparagraph (A), active participation shall be determined under subsection (i)(6), except that subparagraph (A) thereof shall be applied by substituting 'a de minimis portion' for 'less than 10 percent (by value)'.

"(5) SPECIAL RULE.—For purposes of this subsection—

"(A) NON-OWNER EMPLOYEES.—Qualified real estate services shall not include any services performed by an individual as an employee unless the employee owns more than a de minimis interest in the employer.

"(B) CLOSELY HELD C CORPORATIONS.—This subsection shall not apply to any interests held by a closely held C corporation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

PART III—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS

SEC. 2421. REAL ESTATE PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) MODIFICATIONS OF EXCEPTIONS.—Paragraph (9) of section 514(c) (relating to real prop-

erty acquired by a qualified organization) is amended by adding at the end thereof the following new subparagraphs:

"(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTIONS.—Except as otherwise provided by regulations—

"(i) SMALL LEASES DISREGARDED.—For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 20 percent of the leasable floor space in a building is covered by the lease and if the lease is on commercially reasonable terms.

"(ii) COMMERCIALLY REASONABLE FINANCING.—Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms. For purposes of this clause, financing shall be treated on commercially reasonable terms if the downpayment is at least 15 percent of the sales price and the interest rate is at least 150 percent of the applicable Federal rate determined under section 1274(d).

"(H) QUALIFYING SALE OUT OF FORECLOSURE BY FINANCIAL INSTITUTIONS.—

"(i) IN GENERAL.—In the case of a qualifying sale out of foreclosure by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

"(ii) QUALIFYING SALE.—For purposes of this clause, there is a qualifying sale out of foreclosure by a financial institution where—

"(I) a qualified organization acquires foreclosure property from a financial institution and the financial institution treats such property as property which is not a capital asset,

"(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the foreclosure property immediately before the acquisition referred to in clause (i), and

"(III) the value (determined as of the time of the sale) of the amount pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property does not exceed 25 percent of the value of the property (determined as of such time).

"(iii) FINANCIAL INSTITUTION.—For purposes of this subparagraph, the term 'financial institution' means—

"(I) any financial institution described in section 581 or 591(a),

"(II) any other corporation which is a member of an affiliated group (as defined in section 1504(a)) which includes an institution referred to in subclause (I) but only if such other corporation is subject to supervision and examination by the same Federal or State agency as the institution referred to in subclause (I), and

"(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II).

"(iv) FORECLOSURE PROPERTY.—For purposes of this subparagraph, the term 'foreclosure property' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured."

(b) INTERESTS IN MORTGAGES NOT TREATED AS REAL PROPERTY.—

(1) IN GENERAL.—Paragraph (9) of section 514(c) is amended—

(A) by adding the following new sentence at the end of subparagraph (A): "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.", and

(B) by striking the last sentence of subparagraph (B).

(2) EXCEPTION.—Paragraph (9) of section 514(c), as amended by subsection (a), is amended

by adding at the end the following new subparagraph:

"(I) QUALIFIED MORTGAGE INTEREST TREATED AS REAL PROPERTY.—

"(i) IN GENERAL.—The last sentence of subparagraph (A) shall not apply to any qualified mortgage investment during the 30-month period beginning on the date such investment is acquired.

"(ii) QUALIFIED MORTGAGE INVESTMENT.—For purposes of this subparagraph, the term 'qualified mortgage investment' means any interest in 1 or more mortgages—

"(I) acquired after January 31, 1992, and before January 1, 1994, from a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or the conservator or receiver of such an institution,

"(II) with respect to which there is no acquisition indebtedness other than financing provided by the person described in subclause (I), and

"(III) the acquisition indebtedness provided by such person is less than 50 percent of the sales price with respect to such interest."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions on or after February 1, 1992.

SEC. 2422. SPECIAL RULES FOR INVESTMENTS IN PARTNERSHIPS.

(a) MODIFICATION TO ANTI-ABUSE RULES.—Paragraph (9) of section 514(c) (as amended by section 2421) is amended by adding at the end thereof the following new subparagraph:

"(J) PARTNERSHIPS NOT INVOLVING TAX AVOIDANCE.—

"(i) DE MINIMIS RULE FOR CERTAIN LARGE PARTNERSHIPS.—The provisions of subparagraph (B) shall not apply to an investment in a partnership having at least 250 partners if—

"(I) interests in such partnership were offered for sale in an offering registered with the Securities and Exchange Commission,

"(II) at least 50 percent of each class of interests in such partnership is owned by individuals who are not disqualified persons, and

"(III) the principal purpose of partnership allocations is not tax avoidance.

The Secretary may disregard inadvertent failures to meet the requirements of subclause (II).

"(ii) DISQUALIFIED PERSONS.—For purposes of this subparagraph, the term 'disqualified person' means any person described in clause (iii) or (iv) of subparagraph (B) and any person who is not a United States person."

(b) REPEAL OF SPECIAL TREATMENT OF PUBLICLY TRADED PARTNERSHIPS.—Subsection (c) of section 512 is amended—

(1) by striking paragraph (2),

(2) by redesignating paragraph (3) as paragraph (2), and

(3) by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership interests acquired on or after February 1, 1992.

SEC. 2423. TITLE-HOLDING COMPANIES PERMITTED TO RECEIVE SMALL AMOUNTS OF UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Paragraph (25) of section 501(c) is amended by adding at the end thereof the following new subparagraph:

"(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any income which is incidentally derived from the holding of real property.

"(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause

(i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income."

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 501(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2424. EXCLUSION FROM UNRELATED BUSINESS TAX OF GAINS FROM CERTAIN PROPERTY.

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

"(16) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property if—

"(A) such property was acquired by the organization from—

"(i) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

"(ii) the conservator or receiver of such an institution,

"(B) such property is designated by the organization within the 6-month period beginning on the date of its acquisition as property held for sale,

"(C) such sale, exchange, or disposition occurs before the later of—

"(i) the date which is 30 months after the date of the acquisition of such property, or

"(ii) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

"(D) while such property was held by the organization, such property was not substantially improved or renovated and there were no substantial development activities with respect to such property.

For purposes of this paragraph, an interest in a mortgage shall be treated as real property."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property acquired on or after February 1, 1992.

SEC. 2425. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN FEES AND OPTION PREMIUMS.

(a) LOAN COMMITMENT FEES.—Paragraph (1) of section 512(b) (relating to modifications) is amended by inserting "amounts received or accrued as consideration for entering into agreements to make loans," before "and annuities".

(b) OPTION PREMIUMS.—The second sentence of section 512(b)(5) is amended by inserting "or real property" before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received on or after February 1, 1992.

SEC. 2426. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN HOTEL RENTAL INCOME.

(a) IN GENERAL.—Section 512(b)(3) (relating to rents) is amended by adding at the end the following new subparagraph:

"(D)(i) Notwithstanding subparagraph (B), there shall be excluded under subparagraph (A) all rents from any real property described in clause (i).

"(ii) Property is described in this clause if it is a hotel or motel with respect to which the predominant portion of accommodations is used by transients and—

"(I) which is acquired on or after February 1, 1992, from a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

"(II) which is designated by the organization within the 6-month period beginning on the date of its acquisition as property held for sale.

"(iii) Clause (i) shall not apply to any real property unless, during the 30-month period beginning on the date of acquisition—

"(I) the organization sells such property, or

"(II) the organization enters into a contract with an independent contractor to provide all related services in connection with the property, and such contract does not permit the organization to derive or receive any income from the independent contractor (within the meaning of section 856(d)(2)(C)).

"(iv) If clause (iii)(II) applies to any property, clause (i) shall apply to rents from such property only during the continuous period beginning with the date the property is acquired and ending on the earlier of—

"(I) the first date after the 30-month period described in clause (iii) on which a contract described in clause (iii)(II) is not in effect, or

"(II) the date on which the property is sold."

(b) EFFECTIVE DATE.—The amendment made by this section applies to property acquired after January 31, 1992.

PART IV—OTHER PROVISIONS

SEC. 2431. INCREASE IN RECOVERY PERIOD FOR NONRESIDENTIAL REAL PROPERTY.

(a) GENERAL RULE.—Paragraph (1) of section 168(c) is amended by striking "31.5 years" in the item relating to nonresidential real property in the table contained therein and inserting "40 years".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service by the taxpayer after February 12, 1992.

(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1995, if—

(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before February 13, 1992, or

(B) the construction of such property was commenced by or for the taxpayer or a qualified person before February 13, 1992.

For purposes of this paragraph, the term "qualified person" means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

SEC. 2432. LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—

(A) Paragraph (1) of section 42(o) (relating to termination of low-income housing credit) is amended—

(i) by inserting ", for any calendar year after 1993" after "paragraph (2)",

(ii) by striking "to any amount allocated after June 30, 1992" in subparagraph (A), and

(iii) by striking "June 30, 1992" in subparagraph (B) and inserting "1993".

(B) Paragraph (2) of section 42(o) is amended—

(i) by striking "July 1, 1992" each place it appears and inserting "1994",

(ii) by striking "June 30, 1992" in subparagraph (B) and inserting "December 31, 1993",

(iii) by striking "June 30, 1994" in subparagraph (B) and inserting "December 31, 1995", and

(iv) by striking "July 1, 1994" in subparagraph (C) and inserting "January 1, 1996".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to periods ending after June 30, 1992.

(b) MODIFICATIONS.—

(1) CARRYFORWARD RULES.—

(A) **IN GENERAL.**—Clause (ii) of section 42(h)(3)(D) (relating to unused housing credit carryovers allocated among certain States) is amended by striking "the excess" and all that follows and inserting "the excess (if any) of the unused State housing credit ceiling for the year preceding such year over the aggregate housing credit dollar amount allocated for such year."

(B) **CONFORMING AMENDMENT.**—The second sentence of section 42(h)(3)(C) (relating to State housing credit ceiling) is amended by striking "clauses (i) and (iii)" and inserting "clauses (i) through (iv)".

(2) **10-YEAR ANTI-CHURNING RULE WAIVER EXPANDED.**—Clause (ii) of section 42(d)(6)(B) (defining federally assisted building) is amended by inserting ", 221(d)(4)," after "221(d)(3)".

(3) **LIMITATION ON ELIGIBLE BASIS OF UNITS.**—Paragraph (5) of section 42(d) (relating to special rules for determining eligible basis) is amended by adding at the end thereof the following new subparagraph:

"(D) MAXIMUM LIMIT PER UNIT.—

"(i) **IN GENERAL.**—Notwithstanding any other provision of this section, and before the application of subparagraph (C), the eligible basis of each unit of any building shall not exceed \$124,875.

"(ii) **INFLATION ADJUSTMENT.**—For any calendar year beginning after 1992, the dollar amount referred to in clause (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 such calendar year, by substituting 'calendar year 1991' for 'calendar year 1989' in subparagraph (B) thereof.

If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10)."

(4) **UNITS WITH CERTAIN FULL-TIME STUDENTS NOT DISQUALIFIED.**—Subparagraph (D) of section 42(i) (relating to definitions and special rules) is amended to read as follows:

"(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—

A unit shall not fail to be treated as a low-income unit merely because it is occupied—

"(i) by an individual who is—

"(I) a student and receiving assistance under title IV of the Social Security Act, or

"(II) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

"(ii) entirely by full-time students if such students are—

"(I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

"(II) married and file a joint return."

(5) **TREASURY WAIVERS OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.**—Subsection (g) of section 42 (relating to qualified low-income housing projects) is amended by adding at the end thereof the following new paragraph:

"(8) **WAIVER OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.**—On application by the taxpayer, the Secretary may waive—

"(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

"(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants."

(6) **BASIS OF COMMUNITY SERVICE AREAS INCLUDED IN ADJUSTED BASIS.**—Paragraph (4) of section 42(d) (relating to special rules relating to determination of adjusted basis) is amended—

(A) by striking "subparagraph (B)" in subparagraph (A) and inserting "subparagraphs (B) and (C)",

(B) by redesignating subparagraph (C) as subparagraph (D), and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) **BASIS OF PROPERTY IN COMMUNITY SERVICE AREAS INCLUDED.**—The adjusted basis of any building located in a qualified census tract shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in functionally related and subordinate community activity facilities if—

"(i) the size of the facilities is commensurate with tenant needs,

"(ii) the use of such facilities is predominantly by tenants and employees of the building owner, and

"(iii) not more than 20 percent of the building's eligible basis is attributable to the aggregate basis of such facilities."

(7) EFFECTIVE DATES.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to—

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) **WAIVER AUTHORITY.**—The amendments made by paragraphs (2) and (5) shall take effect on the date of the enactment of this Act.

SEC. 2433. QUALIFIED MORTGAGE BONDS.

(a) **IN GENERAL.**—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(b) **MORTGAGE CREDIT CERTIFICATES.**—Subsection (h) of section 25 (relating to interest on certain home mortgages) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(c) EFFECTIVE DATES.—

(1) **BONDS.**—The amendment made by subsection (a) shall apply to bonds issued after June 30, 1992.

(2) **CERTIFICATES.**—The amendment made by subsection (b) shall apply to elections for periods after June 30, 1992.

Subtitle F—Other Incentives**PART I—SPECIAL DEPRECIATION ALLOWANCE****SEC. 2501. SPECIAL DEPRECIATION ALLOWANCE FOR CERTAIN EQUIPMENT ACQUIRED IN 1992.**

(a) **IN GENERAL.**—Section 168 (relating to accelerated cost recovery system) is amended by adding at the end the following new subsection:

"(j) **SPECIAL ALLOWANCE FOR CERTAIN EQUIPMENT ACQUIRED IN 1992.—**

"(I) **ADDITIONAL ALLOWANCE.**—In the case of any qualified equipment—

"(A) the depreciation deduction provided by section 167(a) for the taxable year in which such equipment is placed in service shall include an allowance equal to 10 percent of the adjusted basis of the qualified equipment, and

"(B) the adjusted basis of the qualified equipment shall be reduced by the amount of such deduction before computing the amount otherwise allowable as a depreciation deduction under this chapter for such taxable year and any subsequent taxable year.

"(2) **QUALIFIED EQUIPMENT.**—For purposes of this subsection—

"(A) **IN GENERAL.**—The term 'qualified equipment' means property to which this section applies—

"(i) which is section 1245 property (within the meaning of section 1245(a)(3)),

"(ii) the original use of which commences with the taxpayer on or after February 1, 1992,

"(iii) which is—

"(I) acquired by the taxpayer on or after February 1, 1992, and before January 1, 1993, but only if no written binding contract for the acquisition was in effect before February 1, 1992, or

"(II) acquired by the taxpayer pursuant to a written binding contract which was entered into on or after February 1, 1992, and before January 1, 1993, and

"(iv) which is placed in service by the taxpayer before July 1, 1993.

"(B) **EXCEPTIONS.—**

"(i) **ALTERNATIVE DEPRECIATION PROPERTY.**—The term 'qualified equipment' shall not include any property to which the alternative depreciation system under subsection (g) applies, determined—

"(I) without regard to paragraph (7) of subsection (g) (relating to election to have system apply), and

"(II) after application of section 280F(b) (relating to listed property with limited business use).

"(ii) **ELECTION OUT.**—If a taxpayer makes an election under this clause with respect to any class of property for any taxable year, this subsection shall not apply to all property in such class placed in service during such taxable year.

"(C) **SPECIAL RULES RELATING TO ORIGINAL USE.—**

"(i) **SELF-CONSTRUCTED PROPERTY.**—In the case of a taxpayer manufacturing, constructing, or producing property for the taxpayer's own use, the requirements of clause (iii) of subparagraph (A) shall be treated as met if the taxpayer begins manufacturing, constructing, or producing the property on and after February 1, 1992, and before January 1, 1993.

"(ii) **SALE-LEASEBACKS.**—For purposes of subparagraph (A)(ii), if property—

"(I) is originally placed in service on or after February 1, 1992, by a person, and

"(II) is sold and leased back by such person within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in subclause (II).

"(D) **COORDINATION WITH SECTION 280F.**—For purposes of section 280F—

"(i) **AUTOMOBILES.**—In the case of a passenger automobile (as defined in section 280F(d)(5)) which is qualified equipment, the Secretary shall increase the limitation under section 280F(a)(1)(A)(i), and decrease each other limitation under subparagraphs (A) and (B) of section 280F(a)(1), to appropriately reflect the amount of the deduction allowable under paragraph (1).

"(ii) **LISTED PROPERTY.**—The deduction allowable under paragraph (1) shall be taken into account in computing any recapture amount under section 280F(b)(2)."

(b) **ALLOWANCE AGAINST ALTERNATIVE MINIMUM TAX.—**

(1) **IN GENERAL.**—Section 56(a)(1)(A) (relating to depreciation adjustment for alternative minimum tax) is amended by adding at the end the following new clause:

"(iii) **ADDITIONAL ALLOWANCE FOR EQUIPMENT ACQUIRED IN 1992.**—The deduction under section 168(j) shall be allowed."

(2) **CONFORMING AMENDMENT.**—Clause (i) of section 56(a)(1)(A) is amended by inserting "or (iii)" after "(ii)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service on or after February 1, 1992, in taxable years ending on or after such date.

PART II—MODIFICATIONS TO MINIMUM TAX

SEC. 2502. TEMPORARY REPEAL OF PREFERENCE FOR CONTRIBUTIONS OF APPRECIATED PROPERTY.

(a) **TEMPORARY REPEAL.**—
(1) **IN GENERAL.**—Paragraph (6) of section 57(a) is amended by adding at the end the following new subparagraph:

“(C) **TERMINATION.**—This paragraph shall not apply to any contribution during 1992 or 1993.”

(2) **CONFORMING AMENDMENT.**—Subparagraph (B) of section 57(a)(6) is amended by striking the last sentence.

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to contributions after December 31, 1991.

(b) **ADVANCE DETERMINATION OF VALUE OF CHARITABLE GIFTS.**—

(1) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall develop and implement a procedure under which the Secretary's position as to the value of tangible personal property would be determined for Federal income tax purposes prior to the transfer of such property to a charitable organization.

(2) **REPORT.**—Not later than December 31, 1992, the Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the development of the procedure under paragraph (1) and the timetable for its implementation.

(c) **STUDY OF CORPORATE SPONSORSHIP PAYMENTS.**—

(1) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall conduct a study of the tax treatment of corporate sponsorship payments received by tax-exempt organizations in connection with athletic and other events, including the ramifications of Announcement 92-15, 1992-5 I.R.B. 51.

(2) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study under paragraph (1).

SEC. 2503. MINIMUM TAX TREATMENT OF CERTAIN ENERGY PREFERENCES.

(a) **MODIFICATION OF ADJUSTED CURRENT EARNINGS.**—Clause (i) of section 56(g)(4)(D) is amended by striking “The” and inserting “In the case of an integrated oil company (as defined in section 291(b)(4)), the”.

(b) **MODIFICATIONS OF ENERGY PREFERENCE ADJUSTMENT.**—

(1) **IN GENERAL.**—Subparagraph (A) of section 56(h)(3) is amended to read as follows:

“(A) 50 percent of the intangible drilling cost preference, plus”.

(2) **CONFORMING AMENDMENTS.**—

(A) Paragraph (1) of section 56(h) is amended by inserting “(as defined in section 291(b)(4))” after “company”.

(B) Paragraph (4) of section 56(h) is amended to read as follows:

“(4) **INTANGIBLE DRILLING COST PREFERENCE.**—For purposes of this subsection, the term ‘intangible drilling cost preference’ means the amount by which alternative minimum taxable income would be reduced if it were computed without regard to section 57(a)(2).”

(C) Section 56(h) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7).

(c) **NET INCOME LIMITATION.**—Subparagraph (A) of section 57(a)(2) is amended by adding at the end the following new sentence: “In the case of a taxpayer other than an integrated oil company (as defined in section 291(b)(4)), the preceding sentence shall be applied by substituting ‘70 percent’ for ‘65 percent’”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 2504. ELIMINATION OF ACE DEPRECIATION ADJUSTMENT.

(a) **IN GENERAL.**—Clause (i) of section 56(g)(4)(A) (relating to depreciation adjustments for computing adjusted current earnings) is amended by adding at the end the following new sentence: “The preceding sentence shall not apply to property placed in service on or after February 1, 1992, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A).”

(b) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service on or after February 1, 1992, in taxable years ending after such date.

(2) **COORDINATION WITH TRANSITIONAL RULES.**—The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) of such paragraph (1).

PART III—EXTENSION OF OTHER EXPIRING TAX PROVISIONS

SEC. 2505. EXTENSION OF RESEARCH CREDIT.

(a) **IN GENERAL.**—Subsection (h) of section 41 (relating to credit for increasing research activities) is amended—

(1) by striking “June 30, 1992” each place it appears and inserting “December 31, 1993”; and

(2) by striking “July 1, 1992” each place it appears and inserting “January 1, 1994”.

(b) **CONFORMING AMENDMENT.**—Subparagraph (D) of section 28(b)(1) is amended by striking “June 30, 1992” and inserting “December 31, 1993”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1992.

SEC. 2506. EXTENSION OF SMALL ISSUE BONDS.

(a) **IN GENERAL.**—Subparagraph (B) of section 144(a)(12) (relating to termination dates) is amended by striking “June 30, 1992” and inserting “December 31, 1993”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to bonds issued after June 30, 1992.

SEC. 2507. EXTENSION OF ENERGY INVESTMENT CREDIT FOR SOLAR AND GEOTHERMAL PROPERTY.

(a) **IN GENERAL.**—Subparagraph (B) of section 48(a)(2) (relating to energy percentage) is amended by striking “June 30, 1992” and inserting “December 31, 1993”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to property placed in service after June 30, 1992.

SEC. 2508. EXCISE TAX ON CERTAIN VACCINES.

(a) **TAX.**—Paragraphs (2) and (3) of section 4131(c) (relating to tax on certain vaccines) are each amended by striking “1992” each place it appears and inserting “1994”.

(b) **TRUST FUND.**—Paragraph (1) of section 9510(c) (relating to expenditures from Vaccine Injury Compensation Trust Fund) is amended by striking “1992” and inserting “1994”.

(c) **STUDY.**—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of—

(1) the estimated amount that will be paid from the Vaccine Injury Compensation Trust Fund with respect to vaccines administered after September 30, 1988, and before October 1, 1994,

(2) the rates of vaccine-related injury or death with respect to the various types of such vaccines,

(3) new vaccines and immunization practices being developed or used for which amounts may be paid from such Trust Fund, and

(4) whether additional vaccines should be included in the vaccine injury compensation program.

The report of such study shall be submitted not later than January 1, 1994, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(d) **EFFECTIVE DATE.**—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act.

SEC. 2509. CERTAIN TRANSFERS TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking “with respect to benefits received before October 1, 1992”.

SEC. 2510. EXTENSION OF TAX CREDIT FOR ORPHAN DRUG CLINICAL TESTING EXPENSES.

(a) **IN GENERAL.**—Subsection (e) of section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking “June 30, 1992” and inserting “December 31, 1993”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years ending after June 30, 1992.

PART IV—REPEAL OF CERTAIN LUXURY EXCISE TAXES; TAX ON DIESEL FUEL USED IN NONCOMMERCIAL MOTORBOATS

SEC. 2511. REPEAL OF LUXURY EXCISE TAXES OTHER THAN ON PASSENGER VEHICLES.

(a) **IN GENERAL.**—Subchapter A of chapter 31 (relating to retail excise taxes) is amended to read as follows:

“Subchapter A—Luxury Passenger Automobiles

“Sec. 4001. Imposition of tax.
“Sec. 4002. 1st retail sale; uses, etc. treated as sales; determination of price.
“Sec. 4003. Special rules.

“SEC. 4001. IMPOSITION OF TAX.

“(a) **IMPOSITION OF TAX.**—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds \$30,000.

“(b) **PASSENGER VEHICLE.**—
“(1) **IN GENERAL.**—For purposes of this subchapter, the term ‘passenger vehicle’ means any 4-wheeled vehicle—

“(A) which is manufactured primarily for use on public streets, roads, and highways, and
“(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

“(2) **SPECIAL RULES.**—
“(A) **TRUCKS AND VANS.**—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting ‘gross vehicle weight’ for ‘unloaded gross vehicle weight’.

“(B) **LIMOUSINES.**—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

“(c) **EXCEPTIONS FOR TAXICABS, ETC.**—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

“(d) **EXEMPTION FOR LAW ENFORCEMENT USES, ETC.**—No tax shall be imposed by this section on the sale of any passenger vehicle—

“(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

“(2) to any person for use exclusively in providing emergency medical services.

“(e) **INFLATION ADJUSTMENT.**—

“(1) **IN GENERAL.**—In the case of any calendar year after 1991, the \$30,000 amount in subsection

(a) and section 4003(a) shall be increased by an amount equal to—

“(A) \$30,000, multiplied by
“(B) the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 1990’ for ‘calendar year 1991’ in subparagraph (B) thereof.

“(2) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100 (or, if such amount is a multiple of \$50 and not of \$100, such amount shall be rounded to the next highest multiple of \$100).

“(f) TERMINATION.—The tax imposed by this section shall not apply to any sale or use after December 31, 1999.

“SEC. 4002. 1ST RETAIL SALE; USES, ETC. TREATED AS SALES; DETERMINATION OF PRICE.

“(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term ‘1st retail sale’ means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

“(b) USE TREATED AS SALE.—

“(1) IN GENERAL.—If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle, then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

“(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

“(3) EXEMPTION FOR DEMONSTRATION USE.—Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle.

“(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN VEHICLES.—Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

“(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

“(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

“(2) SPECIAL RULES FOR LONG-TERM LEASES.—“(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

“(B) LONG-TERM LEASE.—For purposes of subparagraph (A), the term ‘long-term lease’ means any long-term lease (as defined in section 4052).

“(C) SPECIAL RULES.—In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle—

“(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.

“(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

“(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a long-term lease if the lessee’s use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

“(d) DETERMINATION OF PRICE.—

“(1) IN GENERAL.—In determining price for purposes of this subchapter—

“(A) there shall be included any charge incident to placing the article in condition ready for use,

“(B) there shall be excluded—

“(i) the amount of the tax imposed by this subchapter,

“(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

“(iii) the value of any component of such article if—

“(I) such component is furnished by the 1st user of such article, and

“(II) such component has been used before such furnishing, and

“(C) the price shall be determined without regard to any trade-in.

“(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

“SEC. 4003. SPECIAL RULES.

“(a) SEPARATE PURCHASE OF VEHICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

“(1) IN GENERAL.—Except as provided in paragraph (2), if—

“(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory on such vehicle, and

“(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service, then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

“(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

“(A) the sum of—

“(i) the price of such part or accessory and its installation,

“(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

“(iii) the price for which the passenger vehicle was sold, over

“(B) \$30,000.

“(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

“(A) the part or accessory installed is a replacement part or accessory,

“(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

“(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed \$200 (or such other amount or amounts as the Secretary may by regulation prescribe).

“(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

“(b) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF VEHICLES PURCHASED TAX-FREE.—

“(1) IN GENERAL.—If—

“(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle by reason of its exempt use, and

“(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

“(2) EXEMPT USE.—For purposes of this subsection, the term ‘exempt use’ means any use of a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

“(c) PARTS AND ACCESSORIES SOLD WITH TAXABLE ARTICLE.—Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

“(d) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter.”

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking “4002(b), 4003(c), 4004(a)” and inserting “4001(d)”.

(5) Subsection (d) of section 4222 is amended by striking “4002(b), 4003(c), 4004(a)” and inserting “4001(d)”.

(3) The table of subchapters for chapter 31 is amended by striking the item relating to subchapter A and inserting the following:

“Subchapter A. Luxury passenger vehicles.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on February 1, 1992.

SEC. 2512. TAX ON DIESEL FUEL USED IN NON-COMMERCIAL MOTORBOATS.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 4092(a) (defining diesel fuel) is amended by striking “or a diesel-powered train” and inserting “, a diesel-powered train, or a diesel-powered motorboat”.

(2) Paragraph (1) of section 4041(a) is amended—

(A) by striking “diesel-powered highway vehicle” each place it appears and inserting “diesel-powered highway vehicle or diesel-powered motorboat”, and

(B) by striking “such vehicle” and inserting “such vehicle or motorboat”.

(3) Subparagraph (B) of section 4092(b)(1) is amended by striking “commercial and non-commercial vessels” each place it appears and inserting “vessels for use in an off-highway business use (as defined in section 6421(e)(2)(B))”.

(b) EXEMPTION FOR USE IN FISHERIES OR COMMERCIAL NAVIGATION.—Subparagraph (B) of section 6421(e)(2) is amended to read as follows:

“(B) USES IN MOTORBOATS.—The term ‘off-highway business use’ does not include any use in a motorboat; except that such term shall include any use in—

“(i) a vessel employed in the fisheries or in the whaling business, and

“(ii) a motorboat in the active conduct of—

“(1) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

“(11) any other trade or business unless the motorboat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement or recreation.”

(c) RETENTION OF TAXES IN GENERAL FUND.—(1) TAXES IMPOSED AT HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (4) of section 9503(b) (relating to transfers to Highway Trust Fund) is amended—

(A) by striking “and” at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting “, and”, and

(C) by adding at the end thereof the following new subparagraph:

“(C) there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered motorboat.”

(2) TAXES IMPOSED AT LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—Subsection (b) of section 9508 (relating to transfers to Leaking Underground Storage Tank Trust Fund) is amended by adding at the end thereof the following new sentence: “For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4091 on diesel fuel sold for use or used as fuel in a diesel-powered motorboat.”

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1992.

PART V—OTHER PROVISIONS

SEC. 2513. TREATMENT OF EMPLOYER-PROVIDED TRANSPORTATION BENEFITS.

(a) EXCLUSION.—Subsection (a) of section 132 (relating to exclusion of certain fringe benefits) is amended by striking “or” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting “, or”, and by adding at the end thereof the following new paragraph:

“(5) qualified transportation fringe.”

(b) QUALIFIED TRANSPORTATION FRINGE.—Section 132 is amended by redesignating subsections (f), (g), (h), (i), (j), and (k) as subsections (g), (h), (i), (j), (k), and (l), respectively, and by inserting after subsection (e) the following new subsection:

“(f) QUALIFIED TRANSPORTATION FRINGE.—

“(1) IN GENERAL.—For purposes of this section, the term ‘qualified transportation fringe’ means any of the following provided by an employer to an employee:

“(A) Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee’s residence and place of employment.

“(B) Any transit pass.

“(C) Qualified parking.

“(2) LIMITATION ON EXCLUSION.—The amount of the fringe benefits which are provided by an employer to any employee and which may be excluded from gross income under subsection (a)(5) shall not exceed—

“(A) \$60 per month in the case of the aggregate of the benefits described in subparagraphs (A) and (B) of paragraph (1), and

“(B) \$160 per month in the case of qualified parking.

“(3) BENEFIT NOT IN LIEU OF COMPENSATION.—Subsection (a)(5) shall not apply to any qualified transportation fringe unless such benefit is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) TRANSIT PASS.—The term ‘transit pass’ means any pass, token, farecard, voucher, or similar item entitling a person to transportation (or transportation at a reduced price) if such transportation is—

“(i) on mass transit facilities (whether or not publicly owned), or

“(ii) provided by any person in the business of transporting persons for compensation or hire if such transportation is provided in a vehicle meeting the requirements of subparagraph (B)(i).

“(B) COMMUTER HIGHWAY VEHICLE.—The term ‘commuter highway vehicle’ means any highway vehicle—

“(i) the seating capacity of which is at least 6 adults (not including the driver), and

“(ii) at least 80 percent of the mileage use of which can reasonably be expected to be—

“(1) for purposes of transporting employees in connection with travel between their residences and their place of employment, and

“(11) on trips during which the number of employees transported for such purposes is at least 1/2 of the adult seating capacity of such vehicle (not including the driver).

“(C) QUALIFIED PARKING.—The term ‘qualified parking’ means parking provided to an employee on or near the business premises of the employer or on or near a location from which the employee commutes to work by transportation described in subparagraph (A), in a commuter highway vehicle, or by carpool.

“(D) TRANSPORTATION PROVIDED BY EMPLOYER.—Transportation referred to in paragraph (1)(A) shall be considered to be provided by an employer if such transportation is furnished in a commuter highway vehicle operated by or for the employer.

“(E) EMPLOYEE.—For purposes of this subsection, the term ‘employee’ does not include an individual who is an employee within the meaning of section 401(c)(1).

“(5) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1992, the dollar amounts contained in paragraph (2)(A) and (B) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins by substituting ‘calendar year 1991’ for ‘calendar year 1989’ in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of \$1, such increase shall be rounded to the next lowest multiple of \$1.

“(6) COORDINATION WITH OTHER PROVISIONS.—For purposes of this section, the terms ‘working condition fringe’ and ‘de minimis fringe’ shall not include any qualified transportation fringe (determined without regard to paragraph (2)).”

(c) CONFORMING AMENDMENT.—Subsection (i) of section 132 (as redesignated by subsection (b)) is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to benefits provided after December 31, 1991.

(2) PARKING LIMIT.—The limitation of subparagraph (B) of section 132(f)(2) of the Internal Revenue Code of 1986 (as amended by this section) shall only apply to benefits provided for months beginning after the date of the enactment of this Act.

SEC. 2514. TARIFF CLASSIFICATION OF LIGHT TRUCKS.

(a) IN GENERAL.—The Additional United States Notes for chapter 87 of the Harmonized Tariff Schedule of the United States is amended by redesignating note 2 as note 3 and inserting after note 1 the following new note:

“2. Any passenger van, multipurpose van, sport utility vehicle, or other Jeep-type vehicle with a g.v.w. not exceeding 3.85 metric tons and a basic vehicle frontal area of 4.1805 square meters or less which is—

“(a) designed primarily for transportation of property or is a derivation of such a vehicle;

“(b) equipped with special features enabling off-street or off-highway operation and use; or

“(c) suitable for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal of seats by means installed for that purpose by the manufacturer of the vehicle or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forwardmost point of installation of the seats to the rear of the vehicle’s interior;

shall be classified under heading 8704.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to merchandise entered, or withdrawn from warehouse for con-

sumption, after the 15th day after the date of the enactment of this Act.

TITLE III—PAYMENT OF FAIR SHARE BY HIGH-INCOME TAXPAYERS

Subtitle A—Treatment of Wealthy Individuals
SEC. 3001. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

“(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

“(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

“(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$35,800	15% of taxable income.
Over \$35,800 but not over \$86,500	\$5,370, plus 28% of the excess over \$35,800.
Over \$86,500 but not over \$175,000	\$19,565, plus 31% of the excess over \$86,500.
Over \$175,000	\$47,001, plus 36% of the excess over \$175,000.

“(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$28,750	15% of taxable income.
Over \$28,750 but not over \$74,150	\$4,312.50, plus 28% of the excess over \$28,750.
Over \$74,150 but not over \$162,500	\$17,024.50, plus 31% of the excess over \$74,150.
Over \$162,500	\$44,413, plus 36% of the excess over \$162,500.

“(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$21,450	15% of taxable income.
Over \$21,450 but not over \$51,900	\$3,217.50, plus 28% of the excess over \$21,450.
Over \$51,900 but not over \$150,000	\$11,743.50, plus 31% of the excess over \$51,900.
Over \$150,000	\$42,154.50, plus 36% of the excess over \$150,000.

“(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over \$17,900	15% of taxable income.
Over \$17,900 but not over \$43,250	\$2,685, plus 28% of the excess over \$17,900.
Over \$43,250 but not over \$87,500	\$9,783, plus 31% of the excess over \$43,250.
Over \$87,500	\$23,500.50, plus 36% of the excess over \$87,500.

“(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

“(1) every estate, and

“(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over \$3,500	15% of taxable income.
Over \$3,500	\$525, plus 36% of the excess over \$3,500."

(b) CONFORMING AMENDMENTS.—

(1) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(2)(A) Subsection (f) of section 1 is amended—
(i) by striking "1990" in paragraph (1) and inserting "1992", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1991".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1989" and inserting "1991".

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1991".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1991".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1991".

(F) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1991".

(G) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1991".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3002. SURTAX ON INDIVIDUALS WITH INCOMES OVER \$1,000,000.

(a) **GENERAL RULE.**—Subchapter A of chapter 1 (relating to determination of tax liability) is amended by adding at the end thereof the following new part:

"PART VIII—SURTAX ON INDIVIDUALS WITH INCOMES OVER \$1,000,000

"Sec. 59B. Surtax on section 1 tax.

"Sec. 59C. Surtax on minimum tax.

"Sec. 59D. Special rules.

"SEC. 59B. SURTAX ON SECTION 1 TAX.

"In the case of an individual who has taxable income for the taxable year in excess of \$1,000,000, the amount of the tax imposed under section 1 for such taxable year shall be increased by 10 percent of the amount which bears the same ratio to the tax imposed under section 1 (determined without regard to this section) as—

"(1) the amount by which the taxable income of such individual for such taxable year exceeds \$1,000,000, bears to

"(2) the total amount of such individual's taxable income for such taxable year.

"SEC. 59C. SURTAX ON MINIMUM TAX.

"In the case of an individual who has alternative minimum taxable income for the taxable year in excess of \$1,000,000, the amount of the tentative minimum tax determined under section 55 for such taxable year shall be increased by 2.4 percent of the amount by which the alternative minimum taxable income of such taxpayer for the taxable year exceeds \$1,000,000.

"SEC. 59D. SPECIAL RULES.

(a) **TREATMENT OF MARRIED INDIVIDUALS FILING SEPARATE RETURNS.**—In the case of a married individual (within the meaning of section 7703) filing a separate return for the taxable year, sections 59B and 59C shall be applied by substituting "\$500,000" for "\$1,000,000".

(b) **COORDINATION WITH OTHER PROVISIONS.**—The provisions of this part—

"(1) shall be applied after the application of subsections (h) and (i) of section 1, but

"(2) before the application of any other provision of this title which refers to the amount of tax imposed by section 1 or 55, as the case may be."

(b) **CLERICAL AMENDMENT.**—The table of parts for subchapter A of chapter 1 is amended by adding at the end the following new item:

"Part VIII. Surtax on individuals with incomes over \$1,000,000."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3003. EXTENSION OF OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS.

Section 68 (relating to overall limitation on itemized deductions) is amended by striking subsection (f).

SEC. 3004. EXTENSION OF PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 3005. MARK TO MARKET INVENTORY METHOD FOR SECURITIES DEALERS.

(a) **GENERAL RULE.**—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET INVENTORY METHOD FOR DEALERS IN SECURITIES.

"(a) **GENERAL RULE.**—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(b) **EXCEPTIONS.**—

"(1) **IN GENERAL.**—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B) any security described in subsection (c)(2)(C) which is originated or acquired by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and

"(C) any hedge with respect to—

"(i) a security to which subsection (a) does not apply, or

"(ii) a position or a liability which is not a security in the hands of the taxpayer.

"(2) **IDENTIFICATION REQUIRED.**—Any security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) **SECURITIES SUBSEQUENTLY HELD FOR SALE.**—If, at any time after the close of the day on which any security described in paragraph (1) was acquired, originated, or entered into (or

such other time as the Secretary may by regulations prescribe)—

"(A) such security is held for sale to customers in the ordinary course of a taxpayer's trade or business, or

"(B) such security is held as a hedge of a security to which subsection (a) applies, such security shall not be treated as described in such paragraph as of such time.

"(4) **SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.**—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

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

"(1) **DEALER IN SECURITIES DEFINED.**—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) **SECURITY DEFINED.**—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) notional principal contract, including any interest rate or currency swap, but not including any other commodity-linked notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), including any option, forward contract, short position, and any similar financial instrument in such a security (but not including any contract to which section 1256(a) applies); and

"(F) position which—

"(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's record as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) **HEDGE.**—The term 'hedge' includes any position which reduces the dealer's risk from interest rate or price changes, or currency fluctuations.

"(d) **SPECIAL RULES.**—For purposes of this section—

"(1) **CERTAIN RULES NOT TO APPLY.**—The rules of sections 263(g) and 263A shall not apply to securities to which subsection (a) applies.

"(2) **IMPROPER IDENTIFICATION.**—If, under subsection (b)(2) or (c)(2)(F)(iii), a taxpayer at any time—

"(A) identifies any security or position as being described in such subsection and such security or position is not so described as of such time, or

"(B) a taxpayer fails to identify a security or position which is so described at the time such identification is required,

the provisions of subsection (a) shall apply to such security, except that only gain shall be taken into account for any taxable year.

"(e) **REGULATORY AUTHORITY.**—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section."

(b) CLERICAL AMENDMENT.—The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

“Sec. 475. Mark to market inventory method for dealers in securities.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer.

(B) such change shall be treated as made with the consent of the Secretary, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 10-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

SEC. 3006. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF \$1,000,000.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

“(1) IN GENERAL.—No deduction shall be allowed under this chapter for employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds \$1,000,000.

“(2) COVERED EMPLOYEE.—For purposes of this subsection—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term ‘covered employee’ means any employee of the taxpayer who is an officer of the taxpayer.

“(B) EXCEPTION FOR EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.—The term ‘covered employee’ shall not include any employee-owner (as defined in section 269A(b)) of a personal service corporation (as defined in section 269A(b)).

“(C) FORMER EMPLOYEES.—The term ‘covered employee’ includes any former employee who had been a covered employee at any time while performing services for the taxpayer.

“(3) EMPLOYEE REMUNERATION.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘employee remuneration’ means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

“(B) REMUNERATION.—For purposes of subparagraph (A), the term ‘remuneration’ includes any remuneration (including benefits) in any medium other than cash, but shall not include—

“(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

“(ii) amounts referred to in section 3121(a)(19), and

“(iii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.

“(4) TREATMENT OF CERTAIN EMPLOYERS.—

“(A) IN GENERAL.—All employers treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 414 shall be treated as a single employer for purposes of this subsection.

“(B) CLARIFICATION OF OFFICER DEFINITION.—Any officer of any of the employers treated as a single employer under subparagraph (A) shall be treated as an officer of such single employer.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

Subtitle B—Administrative Provisions

SEC. 3101. INDIVIDUAL ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Section 6654(d)(1)(C)(ii) (relating to amount of required installment) is amended by striking the flush sentence immediately following subclause (III).

(b) COMPUTATION OF ADJUSTED GROSS INCOME FOR ESTATES AND TRUSTS.—Subsection (l) of section 6654 (relating to estates and trusts) is amended by adding at the end thereof the following new paragraph:

“(5) SPECIAL RULE FOR COMPUTING ADJUSTED GROSS INCOME.—For purposes of subsection (d)(1)(C)(ii), the adjusted gross income of an estate or trust shall be computed in accordance with section 67(e).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 3102. CORPORATE ESTIMATED TAX PROVISIONS.

(a) GENERAL RULE.—Subsection (d) of section 6655 (relating to amount of required installments) is amended—

(1) by striking “90 percent” each place it appears in paragraph (1)(B)(i) and inserting “95 percent”;

(2) by striking “90 PERCENT” in the heading of paragraph (2) and inserting “95 PERCENT”, and

(3) by striking paragraph (3).

(b) CONFORMING AMENDMENTS.—

(1) Clause (ii) of section 6655(e)(2)(B) is amended by striking the table contained therein and inserting in lieu thereof:

“In the case of the following required installments:	The applicable percentage is:
1st	23.75
2nd	47.5
3rd	71.25
4th	95.”

(2) Clause (i) of section 6655(e)(3)(A) is amended by striking “90 percent” and inserting “95 percent”.

(3) Paragraph (1) of section 6655(e) is amended by striking “paragraphs (2) and (3)” in the parenthetical and inserting “paragraph (2)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 3103. DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS OF TAX.

(a) GENERAL RULE.—Subsection (e) of section 6611 is amended to read as follows:

“(e) DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS.—

“(1) REFUNDS WITHIN 45 DAYS AFTER RETURN IS FILED.—If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

“(2) REFUNDS AFTER CLAIM FOR CREDIT OR REFUND.—If—

“(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

“(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

“(3) IRS INITIATED ADJUSTMENTS.—Notwithstanding any other provision, if an adjustment, initiated by or on behalf of the Secretary, results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment.”

(b) EFFECTIVE DATES.—

(1) Paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply in the case of returns the due date for which (determined without regard to extensions) is on or after July 1, 1992.

(2) Paragraph (2) of section 6611(e) of such Code (as so amended) shall apply in the case of claims for credit or refund of any overpayment filed on or after July 1, 1992 regardless of the taxable period to which such refund relates.

(3) Paragraph (3) of section 6611(e) of such Code (as so amended) shall apply in the case of any refund paid on or after July 1, 1992 regardless of the taxable period to which such refund relates.

TITLE IV—SIMPLIFICATION PROVISIONS

Subtitle A—Provisions Relating to Individuals

SEC. 4101. SIMPLIFICATION OF RULES ON ROLL-OVER OF GAIN ON SALE OF PRINCIPAL RESIDENCE IN CASE OF DIVORCE.

(a) TREATMENT IN CASE OF DIVORCES.—Subsection (c) of section 1034 is amended by adding at the end thereof the following new paragraph:

“(5) If—

“(A) a residence is sold by an individual pursuant to a divorce or marital separation, and

“(B) the taxpayer used such residence as his principal residence at any time during the 2-year period ending on the date of such sale,

for purposes of this section, such residence shall be treated as the taxpayer’s principal residence at the time of such sale.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after the date of the enactment of this Act.

SEC. 4102. PAYMENT OF TAX BY CREDIT CARD.

(a) GENERAL RULE.—Section 6311 is amended to read as follows:

“SEC. 6311. PAYMENT BY CHECK, MONEY ORDER, OR OTHER MEANS.

“(a) AUTHORITY TO RECEIVE.—It shall be lawful for the Secretary to receive for internal revenue taxes (or in payment for internal revenue stamps) checks, money orders, or any other commercially acceptable means that the Secretary deems appropriate, including payment by use of credit cards, to the extent and under the conditions provided in regulations prescribed by the Secretary.

“(b) ULTIMATE LIABILITY.—If a check, money order, or other method of payment so received is not duly paid, the person by whom such check, or money order, or other method of payment has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check, money order, or other method of payment had not been tendered.

“(c) LIABILITY OF BANKS AND OTHERS.—If any certified, treasurer’s, or cashier’s check (or other guaranteed draft), or any money order, or any other means of payment that has been guaranteed by a financial institution (such as a guar-

anted credit card transaction) so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for—

“(1) the amount of such check (or draft) upon all assets of the financial institution on which drawn,

“(2) the amount of such money order upon all the assets of the issuer thereof, or

“(3) the guaranteed amount of any other transaction upon all the assets of the institution making such guarantee,

and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution, issuer, or guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution.

“(d) PAYMENT BY OTHER MEANS.—

“(1) AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary shall prescribe such regulations as the Secretary deems necessary to receive payment by commercially acceptable means, including regulations that—

“(A) specify which methods of payment by commercially acceptable means will be acceptable,

“(B) specify when payment by such means will be considered received,

“(C) identify types of nontax matters related to payment by such means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Secretary, and

“(D) ensure that tax matters will be resolved by the Secretary, without the involvement of financial intermediaries.

“(2) AUTHORITY TO ENTER INTO CONTRACTS.—Notwithstanding section 3718(f) of title 31, United States Code, the Secretary is authorized to enter into contracts to obtain services related to receiving payment by other means where cost beneficial to the government and is further authorized to pay any fees required by such contracts.

“(3) SPECIAL PROVISIONS FOR USE OF CREDIT CARDS.—If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a)—

“(A) except as provided by regulations, subject to the provisions of section 6402, any refund due a person who makes a payment by use of a credit card shall be made directly to such person, notwithstanding any other provision of law or any contract made pursuant to paragraph (2),

“(B) any credit card transaction shall not be considered a ‘sales transaction’ under the Federal Truth-in-Lending Act (15 U.S.C. 1601 et seq.),

“(C) all nontax matters as defined by regulations prescribed under paragraph (1)(C), including billing errors as defined in section 161(b) of such Act, shall be resolved by the person tendering the credit card and the credit card issuer, without the involvement of the Secretary, and

“(D) the provisions of sections 161(e) and 170 of such Act shall not apply.”

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 64 is amended by striking the item relating to section 6311 and inserting the following:

“Sec. 6311. Payment by check, money order, or other means.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4103. MODIFICATIONS TO ELECTION TO INCLUDE CHILD'S INCOME ON PARENT'S RETURN.

(a) ELIGIBILITY FOR ELECTION.—Clause (ii) of section 1(g)(7)(A) (relating to election to include certain unearned income of child on parent's return) is amended to read as follows:

“(i) such gross income is more than the amount described in paragraph (4)(A)(ii)(I) and less than 10 times the amount so described.”

(b) COMPUTATION OF TAX.—Subparagraph (B) of section 1(g)(7) (relating to income included on parent's return) is amended—

(1) by striking “\$1,000” in clause (i) and inserting “twice the amount described in paragraph (4)(A)(ii)(I)”, and

(2) by amending subclause (II) of clause (ii) to read as follows:

“(II) for each such child, 15 percent of the lesser of the amount described in paragraph (4)(A)(ii)(I) or the excess of the gross income of such child over the amount so described, and”.

(c) MINIMUM TAX.—Subparagraph (B) of section 59(f)(1) is amended by striking “\$1,000” and inserting “twice the amount in effect for the taxable year under section 63(c)(5)(A)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4104. SIMPLIFIED FOREIGN TAX CREDIT LIMITATION FOR INDIVIDUALS.

(a) GENERAL RULE.—Section 904 (relating to limitations on foreign tax credit) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) SIMPLIFIED LIMITATION FOR CERTAIN INDIVIDUALS.—

“(1) IN GENERAL.—In the case of an individual to whom this subsection applies for any taxable year, the limitation of subsection (a) shall be the lesser of—

“(A) 25 percent of such individual's gross income for the taxable year from sources without the United States, or

“(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year (determined without regard to subsection (c)).

No taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued in any other taxable year under subsection (c).

“(2) INDIVIDUALS TO WHOM SUBSECTION APPLIES.—This subsection shall apply to an individual for any taxable year if—

“(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

“(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed \$200, and

“(C) such individual elects to have this subsection apply for the taxable year.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) QUALIFIED PASSIVE INCOME.—The term ‘qualified passive income’ means any item of gross income if—

“(i) such item of income is passive income (as defined in subsection (d)(2)(A) without regard to clause (iii) thereof), and

“(ii) such item of income is shown on a payee statement furnished to the individual.

“(B) CREDITABLE FOREIGN TAXES.—The term ‘creditable foreign taxes’ means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

“(C) PAYEE STATEMENT.—The term ‘payee statement’ has the meaning given to such term by section 6724(d)(2).

“(D) ESTATES AND TRUSTS NOT ELIGIBLE.—This subsection shall not apply to any estate or trust.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

SEC. 4105. TREATMENT OF PERSONAL TRANSACTIONS BY INDIVIDUALS UNDER FOREIGN CURRENCY RULES.

(a) GENERAL RULE.—Subsection (e) of section 988 (relating to application to individuals) is amended to read as follows:

“(e) APPLICATION TO INDIVIDUALS.—

“(1) IN GENERAL.—The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

“(2) EXCLUSION FOR CERTAIN PERSONAL TRANSACTIONS.—If—

“(A) nonfunctional currency is disposed of by an individual in any transaction, and

“(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The preceding sentence shall not apply if the gain which would otherwise be recognized exceeds \$200.

“(3) PERSONAL TRANSACTIONS.—For purposes of this subsection, the term ‘personal transaction’ means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4106. EXCLUSION OF COMBAT PAY FROM WITHHOLDING LIMITED TO AMOUNT EXCLUDABLE FROM GROSS INCOME.

(a) IN GENERAL.—Paragraph (1) of section 3401(a) (defining wages) is amended by inserting before the semicolon the following: “to the extent remuneration for such service is excludable from gross income under such section”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to remuneration paid after December 31, 1992.

SEC. 4107. EXPANDED ACCESS TO SIMPLIFIED INCOME TAX RETURNS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall take such actions as may be appropriate to expand access to simplified individual income tax returns and otherwise simplify the individual income tax returns.

(b) REPORT.—Not later than the date 1 year after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a report on his actions under subsection (a), together with such recommendations as he may deem advisable.

SEC. 4108. TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses), as amended by section 3006, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) TREATMENT OF CERTAIN REIMBURSED EXPENSES OF RURAL MAIL CARRIERS.—

“(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses

incurred by such employee for the use of a vehicle in performing such services—

“(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

“(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

“(2) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term ‘qualified reimbursements’ means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers’ Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted for changes in the Consumer Price Index (as defined in section 1(j)(5) since 1991.”

(b) TECHNICAL AMENDMENT.—Section 6008 of the Technical and Miscellaneous Revenue Act of 1988 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4109. EXEMPTION FROM LUXURY EXCISE TAX FOR CERTAIN EQUIPMENT INSTALLED ON PASSENGER VEHICLES FOR USE BY DISABLED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (3) of section 4004(b) of the Internal Revenue Code of 1986 (relating to separate purchase of article and parts and accessories therefor) is amended—

(1) by striking “or” at the end of subparagraph (A),

(2) by redesignating subparagraph (B) as subparagraph (C), and

(3) by inserting after subparagraph (A) the following new subparagraph:

“(B) the part or accessory is installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 11221(a) of the Omnibus Budget Reconciliation Act of 1990.

Subtitle B—Pension Simplification

PART I—SIMPLIFIED DISTRIBUTION RULES

SEC. 4201. TAXABILITY OF BENEFICIARY OF QUALIFIED PLAN.

(a) IN GENERAL.—So much of section 402 (relating to taxability of beneficiary of employees’ trust) as precedes subsection (g) thereof is amended to read as follows:

“SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES’ TRUST.

“(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees’ trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

“(b) TAXABILITY OF BENEFICIARY OF NON-EXEMPT TRUST.—

“(1) CONTRIBUTIONS.—Contributions to an employees’ trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a)

shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee’s interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

“(2) DISTRIBUTIONS.—The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

“(3) GRANTOR TRUSTS.—A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

“(4) FAILURE TO MEET REQUIREMENTS OF SECTION 410(b).—

“(A) HIGHLY COMPENSATED EMPLOYEES.—If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under this subsection, include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee’s investment in the contract) as of the close of such taxable year of the trust.

“(B) FAILURE TO MEET COVERAGE TESTS.—If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), this subsection shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

“(i) such taxable year, or

“(ii) any preceding period for which service was creditable to such employee under the plan.

“(C) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term ‘highly compensated employee’ has the meaning given such term by section 414(q).

“(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS.—

“(1) EXCLUSION FROM INCOME.—If—

“(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

“(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

“(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

“(2) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)).

“(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

“(4) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term ‘eligible rollover distribution’ means any distribution to

an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

“(A) any distribution which is part of a series of substantially equal periodic payments (not less frequently than annually) made—

“(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee’s designated beneficiary, or

“(ii) for a specified period of 10 years or more, and

“(B) any distribution to the extent such distribution is required under section 401(a)(9).

“(5) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under paragraph (1) to an eligible retirement plan described in clause (i) or (ii) of paragraph (3)(B) shall be treated as a rollover contribution described in section 408(d)(3).

“(6) SALES OF DISTRIBUTED PROPERTY.—For purposes of this subsection—

“(A) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY.—The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

“(B) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE.—The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

“(C) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION.—In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

“(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

“(ii) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

“(D) TREATMENT WHERE NO DESIGNATION.—In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under subparagraph (C) within the time provided therein, then—

“(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

“(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis.

“(E) NONRECOGNITION OF GAIN OR LOSS.—In the case of any sale described in subparagraph (A), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1), neither gain nor loss on such sale shall be recognized.

“(7) SPECIAL RULE FOR FROZEN DEPOSITS.—

“(A) IN GENERAL.—The 60-day period described in paragraph (3) shall not—

“(i) include any period during which the amount transferred to the employee is a frozen deposit, or

“(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

“(B) FROZEN DEPOSITS.—For purposes of this subparagraph, the term ‘frozen deposit’ means any deposit which may not be withdrawn because of—

"(i) the bankruptcy or insolvency of any financial institution, or

"(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State. A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' means—

"(i) an individual retirement account described in section 408(a),

"(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(iii) a qualified trust, and

"(iv) an annuity plan described in section 403(a).

"(9) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTION AFTER DEATH OF EMPLOYEE.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution.

"(d) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

"(e) OTHER RULES APPLICABLE TO EXEMPT TRUSTS.—

"(1) ALTERNATE PAYEES.—

"(A) ALTERNATE PAYEE TREATED AS DISTRIBUTOR.—For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

"(B) ROLLOVERS.—If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

"(2) DISTRIBUTIONS BY UNITED STATES TO NON-RESIDENT ALIENS.—The amount includible under subsection (a) in the gross income of a non-resident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

"(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

"(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term 'basic pay' shall have the meaning provided in section 8331(3) of title 5, United States Code.

"(3) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

"(4) NET UNREALIZED APPRECIATION.—

"(A) AMOUNTS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—For purposes of subsection (a) and section 72, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(o)(5)). This subparagraph shall not apply to a partial distribution to which subsection (c) applies.

"(B) AMOUNTS ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—In the case of any lump sum distribution which includes securities of the employer corporation, subparagraph (A) shall apply to the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation attributable to amounts other than the amounts contributed by the employee. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph and subparagraph (A) apply to such distribution.

"(C) DETERMINATION OF AMOUNTS AND ADJUSTMENTS.—For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

"(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

"(I) on account of the employee's death,

"(II) after the employee attains age 59½,

"(III) on account of the employee's separation from service, or

"(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

"(ii) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under clause (i)—

"(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans

maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

"(iii) COMMUNITY PROPERTY LAWS.—The provisions of this paragraph shall be applied without regard to community property laws.

"(iv) AMOUNTS SUBJECT TO PENALTY.—This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(v) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER.—For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

"(vi) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

"(vii) LUMP-SUM DISTRIBUTIONS OF ALTERNATE PAYEES.—If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) SECURITIES.—The term 'securities' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

"(ii) SECURITIES OF THE EMPLOYER.—The term 'securities of the employer corporation' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

"(f) WRITTEN EXPLANATION TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—

"(1) IN GENERAL.—The plan administrator of any plan shall, when making an eligible rollover distribution, provide a written explanation to the recipient of the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term 'eligible rollover distribution' has the same meaning as when used in subsection (c) of this section or paragraph (4) of section 403(a).

"(B) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' has the meaning given such term by subsection (c)(8)(B).

"(b) REPEAL OF \$5,000 EXCLUSION OF EMPLOYEES' DEATH BENEFITS.—Subsection (b) of section 101 is hereby repealed.

"(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 55(c) is amended by striking "shall not include any tax imposed by section 402(e) and".

(2) Paragraph (8) of section 62(a) (relating to certain portion of lump-sum distributions from pension plans taxed under section 402(e)) is hereby repealed.

(3) Paragraph (4) of section 72(o) (relating to special rule for treatment of rollover amount) is amended by striking "sections 402(a)(5), 402(a)(7)" and inserting "sections 402(c)".

(4) Paragraph (2) of section 219(d) (relating to recontributed amount) is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(5) Paragraph (20) of section 401(a) is amended by striking "qualified total distribution described in section 402(a)(5)(E)(i)(I)" and inserting "distribution to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan".

(6) Section 401(a)(28)(B) (relating to coordination with distribution rules) is amended by striking clause (v).

(7) Subclause (IV) of section 401(k)(2)(B)(i) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(8) Subparagraph (B)(ii) of section 401(k)(10) (relating to distributions that must be lump-sum distributions) is amended to read as follows:

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' means any distribution of the balance to the credit of an employee immediately before the distribution."

(9) Section 402(g)(1) is amended by striking "subsections (a)(8)" and inserting "subsections (e)(3)".

(10) Section 402(i) is amended by striking ", except as otherwise provided in subparagraph (A) of subsection (e)(4)".

(11) Subsection (j) of section 402 is amended by striking "(a)(1) or (e)(4)(J)" and inserting "(e)(4)".

(12)(A) Clause (i) of section 403(a)(4)(A) is amended by inserting "in an eligible rollover distribution (within the meaning of section 402(c)(4))" before the comma at the end thereof.

(B) Subparagraph (B) of section 403(a)(4) is amended to read as follows:

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A)."

(13)(A) Clause (i) of section 403(b)(8)(A) is amended by inserting "in an eligible rollover distribution (within the meaning of section 402(c)(4))" before the comma at the end thereof.

(B) Paragraph (8) of section 403(b) is amended by striking subparagraphs (B), (C), and (D) and inserting the following:

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A)."

(14) Section 406(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(15) Section 407(c) (relating to termination of status as deemed employee not to be treated as separation from service for purposes of limitation of tax) is hereby repealed.

(16) Paragraph (1) of section 408(a) is amended by striking "section 402(a)(5), 402(a)(7)" and inserting "section 402(c)".

(17) Clause (ii) of section 408(d)(3)(A) is amended to read as follows:

"(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earn-

ings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or".

(18) Subparagraph (B) of section 408(d)(3) (relating to limitations) is amended by striking the second sentence thereof.

(19) Subparagraph (F) of section 408(d)(3) (relating to frozen deposits) is amended by striking "section 402(a)(6)(H)" and inserting "section 402(c)(7)".

(20) Subclause (I) of section 414(n)(5)(C)(iii) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(21) Clause (i) of section 414(a)(7)(B) is amended by striking "402(a)(8)" and inserting "402(e)(3)".

(22) Paragraph (2) of section 414(s) (relating to employer may elect to treat certain deferrals as compensation) is amended by striking "402(a)(8)" and inserting "402(e)(3)".

(23) Subparagraph (A) of section 415(b)(2) (relating to annual benefit in general) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(24) Subparagraph (B) of section 415(b)(2) (relating to adjustment for certain other forms of benefit) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(25) Paragraph (2) of section 415(c) (relating to annual addition) is amended by striking "sections 402(a)(5)" and inserting "sections 402(c)".

(26) Subparagraph (B) of section 457(c)(2) is amended by striking "section 402(a)(8)" in clause (i) thereof and inserting "section 402(e)(3)".

(27) Section 691(c) (relating to coordination with section 402(e)) is amended by striking paragraph (5).

(28) Subparagraph (B) of section 871(a)(1) (relating to income other than capital gains) is amended by striking "402(a)(2), 403(a)(2), or".

(29) Paragraph (1) of section 871(b) (relating to imposition of tax) is amended by striking "section 1, 55, or 402(e)(1)" and inserting "section 1 or 55".

(30) Paragraph (1) of section 871(k) is amended by striking "section 402(a)(4)" and inserting "section 402(e)(2)".

(31) Subsection (b) of section 877 (relating to alternative tax) is amended by striking "section 1, 55, or 402(e)(1)" and inserting "section 1 or 55".

(32) Subsection (b) of section 1441 (relating to income items) is amended by striking "402(a)(2), 403(a)(2), or".

(33) Paragraph (5) of section 1441(c) (relating to special items) is amended by striking "402(a)(2), 403(a)(2), or".

(34) Subparagraph (A) of section 3121(v)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(35) Subparagraph (A) of section 3306(r)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(36) Subsection (a) of section 3405 is amended by striking "PENSIONS, ANNUITIES, ETC.—" from the heading thereof and inserting "PERIODIC PAYMENTS.—".

(37) Subsection (b) of section 3405 (relating to nonperiodic distribution) is amended—

(A) by striking "the amount determined under paragraph (2)" from paragraph (1) thereof and inserting "an amount equal to 10 percent of such distribution"; and

(B) by striking paragraph (2) (relating to amount of withholding) and redesignating paragraph (3) as paragraph (2).

(38) Paragraph (4) of section 3405(d) (relating to qualified total distributions) is hereby repealed.

(39) Paragraph (8) of section 3405(d) (relating to maximum amounts withheld) is amended to read as follows:

"(8) MAXIMUM AMOUNT WITHHELD.—The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than securities of the employer corporation) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of securities of the employer corporation and cash (not in excess of \$200) in lieu of financial shares. For purposes of this paragraph, the term 'securities of the employer corporation' has the meaning given such term by section 402(e)(4)(E)."

(40) Subparagraph (A) of section 4973(b)(1) is amended by striking "sections 402(a)(5), 402(a)(7)" and inserting "sections 402(c)".

(41) Paragraph (4) of section 4980A(c) (relating to special rule where taxpayer elects income averaging) is amended to read as follows:

"(4) ONE-TIME ELECTION FOR CERTAIN DISTRIBUTIONS.—If the taxpayer elects the application of this paragraph for any calendar year, paragraph (1) shall be applied for such calendar year as if the limitation under paragraph (1) were equal to 5 times such limitation determined without regard to this paragraph. No election may be made under this paragraph by any taxpayer if this paragraph applied to the taxpayer for any preceding calendar year."

(42) Subparagraph (C) of section 7701(j)(1) is amended by striking "section 402(a)(8)" and inserting "section 402(e)(3)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(2) ROLLOVERS.—The provisions of section 402(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and any amendment of any other provision of such Code relating to such provision, shall apply to distributions after the date of the enactment of this Act.

(3) RETENTION OF CERTAIN TRANSITION RULES.—Notwithstanding any other provision of this section, the amendments made by this section shall not apply to distributions to employees described in section 1122 (h)(3) or (h)(5) of the Tax Reform Act of 1986.

SEC. 4202. SIMPLIFIED METHOD FOR TAXING ANNUITY DISTRIBUTIONS UNDER CERTAIN EMPLOYER PLANS.

(a) GENERAL RULE.—Subsection (d) of section 72 (relating to annuities; certain proceeds of endowment and life insurance contracts) is amended to read as follows:

"(d) SPECIAL RULES FOR QUALIFIED EMPLOYER RETIREMENT PLANS.—

"(1) SIMPLIFIED METHOD OF TAXING ANNUITY PAYMENTS.—

"(A) IN GENERAL.—In the case of any amount received as an annuity under a qualified employer retirement plan—

"(i) subsection (b) shall not apply, and

"(ii) the investment in the contract shall be recovered as provided in this paragraph.

"(B) METHOD OF RECOVERING INVESTMENT IN CONTRACT.—

"(i) IN GENERAL.—Gross income shall not include so much of any monthly annuity payment under a qualified employer retirement plan as does not exceed the amount obtained by dividing—

"(I) the investment in the contract (as of the annuity starting date), by

"(II) the number of anticipated payments determined under the table contained in clause (iii) (or, in the case of a contract to which subsection (e)(3)(B) applies, the number of monthly annuity payments under such contract).

"(ii) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) and (3) of subsection (b) shall apply for purposes of this paragraph.

“(iii) NUMBER OF ANTICIPATED PAYMENTS.—

“If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	300
More than 55 but not more than 60	260
More than 60 but not more than 65	240
More than 65 but not more than 70	170
More than 70	120

“(C) ADJUSTMENT FOR REFUND FEATURE NOT APPLICABLE.—For purposes of this paragraph, investment in the contract shall be determined under subsection (c)(1) without regard to subsection (c)(2).

“(D) SPECIAL RULE WHERE LUMP SUM PAID IN CONNECTION WITH COMMENCEMENT OF ANNUITY PAYMENTS.—If, in connection with the commencement of annuity payments under any qualified employer retirement plan, the taxpayer receives a lump sum payment—

“(i) such payment shall be taxable under subsection (e) as if received before the annuity starting date, and

“(ii) the investment in the contract for purposes of this paragraph shall be determined as if such payment had been so received.

“(E) EXCEPTION.—This paragraph shall not apply in any case where the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity.

“(F) ADJUSTMENT WHERE ANNUITY PAYMENTS NOT ON MONTHLY BASIS.—In any case where the annuity payments are not made on a monthly basis, appropriate adjustments in the application of this paragraph shall be made to take into account the period on the basis of which such payments are made.

“(G) QUALIFIED EMPLOYER RETIREMENT PLAN.—For purposes of this paragraph, the term ‘qualified employer retirement plan’ means any plan or contract described in paragraph (1), (2), or (3) of section 4974(c).

“(2) TREATMENT OF EMPLOYEE CONTRIBUTIONS UNDER DEFINED CONTRIBUTION PLANS.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in cases where the annuity starting date is after December 31, 1992.

SEC. 4203. QUALIFIED PLANS MUST PROVIDE FOR TRANSFERS OF CERTAIN DISTRIBUTIONS TO OTHER PLANS.

(a) QUALIFICATION REQUIREMENT.—Section 401(a) (relating to requirements for qualification) is amended by adding after paragraph (30) the following new paragraph:

“(31) CERTAIN DISTRIBUTIONS MUST BE MADE IN FORM OF TRANSFER TO OTHER PLAN.—A trust shall not constitute a qualified trust under this section unless the plan of which it is a part meets the requirements of section 417A.”

(b) TRANSFER REQUIREMENTS.—

(1) IN GENERAL.—Subpart B of part I of subchapter D of chapter I (relating to special rules) is amended by adding at the end thereof the following new section:

“SEC. 417A. REQUIRED TRANSFERS OF CERTAIN PLAN DISTRIBUTIONS.

“(a) GENERAL RULE.—A plan meets the requirements of this section only if all applicable distributions from the plan are made in the form of a direct trustee-to-trustee transfer to an eligible transferee plan.

“(b) APPLICABLE DISTRIBUTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘applicable distribution’ means any distribution from a plan in

excess of \$500 which, without regard to this section, would be distributed directly to a participant or to the beneficiary of a participant.

“(2) EXCEPTIONS.—The term ‘applicable distribution’ shall not include any of the following:

“(A) Any distribution described in section 72(t)(2)(A) (other than clause (i), (ii), or (v) thereof) or section 72(t)(2)(C).

“(B) Any distribution on or after the date the employee attains age 55.

“(C) Any distribution on or after the death of the employee other than to the surviving spouse of the employee.

“(D) In the case of a profit-sharing or stock bonus plan, a distribution upon hardship of the employee.

“(E) Any distribution of any employee contribution other than accumulated deductible contributions (within the meaning of section 72(o)(5)).

“(F) Any distribution the proceeds of which are used to repay any loan to the employee from the plan with respect to which the employee is in default.

“(c) ELIGIBLE TRANSFEREE PLAN.—For purposes of this section—

“(1) IN GENERAL.—The term ‘eligible transferee plan’ means an individual retirement plan designated by the employee in such form, and at such time, as the transferor plan may prescribe.

“(2) DESIGNATION BY PLAN.—

“(A) IN GENERAL.—Each plan shall provide a method for the designation of an eligible transferee plan if an employee does not designate a plan under paragraph (1).

“(B) DESIGNATION BY TRUSTEE.—The trustee shall designate the eligible transferee plan under the method prescribed under subparagraph (A) in cases—

“(i) where the employee does not designate, or

“(ii) where the transfer in accordance with an employee’s designation is not practicable.

“(3) TRANSFERS TO QUALIFIED TRUSTS.—Except as otherwise provided in regulations, an eligible transferee plan shall include an employee’s trust described in section 401(a) and exempt from tax under section 501(a) which is designated as provided in paragraph (2) and which—

“(A) is part of a defined contribution plan, and

“(B) provides for the acceptance of the distribution from the transferor plan.

“(d) SPECIAL RULES FOR TREATMENT OF TRANSFERS.—

“(1) WITHDRAWALS BEFORE DUE DATE.—

“(A) IN GENERAL.—For purposes of this title, if, during the distribution period with respect to any applicable distribution, the employee receives a distribution from the eligible transferee plan of any portion of the applicable distribution (and any income allocable thereto), the distribution from the eligible transferee plan shall be treated as if it were a distribution from the transferor plan in the taxable year of receipt by the employee.

“(B) DISTRIBUTION PERIOD.—For purposes of this paragraph, the term ‘distribution period’ means the period beginning on the date of the transfer and ending on the due date (including extensions) for the return of tax for the taxable year of the employee in which the date of transfer occurs.

“(2) SPOUSAL BENEFICIARIES.—For purposes of this section, in the case of an applicable distribution to the surviving spouse of an employee, the surviving spouse shall be treated in the same manner as an employee.

“(e) REPORTS.—

“(1) NOTICE TO EMPLOYEES.—The trustee of a plan shall notify each employee before any applicable distribution of the requirements of this section, including the time and manner of making a designation under subsection (c)(1).

“(2) AMOUNTS TRANSFERRED.—The trustee of a transferor plan shall notify the employee of the amount of any direct trustee-to-trustee transfer.”

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part I of subchapter D of chapter I is amended by inserting after the item relating to section 417 the following new item:

“Sec. 417A. Required transfers of certain plan distributions.”

(c) EXCLUSION FROM INCOME.—

(1) IN GENERAL.—Subsection (e) of section 402 (relating to taxability of beneficiary of employees’ trust), as amended by section _____, is amended by adding at the end the following new paragraph:

“(5) DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS.—In the case of a plan described in section 401(a) to which the requirements of section 417A apply, any amount transferred in a direct trustee-to-trustee transfer in accordance with section 417A shall not be includible in gross income for the taxable year of such transfer.”

(2) DIRECT TRANSFERS FROM EMPLOYEE ANNUITIES.—

(A) QUALIFIED ANNUITY PLANS.—

(i) Paragraph (2) of section 404(a) (relating to employees’ annuities) is amended by striking “and (27)” and inserting “(27), and (31)”.

(ii) Subsection (a) of section 403 (relating to taxability of beneficiary under a qualified annuity plan) is amended by adding at the end the following new paragraph:

“(5) DIRECT TRANSFERS TO INDIVIDUAL RETIREMENT PLANS.—Rules similar to the rules of sections 402(e)(5) and 417A shall apply with respect to annuity contracts described in paragraph (1), and such contracts shall, for purposes of section 417A(c)(3), be treated in the same manner as a trust described in such section.”

(B) ANNUITY CONTRACTS PURCHASED BY SECTION 501(C)(3) ORGANIZATIONS OR PUBLIC SCHOOLS.—Subsection (b) of section 403 (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end the following new paragraph:

“(13) DIRECT TRUSTEE-TO-TRUSTEE TRANSFERS.—Rules similar to the rules of sections 401(a)(31) and 417A and section 402(e)(5) shall apply with respect to annuity contracts described in paragraph (1), and such contracts shall, for purposes of section 417A(c)(3), be treated in the same manner as a trust described in such section.”

(d) OTHER AMENDMENTS.—

(1) CERTAIN TRANSFERS NOT TREATED AS REDUCTIONS IN BENEFITS.—Section 411(d)(6)(B) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following new sentence: “Except as otherwise provided in regulations, the requirements of clause (ii) shall not be treated as violated solely by reason of a direct trustee-to-trustee transfer required by section 417A.”

(2) SERVICE DISREGARDED WHERE DISTRIBUTION IS PERMITTED.—

(A) IN GENERAL.—Subparagraph (B) of section 411(a)(7) (relating to effect of certain distributions) is amended—

(i) in the matter preceding clause (i), by striking “he has received”;

(ii) in clause (i), by inserting “the employee has received” after “(i)”, and by striking “or”;

(iii) in clause (ii), by inserting “the employee has received” after “(ii)”, and by striking “receive.” and inserting “receive, or”;

(iv) by inserting after clause (ii) the following: “(iii) a direct trustee-to-trustee transfer described in section 417A has been made from the plan.”; and

(v) in the last sentence, by striking “Clause (ii)” and inserting “Clauses (ii) and (iii)”.

(B) BUYBACK RULES.—Subparagraph (C) of section 411(a)(7) (relating to repayment of subparagraph (B) distributions) is amended by adding at the end the following new sentence: "For purposes of this subparagraph, a direct trustee-to-trustee transfer referred to in subparagraph (B)(iii) with respect to a participant shall be treated as a distribution received by the participant."

(3) NOTICE TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended—

(A) by striking "when making an eligible rollover distribution, provide a written explanation to the recipient" and inserting "when making an eligible rollover distribution or a direct trustee-to-trustee transfer, provide to the recipient of the distribution or the person with respect to whom the transfer is made a written explanation of"; and

(B) by inserting ", or the income tax consequences of a direct trustee-to-trustee transfer provided in accordance with the applicable requirements of sections 417A, 403(e)(5), and 403(b)(13), respectively" before the end period.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 1993.

SEC. 4204. REQUIRED DISTRIBUTIONS.

(a) IN GENERAL.—Section 401(a)(9)(C) (defining required beginning date) is amended to read as follows:

"(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'required beginning date' means April 1 of the calendar year following the later of—

"(I) the calendar year in which the employee attains age 70½,

"(II) the calendar year in which the employee retires.

"(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

"(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

"(II) for purposes of section 408(a)(6) or (b)(3).

"(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

"(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B))."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1992.

PART II—INCREASED ACCESS TO PENSION PLANS

SEC. 4211. MODIFICATIONS OF SIMPLIFIED EMPLOYEE PENSIONS.

(a) INCREASE IN NUMBER OF ALLOWABLE PARTICIPANTS FOR SALARY REDUCTION ARRANGEMENTS.—Section 408(k)(6)(B) is amended by striking "25" each place it appears in the text and heading thereof and inserting "100".

(b) MODIFICATION OF PARTICIPATION REQUIREMENTS.—Section 408(k)(2)(B) is amended to read as follows:

"(B) has at least 1 year of service (as determined under section 411(a)(5)) with the employer, and";

(c) REPEAL OF PARTICIPATION REQUIREMENT.—Section 408(k)(6)(A) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(d) ALTERNATIVE TEST.—Clause (iii) of section 408(k)(6)(A) is amended by adding at the end thereof the following new flush sentence:

"The requirements of the preceding sentence are met if the employer makes contributions to the simplified employee pension meeting the requirements of sections 401(k)(11) (B) or (C), 401(k)(11)(D), and 401(m)(10)(B)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4212. TAX EXEMPT ORGANIZATIONS ELIGIBLE UNDER SECTION 401(k).

(a) GENERAL RULE.—Subparagraph (B) of section 401(k)(4) is amended to read as follows:

"(B) STATE AND LOCAL GOVERNMENTS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This subparagraph shall not apply to a rural cooperative plan."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to plan years beginning on or after December 31, 1992, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

SEC. 4213. DUTIES OF SPONSORS OF CERTAIN PROTOTYPE PLANS.

(a) IN GENERAL.—The Secretary of the Treasury may, as a condition of sponsorship, prescribe rules defining the duties and responsibilities of sponsors of master and prototype plans, regional prototype plans, and other Internal Revenue Service preapproved plans.

(b) DUTIES RELATING TO PLAN AMENDMENT, NOTIFICATION OF ADOPTERS, AND PLAN ADMINISTRATION.—The duties and responsibilities referred to in subsection (a) may include—

(1) the maintenance of lists of persons adopting the sponsor's plans, including the updating of such lists not less frequently than annually,

(2) the furnishing of notices at least annually to such persons and to the Secretary or his delegate, in such form and at such time as the Secretary shall prescribe,

(3) duties relating to administrative services to such persons in the operation of their plans, and

(4) other duties that the Secretary considers necessary to ensure that—

(A) the master and prototype, regional prototype, and other preapproved plans of adopting employers are timely amended to meet the requirements of the Internal Revenue Code of 1986 or of any rule or regulation of the Secretary, and

(B) adopting employers receive timely notification of amendments and other actions taken by sponsors with respect to their plans.

PART III—NONDISCRIMINATION PROVISIONS

SEC. 4221. DEFINITION OF HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (1) of section 414(q) (defining highly compensated employee) is amended to read as follows:

"(1) IN GENERAL.—The term 'highly compensated employee' means any employee who—
 "(A) was a 5-percent owner at any time during the year or the preceding year, or
 "(B) had compensation for the preceding year from the employer in excess of \$50,000.

The Secretary shall adjust the \$50,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d)."

(b) SPECIAL RULE WHERE NO EMPLOYEES TREATED AS HIGHLY COMPENSATED.—Paragraph (2) of section 414(q) is amended to read as follows:

"(2) SPECIAL RULE IF NO EMPLOYEE DESCRIBED IN PARAGRAPH (1).—If no employee is treated as a highly compensated employee under paragraph (1), the highest paid officer for the year shall be treated as a highly compensated employee. The preceding sentence shall not apply for purposes of section 401 (k) or (m) and shall not apply with respect to employees of an employer described in section 457(e)(1)."

(c) TREATMENT OF FAMILY MEMBERS.—Paragraph (6) of section 414(q) is hereby repealed.

(d) CONFORMING AMENDMENTS.—

(1) Paragraphs (4), (5), (8), and (12) of section 414(q) are hereby repealed.

(2)(A) Section 414(r) is amended by adding at the end thereof the following new paragraph:

"(9) EXCLUDED EMPLOYEES.—For purposes of this subsection, the following employees shall be excluded:

"(A) Employees who have not completed 6 months of service.

"(B) Employees who normally work less than 17½ hours per week.

"(C) Employees who normally work not more than 6 months during any year.

"(D) Employees who have not attained the age of 21.

"(E) Except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) specified in such subparagraph."

(B) Subparagraph (A) of section 414(r)(2) is amended by striking "subsection (q)(8)" and inserting "paragraph (9)".

(3) Paragraph (17) of section 401(a) is amended by striking the last sentence.

(4) Subsection (1) of section 404 is amended by striking the last sentence.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992, except that an employer may elect not to have such amendments apply to years beginning in 1993.

SEC. 4222. ELECTION TO TREAT BASE PAY AS COMPENSATION.

(a) IN GENERAL.—Section 414(s) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) ELECTION TO USE BASE PAY.—An employer may elect to determine an employee's compensation solely by reference to that portion of the employee's compensation attributable to such employee's base pay. Such election shall apply for purposes of all applicable provisions and to all employees and, once made, may be revoked only with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1992.

SEC. 4223. MODIFICATION OF ADDITIONAL PARTICIPATION REQUIREMENTS.

(a) GENERAL RULE.—Section 401(a)(26)(A) (relating to additional participation requirements) is amended to read as follows:

"(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—
 "(i) 25 employees of the employer, or

"(ii) the greater of—
 "(I) 40 percent of all employees of the employer, or

"(II) 2 employees (or if there is only 1 employee, such employee)."

(b) SEPARATE LINE OF BUSINESS TEST.—Section 401(a)(26)(G) (relating to separate line of business) is amended by striking "paragraph (7)" and inserting "paragraph (2)(A) or (7)".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall apply to years beginning after December 31, 1991.

(2) ELECTION.—A plan may elect to have the amendment made by this section apply as if such amendment was included in the amendment made by section 1112(b) of the Tax Reform Act of 1986. Such election shall be made at such time, and in such form, as the Secretary of the Treasury may prescribe.

SEC. 4224. NONDISCRIMINATION RULES FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS AND MATCHING CONTRIBUTIONS.

(a) ALTERNATIVE METHODS OF SATISFYING SECTION 401(k) NONDISCRIMINATION TESTS.—Section 401(k) (relating to cash or deferred arrangements) is amended by adding at the end thereof the following new paragraph:

"(II) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

"(i) meets the contribution requirements of subparagraph (B) or (C), and

"(ii) meets the notice requirements of subparagraph (D).

"(B) MATCHING CONTRIBUTIONS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount not less than—

"(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

"(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

"(ii) RATE FOR HIGHLY COMPENSATED EMPLOYEES.—The requirements of this subparagraph are not met if, under the arrangement, the matching contribution with respect to any elective contribution of a highly compensated employee at any level of compensation is greater than that with respect to an employee who is not a highly compensated employee.

"(iii) ALTERNATIVE PLAN DESIGNS.—If the matching contribution with respect to any elective contribution at any specific level of compensation is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

"(I) the level of an employer's matching contribution does not increase as an employee's elective contributions increase, and

"(II) the aggregate amount of matching contributions with respect to elective contributions not in excess of such level of compensation is at least equal to the amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

"(C) NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee con-

tribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

"(D) NOTICE REQUIREMENT.—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

"(i) is sufficiently accurate and comprehensive to appraise the employee of such rights and obligations, and

"(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

"(E) OTHER REQUIREMENTS.—

"(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to employer contributions.

"(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

"(F) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement."

(b) ALTERNATIVE METHODS OF SATISFYING SECTION 401(m) NONDISCRIMINATION TESTS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (10) as paragraph (11) and by adding after paragraph (9) the following new paragraph:

"(10) ALTERNATIVE METHOD OF SATISFYING TESTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(11),

"(ii) meets the notice requirements of subsection (k)(11)(D), and

"(iii) meets the requirements of subparagraph (B).

"(B) LIMITATION ON MATCHING CONTRIBUTIONS.—The requirements of this subparagraph are met if—

"(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

"(ii) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase, and

"(iii) the matching contribution with respect to any highly compensated employee at a specific level of compensation is not greater than that with respect to an employee who is not a highly compensated employee."

(c) YEAR FOR COMPUTING NONHIGHLY COMPENSATED EMPLOYEE PERCENTAGE.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Clause (ii) of section 401(k)(3)(A) is amended—

(A) by striking "such year" and inserting "the plan year", and

(B) by striking "for such plan year" and inserting "the preceding plan year".

(2) MATCHING AND EMPLOYEE CONTRIBUTIONS.—Section 401(m)(2)(A) is amended—

(A) by inserting "for such plan year" after "highly compensated employee", and

(B) by inserting "for the preceding plan year" after "eligible employees" each place it appears in clause (i) and clause (ii).

(d) SPECIAL RULE FOR DETERMINING AVERAGE DEFERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

(1) Paragraph (3) of section 401(k) is amended by adding at the end thereof the following new subparagraph:

"(E) For purposes of this paragraph, in the case of the first plan year of any plan, the amount taken into account as the average deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

"(i) 3 percent, or

"(ii) if the employer makes an election under this subclause, the average deferral percentage of nonhighly compensated employees determined for such first plan year."

(2) Paragraph (3) of section 401(m) is amended by adding at the end thereof the following: "Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection."

(e) DISTRIBUTION OF EXCESS CONTRIBUTIONS.—

(1) Subparagraph (C) of section 401(k)(8) (relating to arrangement not disqualified if excess contributions distributed) is amended by striking "on the basis of the respective portions of the excess contributions attributable to each of such employees" and inserting "on the basis of the amount of contributions by, or on behalf of, each of such employees".

(2) Subparagraph (C) of section 401(m)(6) (relating to method of distributing excess aggregate contributions) is amended by striking "on the basis of the respective portions of such amounts attributable to each of such employees" and inserting "on the basis of the amount of contributions on behalf of, or by, each such employee".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

PART IV—MISCELLANEOUS SIMPLIFICATION

SEC. 4231. TREATMENT OF LEASED EMPLOYEES.

(a) REPLACEMENT OF HISTORICAL TEST WITH CONTROL TEST.—Subparagraph (C) of section 414(n)(2) is amended to read as follows:

"(C) such services are performed by such person under the control of the recipient."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1983.

SEC. 4242. ELIMINATION OF HALF-YEAR REQUIREMENTS.

(a) IN GENERAL.—Each of the following provisions are amended by striking "age 59½" and inserting "age 59":

(1) Section 72(q)(2)(A).

(2) Section 72(q)(3)(B)(i).

(3) Section 72(q)(3)(B)(ii).

(4) Section 72(t)(2)(A)(i).

(5) Section 72(t)(4)(A)(ii)(I).

(6) Section 72(t)(4)(A)(ii)(II).

(7) Section 72(v)(2)(A).

(8) Section 401(k)(7)(C).

(9) Section 402(e)(4)(D)(i)(II).

(10) Section 403(b)(7)(A)(ii).

(11) Section 403(b)(11)(A).

(12) The heading for section 403(b)(11).

(13) Section 4978(d)(1)(B).

(b) OTHER PROVISIONS.—Each of the following provisions is amended by striking "70½" and inserting "70":

(1) Section 219(d)(1).

(2) The heading for section 219(d)(1).

(3) Section 401(a)(9)(B)(iv)(I).

(4) Section 401(a)(9)(C)(i)(I).

(5) Section 401(a)(9)(C)(ii)(I).

(6) Section 401(a)(9)(C)(iii).

(7) Section 408(b).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4233. MODIFICATIONS OF COST-OF-LIVING ADJUSTMENTS.

(a) IN GENERAL.—Section 415(d) (relating to cost-of-living adjustments) is amended to read as follows:

“(d) COST-OF-LIVING ADJUSTMENTS.—

“(1) IN GENERAL.—The Secretary shall adjust annually—

“(A) the \$90,000 amount in subsection (b)(1)(A), and

“(B) in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

“(2) METHOD.—

“(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall provide for adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

“(B) PERIODS FOR ADJUSTMENT OF DOLLAR AMOUNT.—For purposes of paragraph (1)(A)—

“(i) IN GENERAL.—The adjustment with respect to any calendar year shall be based on the increase in the applicable index as of the close of the calendar quarter ending September 30 of the preceding calendar year over such index as of the close of the base period.

“(ii) BASE PERIOD.—For purposes of clause (i), the base period is the calendar quarter beginning October 1, 1986.

“(C) BASE PERIOD FOR SEPARATIONS.—For purposes of paragraph (1)(B), the base period is the last calendar quarter of the calendar year preceding the calendar year in which the participant separated from service.

“(3) ROUNDING.—Any amount determined under paragraph (1) (or by reference to this subsection) shall be rounded to the nearest \$1,000, except that the amounts under sections 402(g)(1) and 408(k)(2)(C) shall be rounded to the nearest \$100.”

(b) EFFECTIVE DATE.—The amendments made by this section apply to adjustments with respect to calendar years beginning after December 31, 1992.

SEC. 4234. PLANS COVERING SELF-EMPLOYED INDIVIDUALS.

(a) AGGREGATION RULES.—Section 401(d) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended to read as follows:

“(d) CONTRIBUTION LIMIT ON OWNER-EMPLOYEES.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4235. FULL-FUNDING LIMITATION OF MULTI-EMPLOYER PLANS.

(a) FULL-FUNDING LIMITATION.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(1) by inserting “or in the case of a multiemployer plan,” after “paragraph (6)(B),”, and

(2) by inserting “AND MULTIEMPLOYER PLANS” after “PARAGRAPH (6)(B)” in the heading thereof.

(b) VALUATION.—Section 412(c)(9) is amended—

(1) by inserting “(3 years in the case of a multiemployer plan)” after “year”, and

(2) by striking “ANNUAL VALUATION” in the heading and inserting “VALUATION”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1991.

SEC. 4236. ALTERNATIVE FULL-FUNDING LIMITATION.

(a) IN GENERAL.—Subsection (c) of section 412 (relating to minimum funding standards) is amended by redesignating paragraphs (8) through (11) as paragraphs (9) through (12), respectively, and by adding after paragraph (7) the following new paragraph:

“(8) ALTERNATIVE FULL-FUNDING LIMITATION.—

“(A) GENERAL RULE.—An employer may elect the full-funding limitation under this paragraph with respect to any defined benefit plan of the employer in lieu of the full-funding limitation determined under paragraph (7) if the requirements of subparagraphs (C) and (D) are met.

“(B) ALTERNATIVE FULL-FUNDING LIMITATION.—The full-funding limitation under this paragraph is the full-funding limitation determined under paragraph (7) without regard to subparagraph (A)(i)(I) thereof.

“(C) REQUIREMENTS RELATING TO PLAN ELIGIBILITY.—

“(i) IN GENERAL.—The requirements of this subparagraph are met with respect to a defined benefit plan if—

“(I) as of the 1st day of the election period, the average accrued liability of participants accruing benefits under the plan for the 5 immediately preceding plan years is at least 80 percent of the plan’s total accrued liability,

“(II) the plan is not a top-heavy plan (as defined in section 416(g)) for the 1st plan year of the election period or either of the 2 preceding plan years, and

“(III) each defined benefit plan of the employer (and each defined benefit plan of each employer who is a member of any controlled group which includes such employer) meets the requirements of subclauses (I) and (II).

“(ii) FAILURE TO CONTINUE TO MEET REQUIREMENTS.—

“(I) If any plan fails to meet the requirement of clause (i)(I) for any plan year during an election period, the benefits of the election under this paragraph shall be phased out under regulations prescribed by the Secretary.

“(II) If any plan fails to meet the requirement of clause (i)(II) for any plan year during an election period, such plan shall be treated as not meeting the requirements of clause (i) for the remainder of the election period.

If there is a failure period described in subclause (I) or (II) with respect to any plan, such plan (and each plan described in clause (i)(III) with respect to such plan) shall be treated as not meeting the requirements of clause (i) for any of the 10 plan years beginning after the election period.

“(D) REQUIREMENTS RELATING TO ELECTION.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if—

“(I) FILING DATE.—Notice of such election is filed with the Secretary (in such form and manner and containing such information as the Secretary may provide) by January 1 of any calendar year, and is effective as of the 1st day of the election period beginning on or after January 1 of the following calendar.

“(II) CONSISTENT ELECTION.—Such an election is made for all defined benefit plans maintained by the employer or by any member of a controlled group which includes the employer.

“(ii) TRANSITION PERIOD.—In the case of any election period beginning after December 31,

1991, and before January 1, 1994, the requirements of clause (i) shall not apply and the requirements of this subparagraph are met with respect to such election period if—

“(I) FILING DATE.—Notice of election is filed with the Secretary by December 31, 1992.

“(II) INFORMATION.—The notice sets forth the name and tax identification number of the plan sponsor, the names and tax identification numbers of the plans to which the election applies, the limitation under paragraph (7) (determined with and without regard to this paragraph), and a signed certification by an officer of the employer stating that the requirements of this paragraph have been met.

“(E) TERM OF ELECTION.—Any election made under this paragraph shall apply for the election period.

“(F) OTHER CONSEQUENCES OF ELECTION.—

“(i) NO FUNDING WAIVERS.—In the case of a plan with respect to which an election is made under this paragraph, no waiver may be granted under subsection (d) for any plan year beginning after the date the election was made and ending at the close of the election period with respect thereto.

“(ii) FAILURE TO MAKE SUCCESSIVE ELECTIONS.—If an election is made under this paragraph with respect to any plan and such an election does not apply for each successive plan year of such plan, such plan shall be treated as not meeting the requirements of subparagraph (C) for the period of 10 plan years beginning after the close of the last election period for such plan.

“(G) DEFINITIONS.—For purposes of this paragraph—

“(i) ELECTION PERIOD.—The term ‘election period’ means the period of 5 consecutive plan years beginning with the 1st plan year for which the election is made.

“(ii) CONTROLLED GROUP.—The term ‘controlled group’ means all persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

“(H) PROCEDURES IF ALTERNATIVE FUNDING LIMITATION REDUCES NET FEDERAL REVENUES.—

“(i) IN GENERAL.—At least once with respect to each fiscal year, the Secretary shall estimate whether the application of this paragraph will result in a net reduction in Federal revenues for such fiscal year.

“(ii) ADJUSTMENT OF FULL-FUNDING LIMITATION IF REVENUE SHORTFALL.—If the Secretary estimates that the application of this paragraph will result in a more than insubstantial net reduction in Federal revenues for any fiscal year, the Secretary—

“(I) shall make the adjustment described in clause (iii), and

“(II) to the extent such adjustment is not sufficient to reduce such reduction to an insubstantial amount, shall make the adjustment described in clause (iv).

Such adjustments shall apply only to defined benefit plans with respect to which an election under this paragraph is not in effect.

“(iii) REDUCTION IN LIMITATION BASED ON 150 PERCENT OF CURRENT LIABILITY.—The adjustment described in this clause is an adjustment which substitutes a percentage (not lower than 140 percent) for the percentage described in paragraph (7)(A)(i)(I) determined by reducing the percentage of current liability taken into account with respect to participants who are not accruing benefits under the plan.

“(iv) REDUCTION IN LIMITATION BASED ON ACCRUED LIABILITY.—The adjustment described in this clause is an adjustment which reduces the percentage of accrued liability taken into account under paragraph (7)(A)(i)(II). In no event may the amount of accrued liability taken into account under such paragraph after the adjustment be less than 140 of current liability.”

(b) ALTERATION OF DISCRETIONARY REGULATORY AUTHORITY.—Subparagraph (D) of section 412(c)(7) is amended by striking "provide—" and all that follows through "(iii) for" and inserting "provide for".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4237. DISTRIBUTIONS UNDER RURAL COOPERATIVE PLANS.

(a) DISTRIBUTIONS AFTER CERTAIN AGE.—Section 401(k)(7) is amended by adding at the end thereof the following new subparagraph:

"(C) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS.—A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) merely by reason of a distribution to a participant after attainment of age 59½."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1011(k)(9) of the Technical and Miscellaneous Revenue Act of 1988.

SEC. 4238. TREATMENT OF GOVERNMENTAL PLANS.

(a) DEFINITION OF COMPENSATION.—

(1) LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.—Subsection (k) of section 415 (regarding limitations on benefits and contributions under qualified plans) is amended by inserting at the end of the following new paragraph:

"(3) DEFINITION OF COMPENSATION FOR GOVERNMENTAL PLANS.—For purposes of this section, in the case of a governmental plan (as defined in section 414(d)), the term 'compensation' includes, in addition to the amounts described in subsection (c)(3), any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 402(e)(3), 403(b), 414(h)(2), or 457."

(2) OTHER USES.—Paragraph (2) of section 414(s) (defining compensation) is amended—

(A) by inserting "subsection (h) or" before "section 125", and

(B) by striking "or 403(b)" and inserting "403(b), or 457".

(b) COMPENSATION LIMIT.—Subsection (b) of section 415 is amended by inserting at the end the following new paragraph:

"(II) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply."

(c) TREATMENT OF CERTAIN EXCESS BENEFIT PLANS.—

(1) IN GENERAL.—Section 415 is amended by inserting after subsection (l) the following new subsection:

"(m) TREATMENT OF QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENTS.—

"(I) GOVERNMENTAL PLAN NOT AFFECTED.—In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account.

"(2) INCOMING ACCRUING TO PLAN.—For purposes of section 115, income accruing to a governmental plan in respect of a qualified governmental excess benefit arrangement (or to a trust maintained solely for the purpose of providing benefits under such arrangement) shall be treated as income derived from the exercise of an essential governmental function.

"(3) TAXATION OF PARTICIPANT.—For purposes of this chapter—

"(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

"(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

"(4) QUALIFIED GOVERNMENTAL EXCESS BENEFIT ARRANGEMENT.—For purposes of this subsection, the term 'qualified governmental excess benefit arrangement' means a portion of a governmental plan if—

"(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit (otherwise payable under the terms of the plan) in excess of the limitations on benefits imposed by this section,

"(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

"(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 457(f) is amended by striking "and" at the end of subparagraph (C), by striking the period after subparagraph (D) and inserting "and", and by inserting at the end thereof the following new subparagraph:

"(E) a qualified governmental excess benefit arrangement described in section 415(m)."

(d) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Paragraph (2) of section 415(b) is amended by inserting at the end the following new subparagraph:

"(I) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS PROVIDED UNDER GOVERNMENTAL PLANS.—Subparagraph (B) of paragraph (1), subparagraph (C) of this paragraph, and paragraph (5) shall not apply to—

"(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or

"(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee."

(e) REVOCATION OF GRANDFATHER ELECTION.—Subparagraph (C) of section 415(b)(10) is amended by adding at the end thereof the following new sentences: "If all employers maintaining a plan consent, a plan may revoke an election under the preceding sentence if such revocation is filed with the Secretary not later than the last day of the 3rd plan year beginning after the date of the enactment of this sentence. Such revocation shall apply to all plan years for which the election was in effect, except that the limitations under this section for any amount paid by the plan in a taxable year ending after revocation of such election with respect to benefits attributable to a preceding taxable year during which such election was in effect shall be determined as if such amount had been received in such preceding taxable year."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), and (d) shall apply to taxable years beginning after the date of enactment. The amendments made by subsection (e) shall apply with respect to revocations adopted after the date of enactment of this section.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (as defined in section 414(d) of such Code) shall be treated as satisfying the requirements of section 415 of such Code for all taxable years beginning before the date of the enactment of this Act.

SEC. 4239. USE OF EXCESS ASSETS OF BLACK LUNG BENEFIT TRUSTS FOR HEALTH CARE BENEFITS.

(a) GENERAL RULE.—Paragraph (21) of section 501(c) is amended to read as follows:

"(21)(A) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

"(i) the purpose of such trust or trusts is exclusively—

"(I) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts,

"(II) to pay premiums for insurance exclusively covering such liability,

"(III) to pay administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts, and

"(IV) to pay accident or health benefits for retired miners and their spouses and dependents (including administrative and other incidental expenses of such trust in connection therewith) or premiums for insurance exclusively covering such benefits, and

"(ii) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

"(I) the purposes described in clause (i),

"(II) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in clause (i) in qualified investments, or

"(III) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

"(B) No deduction shall be allowed under this chapter for any payment described in subparagraph (A)(i)(IV) from such trust.

"(C) Payments described in subparagraph (A)(i)(IV) may be made from such trust during a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the lesser of—

"(i) the excess (if any) (as of the close of the preceding taxable year) of—

"(I) the fair market value of the assets of the trust, over

"(II) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person, or

"(ii) the excess (if any) of—

"(I) the sum of a similar excess determined as of the close of the last taxable year ending before the date of the enactment of this subparagraph plus earnings thereon as of the close of the taxable year preceding the taxable year involved, over

"(II) the aggregate payments described in subparagraph (A)(i)(IV) made from the trust during all taxable years beginning after the date of the enactment of this subparagraph.

The determinations under the preceding sentence shall be made by an independent actuary using actuarial methods and assumptions (not inconsistent with the regulations prescribed under section 192(c)(1)(A)) each of which is reasonable and which are reasonable in the aggregate.

"(D) For purposes of this paragraph—

"(i) the term 'Black Lung Acts' means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

"(ii) The term 'qualified investments' means—

"(I) public debt securities of the United States,

"(II) obligations of a State or local government which are not in default as to principal or interest, and

"(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States.

"(iii) The term 'miner' has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

"(iv) The term 'incidental expenses' includes legal, accounting, actuarial, and trustee expenses."

(b) **EXCEPTION FROM TAX ON SELF-DEALING.**—Section 4951(f) is amended by striking "clause (i) of section 501(c)(21)(A)" and inserting "subclause (I) or (IV) of section 501(c)(21)(A)(i)".

(c) **TECHNICAL AMENDMENT.**—Paragraph (4) of section 192(c) is amended by striking "clause (ii) of section 501(c)(21)(B)" and inserting "subclause (II) of section 501(c)(21)(A)(i)".

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4240. REPORTS OF PENSION AND ANNUITY PAYMENTS.

(a) **AMENDMENTS RELATED TO DEFINITION OF INFORMATION RETURN.**—

(1) Subparagraph (A) of section 6724(d)(1) is amended—

(A) by redesignating clauses (iv) through (vii) as clauses (vi) through (ix),

(B) by inserting after clause (iii) the following new clause:

"(v) section 6047(d) (relating to reports by employers, plan administrators, etc.),"

(C) by redesignating clauses (i) through (iii) as clauses (ii) through (iv), and

(D) by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) section 408(i) (relating to individual retirement account and simplified employee pension reports)."

(2) Paragraph (1) of section 6724(d) is amended by adding at the end thereof the following new sentence: "For purposes of clauses (i) and (v) of subparagraph (A), such term shall include only those statements filed with the Secretary with respect to information required to be supplied to both the Secretary and the recipient of the payment."

(b) **AMENDMENTS RELATED TO DEFINITION OF PAYEE STATEMENT.**—

(1) Paragraph (2) of section 6724(d) is amended—

(A) by redesignating subparagraphs (H) through (S) as subparagraphs (J) through (U),

(B) by inserting after subparagraph (G) the following new subparagraph:

"(I) section 6047(d) (relating to reports by employers, plan administrators, etc.),"

(C) by redesignating subparagraphs (A) through (G) as subparagraphs (B) through (H), and

(D) by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) section 408(i) (relating to individual retirement account and simplified employee pension reports)."

(2) Paragraph (2) of section 6724(d) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraphs (A) and (I), such term shall only include statements with respect to information required to be supplied to both the Secretary and the recipient of the payment."

(c) **AMENDMENTS RELATED TO REPORTS OF DESIGNATED DISTRIBUTION.**—

(1) Subsection (i) of section 408 is amended by inserting "aggregating \$10 or more" after "distributions".

(2) Section 6047(d)(1) is amended by adding at the end thereof the following sentence: "How-

ever, no returns or reports shall be required with respect to payments of designated distributions aggregating less than \$10 to any person in any year."

(d) **TECHNICAL AMENDMENTS.**—

(1) Paragraph (1) of section 6047(f) is amended by striking "section 6652(e)" and inserting "sections 6652(e), 6721, and 6722".

(2) Subsection (e) of section 6652 is amended by adding at the end thereof the following: "However, failures to file returns and statements also described in section 6724(d)(1) or 6724(d)(2) shall be subject to penalties under part II of chapter 68B of this subtitle, and not under this section."

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns and statements required to be filed after December 31, 1992.

SEC. 4241. CONTRIBUTIONS ON BEHALF OF DISABLED EMPLOYEES.

(a) **ALL DISABLED PARTICIPANTS RECEIVING CONTRIBUTIONS.**—Section 415(c)(3)(C) is amended by adding at the end thereof the following: "If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii)."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4242. AFFILIATED EMPLOYERS.

(a) **IN GENERAL.**—For purposes of Treasury Regulations section 1.501(c)(9)-2(a)(1), employers shall be deemed to be affiliated if they satisfy the requirements of subsection (b).

(b) **AFFILIATION.**—The requirements of subsection (b) shall be satisfied with respect to employers if—

(1) the employers are in the same line of business,

(2) the employers act jointly to perform tasks that are integral to the activities of each of the employers,

(3) the employers act jointly to such an extent that the joint maintenance of a voluntary employees' beneficiary association is not a major part of the employers' joint activities, and

(4) a substantial number of the employers are exempt from tax under subtitle A of the Internal Revenue Code of 1986.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to years beginning before, on, or after the date of the enactment of this section.

SEC. 4243. DISAGGREGATION OF UNION PLANS.

(a) **IN GENERAL.**—Paragraph (3) of section 410(b) (relating to exclusion of certain employees) is amended by adding at the end thereof the following new sentence: "At the election of an employer, subparagraph (A) (and the exclusion of employees described in subparagraph (A) for purposes of section 401(a)(4) and 414(r)) shall not apply to a unit of employees who benefit under the plan on the same terms."

(b) **CONFORMING AMENDMENT.**—Paragraph (4) of section 401(a) is amended by inserting "and except as provided in section 410(b)(3)," after "paragraph,".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4244. UNIFORM RETIREMENT AGE.

(a) **DISCRIMINATION TESTING.**—Paragraph (5) of section 401(a) (relating to special rules relating to nondiscrimination requirements) is amended by adding at the end thereof the following new subparagraph:

"(F) **SOCIAL SECURITY RETIREMENT AGE.**—For purposes of testing for discrimination under paragraph (4)—

"(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

"(ii) subsidized early retirement benefits and joint and survivor annuities which are based in whole or in part on an employee's social security retirement age (as so defined) shall be treated as being available to employees on the same terms."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to years beginning after December 31, 1992.

SEC. 4245. SPECIAL RULES FOR PLANS COVERING PILOTS.

(a) **GENERAL RULE.**—

(1) Subparagraph (B) of section 410(b)(3) is amended to read as follows:

"(B) in the case of a plan established or maintained by one or more employers to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce or air pilots employed by carriers transporting mail for or under contract with the United States Government, all employees who are not air pilots."

(2) Paragraph (3) of section 410(b) is amended by striking the last sentence and inserting the following new sentence: "Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees who are not air pilots or for air pilots whose principal duties are not customarily performed aboard aircraft in flight."

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to years beginning after December 31, 1992.

SEC. 4246. NATIONAL COMMISSION ON PRIVATE PENSION PLANS.

(a) **ESTABLISHMENT.**—There is hereby established a commission to be known as the National Commission on Private Pension Plans (in this section referred to as the "Commission").

(b) **MEMBERSHIP.**—

(1) The Commission shall consist of—

(A) 6 members to be appointed by the President;

(B) 6 members to be appointed by the Speaker of the House of Representatives; and

(C) 6 members to be appointed by the President pro tempore of the Senate.

(2) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of the committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal pension programs.

(c) **DUTIES AND FUNCTIONS OF COMMISSION; PUBLIC HEARINGS IN DIFFERENT GEOGRAPHICAL AREAS; BROAD SPECTRUM OF WITNESSES AND TESTIMONY.**—

(1) It shall be the duty and function of the Commission to conduct the studies and issue the report required by subsection (d) of this section.

(2) The Commission (and any committees that it may form) may conduct public hearings in order to receive the views of a broad spectrum of the public on the status of the Nation's private retirement system.

(d) **REPORT TO THE PRESIDENT AND CONGRESS; RECOMMENDATIONS.**—The Commission shall submit to the President, to the Majority Leader and the Minority Leader of the Senate, and to the Majority Leader and the Minority Leader of the House of Representatives a report no later than September 1, 1994, reviewing existing Federal incentives and programs that encourage and protect private retirement savings. The final report shall also set forth recommendations where appropriate for increasing the level and security of private retirement savings.

(e) **TIME OF APPOINTMENT OF MEMBERS; VACANCIES; ELECTION OF CHAIRMAN; QUORUM; CALLING OF MEETINGS; NUMBER OF MEETINGS; VOTING; COMPENSATION AND EXPENSES.**—

(1)(A) Members of the Commission shall first be appointed not later than December 31, 1992, for terms ending on September 1, 1994.

(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

(2) The Commission shall elect 1 of its members to serve as Chairman of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(4) The Commission shall meet at the call of the Chairman.

(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(f) EXECUTIVE DIRECTOR AND ADDITIONAL PERSONNEL; APPOINTMENT AND COMPENSATION; CONSULTANTS.—

(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(g) TIME AND PLACE OF HEARINGS AND NATURE OF TESTIMONY AUTHORIZED.—In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

(h) DATA AND INFORMATION FROM OTHER AGENCIES AND DEPARTMENTS.—

(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

(i) SUPPORT SERVICES BY GENERAL SERVICES ADMINISTRATION.—The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated through fiscal year 1994, such sums as may be necessary to carry out this section for each of fiscal years 1992, 1993, and 1994.

(k) DONATIONS ACCEPTED AND DEPOSITED IN TREASURY IN SEPARATE FUND; EXPENDITURES; GIFT OR BEQUEST TO OR FOR USE OF UNITED STATES.—

(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting private pension plans.

(2) For purposes of Federal income, estate, and gift taxation, money and other property accepted under paragraph (1) of this subsection shall be considered as a gift or bequest to or for the use of the United States.

(3) Expenditures of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

(l) PUBLIC SURVEYS.—The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting private pension plans and, in conducting such surveys, the Commission shall not be deemed to be an "agency" for the purpose of section 3502 of title 44, United States Code.

SEC. 4247. DATE FOR ADOPTION OF PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

(2) such plan amendment applies retroactively to such period.

Subtitle C—Treatment of Large Partnerships
PART I—GENERAL PROVISIONS

SEC. 4301. SIMPLIFIED FLOW-THROUGH FOR LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subchapter K (relating to partners and partnerships) is amended by adding at the end thereof the following new part:

"PART IV—SPECIAL RULES FOR LARGE PARTNERSHIPS

"Sec. 771. Application of subchapter to large partnerships.

"Sec. 772. Simplified flow-through.

"Sec. 773. Computations at partnership level.

"Sec. 774. Other modifications.

"Sec. 775. Large partnership defined.

"Sec. 776. Special rules for partnerships holding oil and gas properties.

"Sec. 777. Regulations.

"SEC. 771. APPLICATION OF SUBCHAPTER TO LARGE PARTNERSHIPS.

"The preceding provisions of this subchapter to the extent inconsistent with the provisions of this part shall not apply to a large partnership and its partners.

"SEC. 772. SIMPLIFIED FLOW-THROUGH.

"(a) GENERAL RULE.—In determining the income tax of a partner of a large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

"(1) taxable income or loss from passive loss limitation activities,

"(2) taxable income or loss from other activities,

"(3) net capital gain (or net capital loss)—

"(A) to the extent allocable to passive loss limitation activities, and

"(B) to the extent allocable to other activities,

"(4) tax-exempt interest,

"(5) applicable net AMT adjustment separately computed for—

"(A) passive loss limitation activities, and

"(B) other activities,

"(6) general credits,

"(7) low-income housing credit determined under section 42,

"(8) rehabilitation credit determined under section 47,

"(9) foreign income taxes, and

"(10) the credit allowable under section 29.

"(b) SEPARATE COMPUTATIONS.—In determining the amounts required under subsection (a) to be separately taken into account by any partner, this section and section 773 shall be applied separately with respect to such partner by taking into account such partner's distributive share of the items of income, gain, loss, deduction, or credit of the partnership.

"(c) TREATMENT AT PARTNER LEVEL.—

"(1) IN GENERAL.—Except as provided in this subsection, rules similar to the rules of section 702(b) shall apply to any partner's distributive share of the amounts referred to in subsection (a).

"(2) INCOME OR LOSS FROM PASSIVE LOSS LIMITATION ACTIVITIES.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(1) shall be treated as an item of income or loss (as the case may be) from the conduct of a trade or business which is a single passive activity (as defined in section 469). A similar rule shall apply to a partner's distributive share of amounts referred to in paragraphs (3)(A) and (5)(A) of subsection (a).

"(3) INCOME OR LOSS FROM OTHER ACTIVITIES.—

"(A) IN GENERAL.—For purposes of this chapter, any partner's distributive share of any income or loss described in subsection (a)(2) shall be treated as an item of income or expense (as the case may be) with respect to property held for investment.

"(B) DEDUCTIONS FOR LOSS NOT SUBJECT TO SECTION 67.—The deduction under section 212 for any loss described in subparagraph (A) shall not be treated as a miscellaneous itemized deduction for purposes of section 67.

"(4) TREATMENT OF NET CAPITAL GAIN OR LOSS.—For purposes of this chapter, any partner's distributive share of any gain or loss described in subsection (a)(3) shall be treated as a long-term capital gain or loss, as the case may be.

"(5) MINIMUM TAX TREATMENT.—In determining the alternative minimum taxable income of any partner, such partner's distributive share of any applicable net AMT adjustment shall be taken into account in lieu of making the separate adjustments provided in sections 56, 57, and 58 with respect to the items of the partnership. Except as provided in regulations, the applicable net AMT adjustment shall be treated, for purposes of section 53, as an adjustment or item of tax preference not specified in section 53(d)(1)(B)(ii).

"(6) GENERAL CREDITS.—A partner's distributive share of the amount referred to in paragraph (6) of subsection (a) shall be taken into account as a current year business credit.

"(d) OPERATING RULES.—For purposes of this section—

"(1) PASSIVE LOSS LIMITATION ACTIVITY.—The term 'passive loss limitation activity' means—

"(A) any activity which involves the conduct of a trade or business, and

"(B) any rental activity.

For purposes of the preceding sentence, the term 'trade or business' includes any activity treated as a trade or business under paragraph (5) or (6) of section 469(c).

"(2) TAX-EXEMPT INTEREST.—The term 'tax-exempt interest' means interest excludable from gross income under section 103.

"(3) APPLICABLE NET AMT ADJUSTMENT.—

"(A) IN GENERAL.—The applicable net AMT adjustment is—

"(i) with respect to taxpayers other than corporations, the net adjustment determined by using the adjustments applicable to individuals, and

"(ii) with respect to corporations, the net adjustment determined by using the adjustments applicable to corporations.

“(B) NET ADJUSTMENT.—The term ‘net adjustment’ means the net adjustment in the items attributable to passive loss activities or other activities (as the case may be) which would result if such items were determined with the adjustments of sections 56, 57, and 58.

“(4) TREATMENT OF CAPITAL GAINS AND LOSSES.—

“(A) EXCLUSION FOR CERTAIN PURPOSES.—In determining the amounts referred to in paragraphs (1) and (2) of subsection (a), any net capital gain or net capital loss (as the case may be) shall be excluded.

“(B) ALLOCATION RULES.—The net capital gain shall be treated—

“(i) as allocable to passive loss limitation activities to the extent the net capital gain does not exceed the net capital gain determined by only taking into account gains and losses from sales and exchanges of property used in connection with such activities, and

“(ii) as allocable to other activities to the extent such gain exceeds the amount allocated under clause (i).

A similar rule shall apply for purposes of allocating any net capital loss.

“(C) NET CAPITAL LOSS.—The term ‘net capital loss’ means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchange of capital assets.

“(5) GENERAL CREDITS.—The term ‘general credits’ means any credit other than the low-income housing credit, the rehabilitation credit, the foreign tax credit, and the credit allowable under section 29.

“(6) FOREIGN INCOME TAXES.—The term ‘foreign income taxes’ means taxes described in section 901 which are paid or accrued to foreign countries and to possessions of the United States.

“(e) SPECIAL RULE FOR UNRELATED BUSINESS TAX.—In the case of a partner which is an organization subject to tax under section 511, such partner’s distributive share of any items shall be taken into account separately to the extent necessary to comply with the provisions of section 512(c)(1).

“(f) SPECIAL RULES FOR APPLYING PASSIVE LOSS LIMITATIONS.—If any person holds an interest in a large partnership other than as a limited partner—

“(1) paragraph (2) of subsection (c) shall not apply to such partner, and

“(2) such partner’s distributive share of the partnership items allocable to passive loss limitation activities shall be taken into account separately to the extent necessary to comply with the provisions of section 469.

The preceding sentence shall not apply to any items allocable to an interest held as a limited partner.

“SEC. 773. COMPUTATIONS AT PARTNERSHIP LEVEL.

“(a) GENERAL RULE.—

“(1) TAXABLE INCOME.—The taxable income of a large partnership shall be computed in the same manner as in the case of an individual except that—

“(A) the items described in section 772(a) shall be separately stated, and

“(B) the modifications of subsection (b) shall apply.

“(2) ELECTIONS.—All elections affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be made by the partnership; except that the election under section 901 shall be made by each partner separately.

“(3) LIMITATIONS, ETC.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), all limitations and other provisions affecting the computation of the taxable income of a large partnership or the computation of any credit of a large partnership shall be

applied at the partnership level (and not at the partner level).

“(B) CERTAIN LIMITATIONS APPLIED AT PARTNER LEVEL.—The following provisions shall be applied at the partner level (and not at the partnership level):

“(i) Section 68 (relating to overall limitation on itemized deductions).

“(ii) Sections 49 and 465 (relating to at risk limitations).

“(iii) Section 469 (relating to limitation on passive activity losses and credits).

“(iv) Any other provision specified in regulations.

“(4) COORDINATION WITH OTHER PROVISIONS.—Paragraphs (2) and (3) shall apply notwithstanding any other provision of this chapter other than this part.

“(b) MODIFICATIONS TO DETERMINATION OF TAXABLE INCOME.—In determining the taxable income of a large partnership—

“(1) CERTAIN DEDUCTIONS NOT ALLOWED.—The following deductions shall not be allowed:

“(A) The deduction for personal exemptions provided in section 151.

“(B) The net operating loss deduction provided in section 172.

“(C) The additional itemized deductions for individuals provided in part VII of subchapter B (other than section 212 thereof).

“(2) CHARITABLE DEDUCTIONS.—In determining the amount allowable under section 170, the limitation of section 170(b)(2) shall apply.

“(3) COORDINATION WITH SECTION 67.—In lieu of applying section 67, 70 percent of the amount of the miscellaneous itemized deductions shall be disallowed.

“(c) SPECIAL RULES FOR INCOME FROM DISCHARGE OF INDEBTEDNESS.—If a large partnership has income from the discharge of any indebtedness—

“(1) such income shall be excluded in determining the amounts referred to in section 772(a), and

“(2) in determining the income tax of any partner of such partnership—

“(A) such income shall be treated as an item required to be separately taken into account under section 772(a), and

“(B) the provisions of section 108 shall be applied without regard to this part.

“SEC. 774. OTHER MODIFICATIONS.

“(a) TREATMENT OF CERTAIN OPTIONAL ADJUSTMENTS, ETC.—In the case of a large partnership—

“(1) computations under section 773 shall be made without regard to any adjustment under section 743(b) or 108(b), but

“(2) a partner’s distributive share of any amount referred to in section 772(a) shall be appropriately adjusted to take into account any adjustment under section 743(b) or 108(b) with respect to such partner.

“(b) DEFERRED SALE TREATMENT OF CONTRIBUTED PROPERTY.—

“(1) TREATMENT OF PARTNERSHIP.—In the case of any contribution of property to which this subsection applies—

“(A) the basis of such property to the partnership shall be its fair market value as of the time of such contribution, and

“(B) section 704(c) shall not apply to such property.

“(2) TREATMENT OF CONTRIBUTING PARTNER.—

“(A) IN GENERAL.—In the case of any partner who makes a contribution of property to which this subsection applies—

“(i) such partner shall recognize the pre-contribution gain or loss from such property as provided in this paragraph, and

“(ii) appropriate adjustments to the basis of such partner’s interest in the partnership shall be made for the amounts recognized under this paragraph.

“(B) CHARACTER.—The character of any gain or loss recognized under this paragraph shall be determined by reference to the character which would have resulted if the property had been sold to the partnership at the time of the contributions; except that any gain or loss recognized under subparagraph (C)(i) shall be treated as ordinary income or loss, as the case may be.

“(C) TRANSACTIONS AT PARTNERSHIP LEVEL.—

“(i) DEPRECIATION, ETC.—If any partnership deduction for depreciation, depletion, or amortization is increased by reason of an increase in the basis of any property under paragraph (1), the contributing partner shall recognize so much of the pre-contribution gain with respect to such property as does not exceed the increase in such deduction. If there is a pre-contribution loss, a similar rule shall apply to any decrease in such a deduction.

“(ii) DISPOSITIONS.—

“(I) IN GENERAL.—Except as otherwise provided in this clause, any pre-contribution gain or loss with respect to any property (to the extent not previously taken into account under this paragraph) shall be recognized by the contributing partner if the partnership makes any disposition of the property.

“(II) DISTRIBUTIONS TO CONTRIBUTING PARTNER.—No gain or loss shall be recognized under subclause (I) by reason of any distribution of the contributed property to the contributing partner (and subparagraph (D)(ii) shall not apply to any such distribution). In any such case, no adjustment shall be made under section 734 on account of such distribution and the adjusted basis of such property in the hands of the contributing partner shall be its adjusted basis immediately before the contribution properly adjusted for gain or loss previously recognized under this paragraph.

“(iii) YEAR FOR WHICH AMOUNT TAKEN INTO ACCOUNT.—Any amount recognized under this subparagraph shall be taken into account for the partner’s taxable year in which or with which ends the partnership taxable year of the deduction or disposition.

“(D) TRANSACTIONS AT PARTNER LEVEL.—

“(i) IN GENERAL.—If the contributing partner makes a disposition of any portion of his interest in the partnership, a corresponding portion of any pre-contribution gain or loss which was not previously taken into account under this paragraph shall be recognized for the partner’s taxable year in which the disposition occurs. The preceding sentence shall not apply to a disposition at death.

“(ii) TREATMENT OF CERTAIN DISTRIBUTIONS.—

“(I) the amount of cash and the fair market value of property distributed to a partner, exceeds

“(II) the adjusted basis of such partner’s interest in the partnership immediately before the distribution (determined without regard to any adjustment under subparagraph (A)(ii) resulting from such distribution),

the contributing partner shall recognize so much of any pre-contribution gain as does not exceed such excess.

“(iii) SPECIAL RULE.—Except as provided in clause (ii)(II), any basis adjustment under subparagraph (A)(ii) resulting from any gain or loss recognized under this subparagraph shall be treated as occurring immediately before the disposition or distribution involved.

“(E) SECTION 267 AND 707(b) PRINCIPLES TO APPLY.—No loss shall be recognized under subparagraph (C)(ii) or (D) by reason of any disposition (directly or indirectly) to a person related (within the meaning of section 267(b) or 707(b)(1)) to the contributing partner.

“(F) TREATMENT OF CERTAIN NONTAXABLE EXCHANGES.—

“(i) SECTION 1031 AND 1033 TRANSACTIONS.—If the disposition referred to in subclause (I) of

subparagraph (C)(ii) is an exchange described in section 1031 or a compulsory or involuntary conversion within the meaning of section 1033—

“(I) the amount of gain or loss recognized by the contributing partner under such subclause (I) shall not exceed the gain or loss recognized by the partnership on the disposition, and

“(II) the replacement property shall be treated as the contributed property for purposes of this paragraph.

For purposes of the preceding sentence, the term ‘replacement property’ means the property the basis of which is determined under section 1031(d) or 1033(b), whichever is applicable.

“(ii) CONTRIBUTIONS TO CONTROLLED PARTNERSHIP.—If the disposition referred to in subclause (I) of subparagraph (C)(ii) is a contribution of the property to another partnership which is a controlled partnership—

“(I) the rules of subclause (I) of clause (i) shall apply, and

“(II) the partnership shall be treated as continuing to hold the contributed property so long as the other partnership continues to be a controlled partnership and continues to hold such property.

For purposes of the preceding sentence, the term ‘controlled partnership’ means any partnership in which the partnership making the disposition owns more than 50 percent of the capital interest or profits interest.

“(3) PRECONTRIBUTION GAIN OR LOSS.—For purposes of this subsection—

“(A) PRECONTRIBUTION GAIN.—The term ‘precontribution gain’ means the excess (if any) of—

“(i) the fair market value of the contributed property as of the time of the contribution, over

“(ii) the adjusted basis of such property immediately before such contribution.

“(B) PRECONTRIBUTION LOSS.—The term ‘precontribution loss’ means the excess (if any) of the amount referred to in clause (ii) of subparagraph (A) over the amount referred to in clause (i) of subparagraph (A).

“(4) CONTRIBUTIONS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any contribution of property (other than cash) which is made by any partner to a partnership if—

“(A) as of the time of such contribution, such partnership is a large partnership, or

“(B) such contribution is to a partnership reasonably expected to become a large partnership. This subsection shall not apply to any contribution made before the date of the enactment of this part.

“(c) CREDIT RECAPTURE DETERMINED AT PARTNERSHIP LEVEL.—

“(1) IN GENERAL.—In the case of a large partnership—

“(A) any credit recapture shall be taken into account by the partnership, and

“(B) the amount of such recapture shall be determined as if the credit with respect to which the recapture is made had been fully utilized to reduce tax.

“(2) METHOD OF TAKING RECAPTURE INTO ACCOUNT.—A large partnership shall take into account a credit recapture by reducing the amount of the appropriate current year credit to the extent thereof, and if such recapture exceeds the amount of such current year credit, the partnership shall be liable to pay such excess.

“(3) DISPOSITIONS NOT TO TRIGGER RECAPTURE.—No credit recapture shall be required by reason of any transfer of an interest in a large partnership.

“(4) CREDIT RECAPTURE.—For purposes of this subsection, the term ‘credit recapture’ means any increase in tax under section 42(f) or 50(a).

“(d) PARTNERSHIP NOT TERMINATED BY REASON OF CHANGE IN OWNERSHIP.—Subparagraph (B) of section 708(b)(1) shall not apply to a large partnership.

“(e) PARTNERSHIP ENTITLED TO CERTAIN CREDITS.—The following shall be allowed to a large partnership and shall not be taken into account by the partners of such partnership:

“(1) The credit provided by section 34.

“(2) Any credit or refund under section 852(b)(3)(D).

“(f) TREATMENT OF REMIC RESIDUALS.—For purposes of applying section 860E(e)(6) to any large partnership—

“(1) all interests in such partnership shall be treated as held by disqualified organizations,

“(2) in lieu of applying subparagraph (C) of section 860E(e)(6), the amount subject to tax under section 860E(e)(6) shall be excluded from the gross income of such partnership, and

“(3) subparagraph (D) of section 860E(e)(6) shall not apply.

“(g) SPECIAL RULES FOR APPLYING CERTAIN INSTALLMENT SALE RULES.—In the case of a large partnership—

“(1) the provisions of sections 453(l)(3) and 453A shall be applied at the partnership level, and

“(2) in determining the amount of interest payable under such sections, such partnership shall be treated as subject to tax under this chapter at the highest rate of tax in effect under section 1 or 11.

“SEC. 775. LARGE PARTNERSHIP.

“(a) GENERAL RULE.—For purposes of this part—

“(1) IN GENERAL.—Except as otherwise provided in this section or section 776, the term ‘large partnership’ means, with respect to any partnership taxable year, any partnership if the number of persons who were partners in such partnership in such taxable year or any preceding partnership taxable year beginning after December 31, 1992, equaled or exceeded 250. To the extent provided in regulations, a partnership shall cease to be treated as a large partnership for any partnership taxable year if in such taxable year fewer than 100 persons were partners in such partnership.

“(2) ELECTION FOR PARTNERSHIPS WITH AT LEAST 100 PARTNERS.—If a partnership makes an election under this paragraph, paragraph (1) shall be applied by substituting ‘100’ for ‘250’. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

“(b) SPECIAL RULES FOR CERTAIN SERVICE PARTNERSHIPS.—

“(1) CERTAIN PARTNERS NOT COUNTED.—For purposes of this section, the term ‘partner’ does not include any individual performing substantial services in connection with the activities of the partnership and holding an interest in such partnership, or an individual who formerly performed substantial services in connection with such activities and who held an interest in such partnership at the time the individual performed such services.

“(2) EXCLUSION.—For purposes of this part, the term ‘large partnership’ does not include any partnership if substantially all the partners of such partnership—

“(A) are individuals performing substantial services in connection with the activities of such partnership or are personal service corporations (as defined in section 269A(b)) the owner-employees (as defined in section 269A(b)) of which perform such substantial services,

“(B) are retired partners who had performed such substantial services, or

“(C) are spouses of partners who are performing (or had previously performed) such substantial services.

“(3) SPECIAL RULE FOR LOWER TIER PARTNERSHIPS.—For purposes of this subsection, the activities of a partnership shall include the activities of any other partnership in which the part-

nership owns directly an interest in the capital and profits of at least 80 percent.

“(c) EXCLUSION OF COMMODITY POOLS.—For purposes of this part, the term ‘large partnership’ does not include any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures, or forwards with respect to such commodities.

“(d) SECRETARY MAY RELY ON TREATMENT ON RETURN.—If, on the partnership return of any partnership, such partnership is treated as a large partnership, such treatment shall be binding on such partnership and all partners of such partnership but not on the Secretary.

“SEC. 776. SPECIAL RULES FOR PARTNERSHIPS HOLDING OIL AND GAS PROPERTIES.

“(a) EXCEPTION FOR PARTNERSHIPS HOLDING SIGNIFICANT OIL AND GAS PROPERTIES.—

“(1) IN GENERAL.—For purposes of this part, the term ‘large partnership’ shall not include any partnership if the average percentage of assets (by value) held by such partnership during the taxable year which are oil or gas properties is at least 25 percent. For purposes of the preceding sentence, any interest held by a partnership in another partnership shall be disregarded, except that the partnership shall be treated as holding its proportionate share of the assets of such other partnership.

“(2) ELECTION TO WAIVE EXCEPTION.—Any partnership may elect to have paragraph (1) not apply. Such an election shall apply to the partnership taxable year for which made and all subsequent partnership taxable years unless revoked with the consent of the Secretary.

“(b) SPECIAL RULES WHERE PART APPLIES.—

“(1) COMPUTATION OF PERCENTAGE DEPLETION.—In the case of a large partnership, except as provided in paragraph (2)—

“(A) the allowance for depletion under section 611 with respect to any partnership oil or gas property shall be computed at the partnership level without regard to any provision of section 613A requiring such allowance to be computed separately by each partner,

“(B) such allowance shall be determined without regard to the provisions of section 613A(c) limiting the amount of production for which percentage depletion is allowable and without respect to paragraph (1) of section 613A(d), and

“(C) paragraph (3) of section 705(a) shall not apply.

“(2) TREATMENT OF CERTAIN PARTNERS.—

“(A) IN GENERAL.—In the case of a disqualified person, the treatment under this chapter of such person’s distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property shall be determined without regard to this part. Such person’s distributive share of any such items shall be excluded for purposes of making determinations under sections 772 and 773.

“(B) DISQUALIFIED PERSON.—For purposes of subparagraph (A), the term ‘disqualified person’ means, with respect to any partnership taxable year—

“(i) any person referred to in paragraph (2) or (4) of section 613A(d) for such person’s taxable year in which such partnership taxable year ends, and

“(ii) any other person if such person’s average daily production of domestic crude oil and natural gas for such person’s taxable year in which such partnership taxable year ends exceeds 500 barrels.

“(C) AVERAGE DAILY PRODUCTION.—For purposes of subparagraph (B), a person’s average daily production of domestic crude oil and natural gas for any taxable year shall be computed as provided in section 613A(c)(2)—

“(i) by taking into account all production of domestic crude oil and natural gas (including such person’s proportionate share of any production of a partnership),

"(ii) by treating 6,000 cubic feet of natural gas as a barrel of crude oil, and

"(iii) by treating as 1 person all persons treated as 1 taxpayer under section 613A(c)(8) or among whom allocations are required under such section.

"SEC. 777. REGULATIONS.

"The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this part."

(b) **CLERICAL AMENDMENT.**—The table of parts for subchapter K of chapter I is amended by adding at the end thereof the following new item:

"Part IV. Special rules for large partnerships."

SEC. 4302. SIMPLIFIED AUDIT PROCEDURES FOR LARGE PARTNERSHIPS.

(a) **GENERAL RULE.**—Chapter 63 is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER D—TREATMENT OF LARGE PARTNERSHIPS

"Part I. Treatment of partnership items and adjustments.

"Part II. Partnership level adjustments.

"Part III. Definitions and special rules.

"PART I—TREATMENT OF PARTNERSHIP ITEMS AND ADJUSTMENTS

"Sec. 6240. Application of subchapter.

"Sec. 6241. Partner's return must be consistent with partnership return.

"Sec. 6242. Procedures for taking partnership adjustments into account.

"SEC. 6240. APPLICATION OF SUBCHAPTER.

(a) **GENERAL RULE.**—This subchapter shall only apply to large partnerships and partners in such partnerships.

(b) **COORDINATION WITH OTHER PARTNERSHIP AUDIT PROCEDURES.**—

"(1) **IN GENERAL.**—Subchapter C of this chapter shall not apply to any large partnership other than in its capacity as a partner in another partnership which is not a large partnership.

"(2) **TREATMENT WHERE PARTNER IN OTHER PARTNERSHIP.**—If a large partnership is a partner in another partnership which is not a large partnership—

"(A) subchapter C of this chapter shall apply to items of such large partnership which are partnership items with respect to such other partnership, but

"(B) any adjustment under such subchapter C shall be taken into account in the manner provided by section 6242.

"SEC. 6241. PARTNER'S RETURN MUST BE CONSISTENT WITH PARTNERSHIP RETURN.

(a) **GENERAL RULE.**—A partner of any large partnership shall, on the partner's return, treat each partnership item attributable to such partnership in a manner which is consistent with the treatment of such partnership item on the partnership return.

(b) **UNDERPAYMENT DUE TO INCONSISTENT TREATMENT ASSESSED AS MATH ERROR.**—Any underpayment of tax by a partner by reason of failing to comply with the requirements of subsection (a) shall be assessed and collected in the same manner as if such underpayment were on account of a mathematical or clerical error appearing on the partner's return. Paragraph (2) of section 6213(b) shall not apply to any assessment of an underpayment referred to in the preceding sentence.

(c) **ADJUSTMENTS NOT TO AFFECT PRIOR YEAR OF PARTNERS.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), subsections (a) and (b) shall apply without regard to any adjustment to the partnership item under part II.

"(2) CERTAIN CHANGES IN DISTRIBUTIVE SHARE TAKEN INTO ACCOUNT BY PARTNER.—

"(A) **IN GENERAL.**—To the extent that any adjustment under part II involves a change under section 704 in a partner's distributive share of the amount of any partnership item shown on the partnership return, such adjustment shall be taken into account in applying this title to such partner for the partner's taxable year for which such item was required to be taken into account.

"(B) **COORDINATION WITH DEFICIENCY PROCEDURES.**—

"(i) **IN GENERAL.**—Subchapter B shall not apply to the assessment or collection of any underpayment of tax attributable to an adjustment referred to in subparagraph (A).

"(ii) **ADJUSTMENT NOT PRECLUDED.**—Notwithstanding any other law or rule of law, nothing in subchapter B (or in any proceeding under subchapter B) shall preclude the assessment or collection of any underpayment of tax (or the allowance of any credit or refund of any overpayment of tax) attributable to an adjustment referred to in subparagraph (A) and such assessment or collection or allowance (or any notice thereof) shall not preclude any notice, proceeding, or determination under subchapter B.

"(C) **PERIOD OF LIMITATIONS.**—The period for—

"(i) assessing any underpayment of tax, or

"(ii) filing a claim for credit or refund of any overpayment of tax,

attributable to an adjustment referred to in subparagraph (A) shall not expire before the close of the period prescribed by section 6248 for making adjustments with respect to the partnership taxable year involved.

"(D) **TIERED STRUCTURES.**—If the partner referred to in subparagraph (A) is another partnership or an S corporation, the rules of this paragraph shall also apply to persons holding interests in such partnership or S corporation (as the case may be); except that, if such partner is a large partnership, the adjustment referred to in subparagraph (A) shall be taken into account in the manner provided by section 6242.

"(d) **ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.**—

"For addition to tax in case of partner's disregard of requirements of this section, see part II of subchapter A of chapter 68.

"SEC. 6242. PROCEDURES FOR TAKING PARTNERSHIP ADJUSTMENTS INTO ACCOUNT.

"(a) **ADJUSTMENTS FLOW THROUGH TO PARTNERS FOR YEAR IN WHICH ADJUSTMENT TAKES EFFECT.**—

"(1) **IN GENERAL.**—If any partnership adjustment with respect to any partnership item takes effect (within the meaning of subsection (d)(2)) during any partnership taxable year and if an election under paragraph (2) does not apply to such adjustment, such adjustment shall be taken into account in determining the amount of such item for the partnership taxable year in which such adjustment takes effect. In applying this title to any person who is (directly or indirectly) a partner in such partnership during such partnership taxable year, such adjustment shall be treated as an item actually arising during such taxable year.

"(2) **PARTNERSHIP LIABLE IN CERTAIN CASES.**—If—

"(A) a partnership elects under this paragraph to not take an adjustment into account under paragraph (1),

"(B) a partnership does not make such an election but in filing its return for any partnership taxable year fails to take fully into account any partnership adjustment as required under paragraph (1), or

"(C) any partnership adjustment involves a reduction in a credit which exceeds the amount of such credit determined for the partnership

taxable year in which the adjustment takes effect,

the partnership shall pay to the Secretary an amount determined by applying the rules of subsection (b)(4) to the adjustments not so taken into account and any excess referred to in subparagraph (C).

"(3) **OFFSETTING ADJUSTMENTS TAKEN INTO ACCOUNT.**—If a partnership adjustment requires another adjustment in a taxable year after the adjusted year and before the partnership taxable year in which such partnership adjustment takes effect, such other adjustment shall be taken into account under this subsection for the partnership taxable year in which such partnership adjustment takes effect.

"(4) **COORDINATION WITH PART II.**—Amounts taken into account under this subsection for any partnership taxable year shall continue to be treated as adjustments for the adjusted year for purposes of determining whether such amounts may be readjusted under part II.

"(b) **PARTNERSHIP LIABLE FOR INTEREST AND PENALTIES.**—

"(1) **IN GENERAL.**—If a partnership adjustment takes effect during any partnership taxable year and such adjustment results in an imputed underpayment for the adjusted year, the partnership—

"(A) shall pay to the Secretary interest computed under paragraph (2), and

"(B) shall be liable for any penalty, addition to tax, or additional amount as provided in paragraph (3).

"(2) **DETERMINATION OF AMOUNT OF INTEREST.**—The interest computed under this paragraph with respect to any partnership adjustment is the interest which would be determined under chapter 67—

"(A) on the imputed underpayment determined under paragraph (4) with respect to such adjustment, or

"(B) for the period beginning on the day after the return due date for the adjusted year and ending on the return due date for the partnership taxable year in which such adjustment takes effect (or, if earlier, in the case of any adjustment to which subsection (a)(2) applies, the date on which the payment under subsection (a)(2) is made).

Proper adjustments in the amount determined under the preceding sentence shall be made for adjustments required for partnership taxable years after the adjusted year and before the year in which the partnership adjustment takes effect by reason of such partnership adjustment.

"(3) **PENALTIES.**—A partnership shall be liable for any penalty, addition to tax, or additional amount for which it would have been liable if such partnership had been an individual subject to tax under chapter 1 for the adjusted year and the imputed underpayment determined under paragraph (4) were an actual underpayment (or understatement) for such year.

"(4) **IMPUTED UNDERPAYMENT.**—For purposes of this subsection, the imputed underpayment determined under this paragraph with respect to any partnership adjustment is the underpayment (if any) which would result—

"(A) by netting all adjustments to items of income, gain, loss, or deduction and—

"(i) if such netting results in a net increase in income, by treating such net increase as an underpayment equal to the amount of such net increase multiplied by the highest rate of tax in effect under section 1 or 11 for the adjusted year, or

"(ii) if such netting results in a net decrease in income, by treating such net decrease as an overpayment equal to such net decrease multiplied by such highest rate, and

"(B) by taking adjustments to credits into account as increases or decreases (whichever is appropriate) in the amount of tax.

For purposes of the preceding sentence, any net decrease in a loss shall be treated as an increase in income and a similar rule shall apply to a net increase in a loss.

“(c) ADMINISTRATIVE PROVISIONS.—

“(1) IN GENERAL.—Any payment required by subsection (a)(2) or (b)(1)(A)—

“(A) shall be assessed and collected in the same manner as if it were a tax imposed by subtitle C, and

“(B) shall be paid on or before the return due date for the partnership taxable year in which the partnership adjustment takes effect.

“(2) INTEREST.—For purposes of determining interest, any payment required by subsection (a)(2) or (b)(1)(A) shall be treated as an underpayment of tax.

“(3) PENALTIES.—

“(A) IN GENERAL.—In the case of any failure by any partnership to pay on the date prescribed therefor any amount required by subsection (a)(2) or (b)(1)(A), there is hereby imposed on such partnership a penalty of 10 percent of the underpayment. For purposes of the preceding sentence, the term ‘underpayment’ means the excess of any payment required under this section over the amount (if any) paid on or before the date prescribed therefor.

“(B) ACCURACY-RELATED AND FRAUD PENALTIES MADE APPLICABLE.—For purposes of part II of subchapter A of chapter 68, any payment required by subsection (a)(2) shall be treated as an underpayment of tax.

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) PARTNERSHIP ADJUSTMENT.—The term ‘partnership adjustment’ means any adjustment in the amount of any partnership item of a large partnership.

“(2) WHEN ADJUSTMENT TAKES EFFECT.—A partnership adjustment takes effect—

“(A) in the case of an adjustment pursuant to the decision of a court in a proceeding brought under part II, when such decision becomes final,

“(B) in the case of an adjustment pursuant to any administrative adjustment request under section 6251, when such adjustment is allowed by the Secretary, or

“(C) in any other case, when such adjustment is made.

“(3) ADJUSTED YEAR.—The term ‘adjusted year’ means the partnership taxable year to which the item being adjusted relates.

“(4) RETURN DUE DATE.—The term ‘return due date’ means, with respect to any taxable year, the date prescribed for filing the partnership return for such taxable year (determined without regard to extensions).

“(5) ADJUSTMENTS INVOLVING CHANGES IN CHARACTER.—Under regulations, appropriate adjustments in the application of this section shall be made for purposes of taking into account partnership adjustments which involve a change in the character of any item of income, gain, loss, or deduction.

“(e) PAYMENTS NONDEDUCTIBLE.—No deduction shall be allowed under subtitle A for any payment required to be made by a large partnership under this section.

“PART II—PARTNERSHIP LEVEL ADJUSTMENTS

“Subpart A. Adjustments by Secretary.

“Subpart B. Claims for adjustments by partnership.

“Subpart A—Adjustments by Secretary

“Sec. 6245. Secretarial authority.

“Sec. 6246. Restrictions on partnership adjustments.

“Sec. 6247. Judicial review of partnership adjustment.

“Sec. 6248. Period of limitations for making adjustments.

“SEC. 6245. SECRETARIAL AUTHORITY.

“(a) GENERAL RULE.—The Secretary is authorized and directed to make adjustments at the partnership level in any partnership item to the extent necessary to have such item be treated in the manner required.

“(b) NOTICE OF PARTNERSHIP ADJUSTMENT.—

“(1) IN GENERAL.—If the Secretary determines that a partnership adjustment is required, the Secretary is authorized to send notice of such adjustment to the partnership by certified mail or registered mail. Such notice shall be sufficient if mailed to the partnership at its last known address even if the partnership has terminated its existence.

“(2) FURTHER NOTICES RESTRICTED.—If the Secretary mails a notice of a partnership adjustment to any partnership for any partnership taxable year and the partnership files a petition under section 6247 with respect to such notice, in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact, the Secretary shall not mail another such notice to such partnership with respect to such taxable year.

“(3) AUTHORITY TO RESCIND NOTICE WITH PARTNERSHIP CONSENT.—The Secretary may, with the consent of the partnership, rescind any notice of a partnership adjustment mailed to such partnership. Any notice so rescinded shall not be treated as a notice of a partnership adjustment, for purposes of this section, section 6246, and section 6247, and the taxpayer shall have no right to bring a proceeding under section 6247 with respect to such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

“SEC. 6246. RESTRICTIONS ON PARTNERSHIP ADJUSTMENTS.

“(a) GENERAL RULE.—Except as otherwise provided in this chapter, no adjustment to any partnership item may be made (and no levy or proceeding in any court for the collection of any amount resulting from such adjustment may be made, begun or prosecuted) before—

“(1) the close of the 90th day after the day on which a notice of a partnership adjustment was mailed to the partnership, and

“(2) if a petition is filed under section 6247 with respect to such notice, the decision of the court has become final.

“(b) PREMATURE ACTION MAY BE ENJOINED.—Notwithstanding section 7421(a), any action which violates subsection (a) may be enjoined in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action under this subsection unless a timely petition has been filed under section 6247 and then only in respect of the adjustments that are the subject of such petition.

“(c) EXCEPTIONS TO RESTRICTIONS ON ADJUSTMENTS.—

“(1) ADJUSTMENTS ARISING OUT OF MATH OR CLERICAL ERRORS.—

“(A) IN GENERAL.—If the partnership is notified that, on account of a mathematical or clerical error appearing on the partnership return, an adjustment to a partnership item is required, rules similar to the rules of paragraphs (1) and (2) of section 6213(b) shall apply to such adjustment.

“(B) SPECIAL RULE.—If a large partnership is a partner in another large partnership, any adjustment on account of such partnership's failure to comply with the requirements of section 6241(a) with respect to its interest in such other partnership shall be treated as an adjustment referred to in subparagraph (A), except that paragraph (2) of section 6213(b) shall not apply to such adjustment.

“(2) PARTNERSHIP MAY WAIVE RESTRICTIONS.—The partnership shall at any time (whether or

not a notice of partnership adjustment has been issued) have the right, by a signed notice in writing filed with the Secretary, to waive the restrictions provided in subsection (a) on the making of any partnership adjustment.

“(d) LIMIT WHERE NO PROCEEDING BEGUN.—If no proceeding under section 6247 is begun with respect to any notice of a partnership adjustment during the 90-day period described in subsection (a), the amount for which the partnership is liable under section 6242 (and any increase in any partner's liability for tax under chapter 1 by reason of any adjustment under section 6242(a)) shall not exceed the amount determined in accordance with such notice.

“SEC. 6247. JUDICIAL REVIEW OF PARTNERSHIP ADJUSTMENT.

“(a) GENERAL RULE.—Within 90 days after the date on which a notice of a partnership adjustment is mailed to the partnership with respect to any partnership taxable year, the partnership may file a petition for a readjustment of the partnership items for such taxable year with—

“(1) the Tax Court,

“(2) the district court of the United States for the district in which the partnership's principal place of business is located, or

“(3) the Claims Court.

“(b) JURISDICTIONAL REQUIREMENT FOR BRINGING ACTION IN DISTRICT COURT OR CLAIMS COURT.—

“(1) IN GENERAL.—A readjustment petition under this section may be filed in a district court of the United States or the Claims Court only if the partnership filing the petition deposits with the Secretary, on or before the date the petition is filed, the amount for which the partnership would be liable under section 6242(b) (as of the date of the filing of the petition) if the partnership items were adjusted as provided by the notice of partnership adjustment. The court may by order provide that the jurisdictional requirements of this paragraph are satisfied where there has been a good faith attempt to satisfy such requirement and any shortfall of the amount required to be deposited is timely corrected.

“(2) INTEREST PAYABLE.—Any amount deposited under paragraph (1), while deposited, shall not be treated as a payment of tax for purposes of this title (other than chapter 67).

“(c) SCOPE OF JUDICIAL REVIEW.—A court with which a petition is filed in accordance with this section shall have jurisdiction to determine all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates and the proper allocation of such items among the partners (and the applicability of any penalty, addition to tax, or additional amount for which the partnership may be liable under section 6242(b)).

“(d) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this section shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

“(e) EFFECT OF DECISION DISMISSING ACTION.—If an action brought under this section is dismissed other than by reason of a rescission under section 6245(b)(3), the decision of the court dismissing the action shall be considered as its decision that the notice of partnership adjustment is correct, and an appropriate order shall be entered in the records of the court.

“SEC. 6248. PERIOD OF LIMITATIONS FOR MAKING ADJUSTMENTS.

“(a) GENERAL RULE.—Except as otherwise provided in this section, no adjustment under this subpart to any partnership item for any

partnership taxable year may be made after the date which is 3 years after the later of—

"(1) the date on which the partnership return for such taxable year was filed, or

"(2) the last day for filing such return for such year (determined without regard to extensions).

"(b) EXTENSION BY AGREEMENT.—The period described in subsection (a) (including an extension period under this subsection) may be extended by an agreement entered into by the Secretary and the partnership before the expiration of such period.

"(c) SPECIAL RULE IN CASE OF FRAUD, ETC.—

"(1) FALSE RETURN.—In the case of a false or fraudulent partnership return with intent to evade tax, the adjustment may be made at any time.

"(2) SUBSTANTIAL OMISSION OF INCOME.—If any partnership omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in its return, subsection (a) shall be applied by substituting '6 years' for '3 years'.

"(3) NO RETURN.—In the case of a failure by a partnership to file a return for any taxable year, the adjustment may be made at any time.

"(4) RETURN FILED BY SECRETARY.—For purposes of this section, a return executed by the Secretary under subsection (b) of section 6020 on behalf of the partnership shall not be treated as a return of the partnership.

"(d) SUSPENSION WHEN SECRETARY MAILES NOTICE OF ADJUSTMENT.—If notice of a partnership adjustment with respect to any taxable year is mailed to the partnership, the running of the period specified in subsection (a) (as modified by the other provisions of this section) shall be suspended—

"(1) for the period during which an action may be brought under section 6247 (and, if a petition is filed under section 6247 with respect to such notice, until the decision of the court becomes final), and

"(2) for 1 year thereafter.

"Subpart B—Claims for Adjustments by Partnership"

"Sec. 6251. Administrative adjustment requests.

"Sec. 6252. Judicial review where administrative adjustment request is not allowed in full.

"SEC. 6251. ADMINISTRATIVE ADJUSTMENT REQUESTS.

"(a) GENERAL RULE.—A partnership may file a request for an administrative adjustment of partnership items for any partnership taxable year at any time which is—

"(1) within 3 years after the later of—

"(A) the date on which the partnership return for such year is filed, or

"(B) the last day for filing the partnership return for such year (determined without regard to extensions), and

"(2) before the mailing to the partnership of a notice of a partnership adjustment with respect to such taxable year.

"(b) SECRETARIAL ACTION.—If a partnership files an administrative adjustment request under subsection (a), the Secretary may allow any part of the requested adjustments.

"(c) SPECIAL RULE IN CASE OF EXTENSION UNDER SECTION 6248.—If the period described in section 6248(a) is extended pursuant to an agreement under section 6248(b), the period prescribed by subsection (a)(1) shall not expire before the date 6 months after the expiration of the extension under section 6248(b).

"SEC. 6252. JUDICIAL REVIEW WHERE ADMINISTRATIVE ADJUSTMENT REQUEST IS NOT ALLOWED IN FULL.

"(a) IN GENERAL.—If any part of an administrative adjustment request filed under section 6251 is not allowed by the Secretary, the partnership may file a petition for an adjustment

with respect to the partnership items to which such part of the request relates with—

"(1) the Tax Court,

"(2) the district court of the United States for the district in which the principal place of business of the partnership is located, or

"(3) the Claims Court.

"(b) PERIOD FOR FILING PETITION.—A petition may be filed under subsection (a) with respect to partnership items for a partnership taxable year only—

"(1) after the expiration of 6 months from the date of filing of the request under section 6251, and

"(2) before the date which is 2 years after the date of such request.

The 2-year period set forth in paragraph (2) shall be extended for such period as may be agreed upon in writing by the partnership and the Secretary.

"(c) COORDINATION WITH SUBPART A.—

"(1) NOTICE OF PARTNERSHIP ADJUSTMENT BEFORE FILING OF PETITION.—No petition may be filed under this section after the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates.

"(2) NOTICE OF PARTNERSHIP ADJUSTMENT AFTER FILING BUT BEFORE HEARING OF PETITION.—If the Secretary mails to the partnership a notice of a partnership adjustment for the partnership taxable year to which the request under section 6251 relates after the filing of a petition under this subsection but before the hearing of such petition, such petition shall be treated as an action brought under section 6247 with respect to such notice, except that subsection (b) of section 6247 shall not apply.

"(3) NOTICE MUST BE BEFORE EXPIRATION OF STATUTE OF LIMITATIONS.—A notice of a partnership adjustment for the partnership taxable year shall be taken into account under paragraphs (1) and (2) only if such notice is mailed before the expiration of the period prescribed by section 6248 for making adjustments to partnership items for such taxable year.

"(d) SCOPE OF JUDICIAL REVIEW.—Except in the case described in paragraph (2) of subsection (c), a court with which a petition is filed in accordance with this section shall have jurisdiction to determine only those partnership items to which the part of the request under section 6251 not allowed by the Secretary relates and those items with respect to which the Secretary asserts adjustments as offsets to the adjustments requested by the partnership.

"(e) DETERMINATION OF COURT REVIEWABLE.—Any determination by a court under this subsection shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Claims Court, as the case may be, and shall be reviewable as such. The date of any such determination shall be treated as being the date of the court's order entering the decision.

"PART III—DEFINITIONS AND SPECIAL RULES"

"Sec. 6255. Definitions and special rules.

"SEC. 6255. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) LARGE PARTNERSHIP.—The term 'large partnership' has the meaning given to such term by section 775 without regard to section 776(a).

"(2) PARTNERSHIP ITEM.—The term 'partnership item' has the meaning given to such term by section 6231(a)(3).

"(b) PARTNERS BOUND BY ACTIONS OF PARTNERSHIP, ETC.—

"(1) DESIGNATION OF PARTNER.—Each large partnership shall designate (in the manner pre-

scribed by the Secretary) a partner (or other person) who shall have the sole authority to act on behalf of such partnership under this subchapter. In any case in which such a designation is not in effect, the Secretary may select any partner as the partner with such authority.

"(2) BINDING EFFECT.—A large partnership and all partners of such partnership shall be bound—

"(A) by actions taken under this subchapter by the partnership, and

"(B) by any decision in a proceeding brought under this subchapter.

"(c) PARTNERSHIPS HAVING PRINCIPAL PLACE OF BUSINESS OUTSIDE THE UNITED STATES.—For purposes of sections 6247 and 6252, a principal place of business located outside the United States shall be treated as located in the District of Columbia.

"(d) TREATMENT WHERE PARTNERSHIP CEASES TO EXIST.—If a partnership ceases to exist before a partnership adjustment under this subchapter takes effect, such adjustment shall be taken into account by the former partners of such partnership under regulations prescribed by the Secretary.

"(e) DATE DECISION BECOMES FINAL.—For purposes of this subchapter, the principles of section 7481(a) shall be applied in determining the date on which a decision of a district court or the Claims Court becomes final.

"(f) PARTNERSHIPS IN CASES UNDER TITLE 11 OF THE UNITED STATES CODE.—The running of any period of limitations provided in this subchapter on making a partnership adjustment (or provided by section 6501 or 6502 on the assessment or collection of any amount required to be paid under section 6242) shall, in a case under title 11 of the United States Code, be suspended during the period during which the Secretary is prohibited by reason of such case from making the adjustment (or assessment or collection) and—

"(1) for adjustment or assessment, 60 days thereafter, and

"(2) for collection, 6 months thereafter.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subchapter, including regulations—

"(1) to prevent abuse through manipulation of the provisions of this subchapter, and

"(2) providing that this subchapter shall not apply to any case described in section 6231(c)(1) (or the regulations prescribed thereunder) where the application of this subchapter to such a case would interfere with the effective and efficient enforcement of this title.

In any case to which this subchapter does not apply by reason of paragraph (2), rules similar to the rules of sections 6229(f) and 6255(f) shall apply."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 63 is amended by adding at the end thereof the following new item:

"SUBCHAPTER D. Treatment of large partnerships."

SEC. 4303. DUE DATE FOR FURNISHING INFORMATION TO PARTNERS OF LARGE PARTNERSHIPS.

(a) GENERAL RULE.—Subsection (b) of section 6031 (relating to copies to partners) is amended by adding at the end thereof the following new sentence: "In the case of a large partnership (as defined in sections 775 and 776(a)), such information shall be furnished on or before the first March 15 following the close of such taxable year."

(b) TREATMENT AS INFORMATION RETURN.—Section 6724 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULE FOR CERTAIN PARTNERSHIP RETURNS.—If any partnership return under sec-

tion 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return."

SEC. 4304. RETURNS MAY BE REQUIRED ON MAGNETIC MEDIA.

Paragraph (2) of section 6011(e) (relating to returns on magnetic media) is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply in the case of the partnership return of a large partnership (as defined in sections 775 and 776(a)) or any other partnership with 250 or more partners."

SEC. 4305. EFFECTIVE DATE.

(a) **GENERAL RULE.**—Except as provided in subsection (b), the amendments made by this part shall apply to partnership taxable years ending on or after December 31, 1992.

(b) **SPECIAL RULE FOR SECTION 4304.**—In the case of a partnership which is not a large partnership (as defined in sections 775 and 776(a) of the Internal Revenue Code of 1986, as added by this part), the amendment made by section 4304 shall only apply to partnership taxable years ending on or after December 31, 1998.

PART II—PROVISIONS RELATED TO TEFRA PARTNERSHIP PROCEEDINGS

SEC. 4311. TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.

(a) **IN GENERAL.**—Subchapter C of chapter 63 is amended by adding at the end thereof the following new section:

"SEC. 6234. DECLARATORY JUDGMENT RELATING TO TREATMENT OF ITEMS OTHER THAN PARTNERSHIP ITEMS WITH RESPECT TO AN OVERSHELTERED RETURN.

"(a) **GENERAL RULE.**—If—

"(1) a taxpayer files an oversheltered return for a taxable year,

"(2) the Secretary makes a determination with respect to the treatment of items (other than partnership items) of such taxpayer for such taxable year, and

"(3) the adjustments resulting from such determination do not give rise to a deficiency (as defined in section 6211) but would give rise to a deficiency if there were no net loss from partnership items,

the Secretary is authorized to send a notice of adjustment reflecting such determination to the taxpayer by certified or registered mail.

"(b) **OVERSHELTERED RETURN.**—For purposes of this section, the term 'oversheltered return' means an income tax return which—

"(1) shows no taxable income for the taxable year, and

"(2) shows a net loss from partnership items.

"(c) **JUDICIAL REVIEW IN THE TAX COURT.**—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the day on which the notice of adjustment authorized in subsection (a) is mailed to the taxpayer, the taxpayer may file a petition with the Tax Court for redetermination of the adjustments. Upon the filing of such a petition, the Tax Court shall have jurisdiction to make a declaration with respect to all items (other than partnership items and affected items which require partner level determinations as described in section 6230(a)(2)(A)(i)) for the taxable year to which the notice of adjustment relates, in accordance with the principles of section 6214(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(d) **FAILURE TO FILE PETITION.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), if the taxpayer does not file a petition

with the Tax Court within the time prescribed in subsection (c), the determination of the Secretary set forth in the notice of adjustment that was mailed to the taxpayer shall be deemed to be correct.

"(2) **EXCEPTION.**—Paragraph (1) shall not apply after the date that the taxpayer—

"(A) files a petition with the Tax Court within the time prescribed in subsection (c) with respect to a subsequent notice of adjustment relating to the same taxable year, or

"(B) files a claim for refund of an overpayment of tax under section 6511 for the taxable year involved.

If a claim for refund is filed by the taxpayer, then solely for purposes of determining (for the taxable year involved) the amount of any computational adjustment in connection with a partnership proceeding under this subchapter (other than under this section) or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), the items that are the subject of the notice of adjustment shall be presumed to have been correctly reported on the taxpayer's return during the pendency of the refund claim (and, if within the time prescribed by section 6532 the taxpayer commences a civil action for refund under section 7422, until the decision in the refund action becomes final).

"(e) **LIMITATIONS PERIOD.**—

"(1) **IN GENERAL.**—Any notice to a taxpayer under subsection (a) shall be mailed before the expiration of the period prescribed by section 6501 (relating to the period of limitations on assessment).

"(2) **SUSPENSION WHEN SECRETARY MAILES NOTICE OF ADJUSTMENT.**—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year, the period of limitations on the making of assessments shall be suspended for the period during which the Secretary is prohibited from making the assessment (and, in any event, if a proceeding in respect of the notice of adjustment is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

"(3) **RESTRICTIONS ON ASSESSMENT.**—Except as otherwise provided in section 6851, 6852, or 6861, no assessment of a deficiency with respect to any tax imposed by subtitle A attributable to any item (other than a partnership item or any item affected by a partnership item) shall be made—

"(A) until the expiration of the applicable 90-day or 150-day period set forth in subsection (c) for filing a petition with the Tax Court, or

"(B) if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

"(f) **FURTHER NOTICES OF ADJUSTMENT RESTRICTED.**—If the Secretary mails a notice of adjustment to the taxpayer for a taxable year and the taxpayer files a petition with the Tax Court within the time prescribed in subsection (c), the Secretary may not mail another such notice to the taxpayer with respect to the same taxable year in the absence of a showing of fraud, malfeasance, or misrepresentation of a material fact.

"(g) **COORDINATION WITH OTHER PROCEEDINGS UNDER THIS SUBCHAPTER.**—

"(1) **IN GENERAL.**—The treatment of any item that has been determined pursuant to subsection (c) or (d) shall be taken into account in determining the amount of any computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), or the amount of any deficiency attributable to affected items in a proceeding under section 6230(a)(2), for the taxable year involved. Notwithstanding any other law or rule of law pertaining to the period of limitations on the making of assessments, for

purposes of the preceding sentence, any adjustment made in accordance with this section shall be taken into account regardless of whether any assessment has been made with respect to such adjustment.

"(2) **SPECIAL RULE IN CASE OF COMPUTATIONAL ADJUSTMENT.**—In the case of a computational adjustment that is made in connection with a partnership proceeding under this subchapter (other than under this section), the provisions of paragraph (1) shall apply only if the computational adjustment is made within the period prescribed by section 6229 for assessing any tax under subtitle A which is attributable to any partnership item or affected item for the taxable year involved.

"(3) **CONVERSION TO DEFICIENCY PROCEEDING.**—If—

"(A) after the notice referred to in subsection (a) is mailed to a taxpayer for a taxable year but before the expiration of the period for filing a petition with the Tax Court under subsection (c) (or, if a petition is filed with the Tax Court, before the Tax Court makes a declaration for that taxable year), the treatment of any partnership item for the taxable year is finally determined, or any such item ceases to be a partnership item pursuant to section 6231(b), and

"(B) as a result of that final determination or cessation, a deficiency can be determined with respect to the items that are the subject of the notice of adjustment,

the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition filed in respect of the notice shall be treated as an action brought under section 6213.

"(4) **FINALLY DETERMINED.**—For purposes of this subsection, the treatment of partnership items shall be treated as finally determined if—

"(A) the Secretary enters into a settlement agreement (within the meaning of section 6224) with the taxpayer regarding such items,

"(B) a notice of final partnership administrative adjustment has been issued and—

"(i) no petition has been filed under section 6226 and the time for doing so has expired, or

"(ii) a petition has been filed under section 6226 and the decision of the court has become final, or

"(C) the period within which any tax attributable to such items may be assessed against the taxpayer has expired.

"(h) **SPECIAL RULES IF SECRETARY INCORRECTLY DETERMINES APPLICABLE PROCEDURE.**—

"(1) **SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILES NOTICE OF ADJUSTMENT.**—If the Secretary erroneously determines that subchapter B does not apply to a taxable year of a taxpayer and consistent with that determination timely mails a notice of adjustment to the taxpayer pursuant to subsection (a) of this section, the notice of adjustment shall be treated as a notice of deficiency under section 6212 and any petition that is filed in respect of the notice shall be treated as an action brought under section 6213.

"(2) **SPECIAL RULE IF SECRETARY ERRONEOUSLY MAILES NOTICE OF DEFICIENCY.**—If the Secretary erroneously determines that subchapter B applies to a taxable year of a taxpayer and consistent with that determination timely mails a notice of deficiency to the taxpayer pursuant to section 6212, the notice of deficiency shall be treated as a notice of adjustment under subsection (a) and any petition that is filed in respect of the notice shall be treated as an action brought under subsection (c)."

(b) **TREATMENT OF PARTNERSHIP ITEMS IN DEFICIENCY PROCEEDINGS.**—Section 6211 (defining deficiency) is amended by adding at the end thereof the following new subsection:

"(c) **COORDINATION WITH SUBCHAPTER C.**—In determining the amount of any deficiency for purposes of this subchapter, adjustments to partnership items shall be made only as provided in subchapter C."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 63 is amended by adding at the end thereof the following new item:

“Sec. 6234. Declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4312. PARTNERSHIP RETURN TO BE DETERMINATIVE OF AUDIT PROCEDURES TO BE FOLLOWED.

(a) IN GENERAL.—Section 6231 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

“(g) PARTNERSHIP RETURN TO BE DETERMINATIVE OF WHETHER SUBCHAPTER APPLIES.—

“(1) DETERMINATION THAT SUBCHAPTER APPLIES.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter applies to such partnership for such year but such determination is erroneous, then the provisions of this subchapter are hereby extended to such partnership (and its items) for such taxable year and to partners of such partnership.

“(2) DETERMINATION THAT SUBCHAPTER DOES NOT APPLY.—If, on the basis of a partnership return for a taxable year, the Secretary reasonably determines that this subchapter does not apply to such partnership for such year but such determination is erroneous, then the provisions of this subchapter shall not apply to such partnership (and its items) for such taxable year or to partners of such partnership.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4313. PROVISIONS RELATING TO STATUTE OF LIMITATIONS.

(a) SUSPENSION OF STATUTE WHERE UNTIMELY PETITION FILED.—Paragraph (1) of section 6229(d) (relating to suspension where Secretary makes administrative adjustment) is amended by striking all that follows “section 6226” and inserting the following: “(and, if a petition is filed under section 6226 with respect to such administrative adjustment, until the decision of the court becomes final), and”.

(b) SUSPENSION OF STATUTE DURING BANKRUPTCY PROCEEDING.—Section 6229 is amended by adding at the end thereof the following new subsection:

“(h) SUSPENSION DURING PENDENCY OF BANKRUPTCY PROCEEDING.—If a petition is filed naming a partner as a debtor in a bankruptcy proceeding under title 11 of the United States Code, the running of the period of limitations provided in this section with respect to such partner shall be suspended—

“(1) for the period during which the Secretary is prohibited by reason of such bankruptcy proceeding from making an assessment, and

“(2) for 60 days thereafter.”

(c) TAX MATTERS PARTNER IN BANKRUPTCY.—Section 6229(b) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) SPECIAL RULE WITH RESPECT TO DEBTORS IN TITLE 11 CASES.—Notwithstanding any other law or rule of law, if an agreement is entered into under paragraph (1)(B) and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under title 11 of the United States Code, such agreement shall

be binding on all partners in the partnership unless the Secretary has been notified of the bankruptcy proceeding in accordance with regulations prescribed by the Secretary.”

(d) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to partnership taxable years with respect to which the period under section 6229 of the Internal Revenue Code of 1986 for assessing tax has not expired on or before the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 4314. EXPANSION OF SMALL PARTNERSHIP EXCEPTION.

(a) IN GENERAL.—Clause (i) of section 6231(a)(1)(B) (relating to exception for small partnerships) is amended to read as follows:

“(i) IN GENERAL.—The term ‘partnership’ shall not include any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. For purposes of the preceding sentence, a husband and wife (and their estates) shall be treated as 1 partner.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4315. EXCLUSION OF PARTIAL SETTLEMENTS FROM 1 YEAR LIMITATION ON ASSESSMENT.

(a) IN GENERAL.—Subsection (f) of section 6229 (relating to items becoming nonpartnership items) is amended—

(1) by striking “(f) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If” and inserting the following:

“(f) SPECIAL RULES.—

“(1) ITEMS BECOMING NONPARTNERSHIP ITEMS.—If”

(2) by moving the text of such subsection 2 ems to the right, and

(3) by adding at the end thereof the following new paragraph:

“(2) SPECIAL RULE FOR PARTIAL SETTLEMENT AGREEMENTS.—If a partner enters into a settlement agreement with the Secretary with respect to the treatment of some of the partnership items in dispute for a partnership taxable year but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4316. EXTENSION OF TIME FOR FILING A REQUEST FOR ADMINISTRATIVE ADJUSTMENT.

(a) IN GENERAL.—Section 6227 (relating to administrative adjustment requests) is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

“(b) SPECIAL RULE IN CASE OF EXTENSION OF PERIOD OF LIMITATIONS UNDER SECTION 6229.—The period prescribed by subsection (a)(1) for filing of a request for an administrative adjustment shall be extended—

“(1) for the period within which an assessment may be made pursuant to an agreement (or any extension thereof) under section 6229(b), and

“(2) for 6 months thereafter.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4317. AVAILABILITY OF INNOCENT SPOUSE RELIEF IN CONTEXT OF PARTNERSHIP PROCEEDINGS.

(a) IN GENERAL.—Subsection (a) of section 6230 is amended by adding at the end thereof the following new paragraph:

“(3) SPECIAL RULE IN CASE OF ASSERTION BY PARTNER'S SPOUSE OF INNOCENT SPOUSE RELIEF.—

“(A) Notwithstanding section 6404(b), if the spouse of a partner asserts that section 6013(e) applies with respect to a liability that is attributable to any adjustment to a partnership item, then such spouse may file with the Secretary within 60 days after the notice and demand (or notice of computational adjustment) is mailed to the spouse a request for abatement of the assessment specified in such notice. Upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by subchapter B. The period for making any such reassessment shall not expire before the expiration of 60 days after the date of such abatement.

“(B) If the spouse files a petition with the Tax Court pursuant to section 6213 with respect to the request for abatement described in subparagraph (A), the Tax Court shall only have jurisdiction pursuant to this section to determine whether the requirements of section 6013(e) have been satisfied. For purposes of such determination, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.

“(C) Rules similar to the rules contained in subparagraphs (B) and (C) of paragraph (2) shall apply for purposes of this paragraph.”

(b) CLAIMS FOR REFUND.—Subsection (c) of section 6230 is amended by adding at the end thereof the following new paragraph:

“(5) RULES FOR SEEKING INNOCENT SPOUSE RELIEF.—

“(A) IN GENERAL.—The spouse of a partner may file a claim for refund on the ground that the Secretary failed to relieve the spouse under section 6013(e) from a liability that is attributable to an adjustment to a partnership item.

“(B) TIME FOR FILING CLAIM.—Any claim under subparagraph (A) shall be filed within 6 months after the day on which the Secretary mails to the spouse the notice and demand (or notice of computational adjustment) referred to in subsection (a)(3)(A).

“(C) SUIT IF CLAIM NOT ALLOWED.—If the claim under subparagraph (B) is not allowed, the spouse may bring suit with respect to the claim within the period specified in paragraph (3).

“(D) PRIOR DETERMINATIONS ARE BINDING.—For purposes of any claim or suit under this paragraph, the treatment of partnership items under the settlement, the final partnership administrative adjustment, or the decision of the court (whichever is appropriate) that gave rise to the liability in question shall be conclusive.”

(c) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6230(a) is amended by striking “paragraph (2)” and inserting “paragraph (2) or (3)”.

(2) Subsection (a) of section 6503 is amended by striking “section 6230(a)(2)(A)” and inserting “paragraph (2)(A) or (3) of section 6230(a)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4318. DETERMINATION OF PENALTIES AT PARTNERSHIP LEVEL.

(a) IN GENERAL.—Section 6221 (relating to tax treatment determined at partnership level) is amended by striking “item” and inserting “item

(and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item)".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 6226 is amended—
(A) by striking "relates and" and inserting "relates," and

(B) by inserting before the period "and the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item".

(2) Clause (i) of section 6230(a)(2)(A) is amended to read as follows:

"(i) affected items which require partner level determinations (other than penalties, additions to tax, and additional amounts that relate to adjustments to partnership items), or".

(3)(A) Subparagraph (A) of section 6230(a)(3), as added by section 3317, is amended by inserting "(including any liability for any penalty, addition to tax, or additional amount relating to such adjustment)" after "partnership item".

(B) Subparagraph (B) of such section is amended by inserting "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

(C) Subparagraph (A) of section 6230(c)(5), as added by section 3317, is amended by inserting before the period "(including any liability for any penalties, additions to tax, or additional amounts relating to such adjustment)".

(D) Subparagraph (D) of section 6230(c)(5), as added by section 3317, is amended by inserting "(and the applicability of any penalties, additions to tax, or additional amounts)" after "partnership items".

(4) Paragraph (1) of section 6230(c) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by adding at the end thereof the following new subparagraph:

"(C) the Secretary erroneously imposed any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item."

(5) So much of subparagraph (A) of section 6230(c)(2) as precedes "shall be filed" is amended to read as follows:

"(A) UNDER PARAGRAPH (1) (A) OR (C).—Any claim under subparagraph (A) or (C) of paragraph (1)".

(6) Paragraph (4) of section 6230(c) is amended by adding at the end thereof the following: "In addition, the determination under the final partnership administrative adjustment or under the decision of the court (whichever is appropriate) concerning the applicability of any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item shall also be conclusive."

Notwithstanding the preceding sentence, the partner shall be allowed to assert any partner level defenses that may apply or to challenge the amount of the computational adjustment."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4319. PROVISIONS RELATING TO COURT JURISDICTION, ETC.

(a) TAX COURT JURISDICTION TO ENJOIN PREMATURE ASSESSMENTS OF DEFICIENCIES ATTRIBUTABLE TO PARTNERSHIP ITEMS.—Subsection (b) of section 6225 is amended by striking "the proper court." and inserting "the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a readjustment of the partnership items for the taxable year has been filed and then only in respect of the adjustments that are the subject of such petition."

(b) JURISDICTION TO CONSIDER STATUTE OF LIMITATIONS WITH RESPECT TO PARTNERS.—

Paragraph (1) of section 6226(d) is amended by adding at the end thereof the following new sentence:

"Notwithstanding subparagraph (B), any person treated under subsection (c) as a party to an action shall be permitted to participate in such action (or file a readjustment petition under subsection (b) or paragraph (2) of this subsection) solely for the purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired with respect to such person, and the court having jurisdiction of such action shall have jurisdiction to consider such assertion."

(c) TAX COURT JURISDICTION TO DETERMINE OVERPAYMENTS ATTRIBUTABLE TO AFFECTED ITEMS.—

(1) Paragraph (6) of section 6230(d) is amended by striking "(or an affected item)".

(2) Paragraph (3) of section 6512(b) is amended by adding at the end thereof the following new sentence:

"In the case of a credit or refund relating to an affected item (within the meaning of section 6229), the preceding sentence shall be applied by substituting the periods under sections 6229 and 6230(d) for the periods under section 6511(b)(2), (c), and (d)."

(d) VENUE ON APPEAL.—

(1) Paragraph (1) of section 7482(b) is amended by striking "or" at the end of subparagraph (D), by striking the period at the end of subparagraph (E) and inserting ", or", and by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of a petition under section 6234(c)—

"(i) the legal residence of the petitioner if the petitioner is not a corporation, and

"(ii) the place or office applicable under subparagraph (B) if the petitioner is a corporation."

(2) The last sentence of section 7482(b) is amended by striking "or 6228(a)" and inserting "6228(a), or 6234(c)".

(e) OTHER PROVISIONS.—

(1) Subsection (c) of section 7459 is amended by striking "or section 6228(a)" and inserting "6228(a), or 6234(c)".

(2) Subsection (o) of section 6501 is amended by adding at the end thereof the following new paragraph:

"(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years ending after the date of the enactment of this Act.

SEC. 4320. TREATMENT OF PREMATURE PETITIONS FILED BY NOTICE PARTNERS OR 5-PERCENT GROUPS.

(a) IN GENERAL.—Subsection (b) of section 6226 (relating to judicial review of final partnership administrative adjustments) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) TREATMENT OF PREMATURE PETITIONS.—

If—
(A) a petition for a readjustment of partnership items for the taxable year involved is filed by a notice partner (or a 5-percent group) during the 90-day period described in subsection (a), and

(B) no action is brought under paragraph (1) during the 60-day period described therein with respect to such taxable year which is not dismissed,

such petition shall be treated for purposes of paragraph (1) as filed on the last day of such 60-day period."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to petitions filed after the date of the enactment of this Act.

SEC. 4321. BONDS IN CASE OF APPEALS FROM TEFRA PROCEEDING.

(a) IN GENERAL.—Subsection (b) of section 7485 (relating to bonds to stay assessment of collection) is amended—

(1) by inserting "penalties," after "any interest," and

(2) by striking "aggregate of such deficiencies" and inserting "aggregate liability of the parties to the action".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

SEC. 4322. SUSPENSION OF INTEREST WHERE DELAY IN COMPUTATIONAL ADJUSTMENT RESULTING FROM TEFRA SETTLEMENTS.

(a) IN GENERAL.—Subsection (c) of section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment, of tax) is amended by adding at the end thereof the following new sentence: "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to settlements entered into after the date of the enactment of this Act.

Subtitle D—Foreign Provisions

PART I—SIMPLIFICATION OF TREATMENT OF PASSIVE FOREIGN CORPORATIONS

SEC. 4401. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM ACCUMULATED EARNINGS TAX AND PERSONAL HOLDING COMPANY RULES.—

(1) ACCUMULATED EARNINGS TAX.—Subsection (b) of section 532 (relating to exceptions) is amended—

(A) by striking paragraph (2) and inserting the following:

"(2) a foreign corporation, or",

(B) by striking "or" at the end of paragraph (3) and inserting a period, and

(C) by striking paragraph (4).

(2) PERSONAL HOLDING COMPANY RULES.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

"(5) a foreign corporation,"

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting "and" at the end of paragraph (7) (as so redesignated), and

(D) by striking "and" at the end of paragraph (8) (as so redesignated) and inserting a period.

(c) TREATMENT OF CERTAIN SERVICE CONTRACTS UNDER SUBPART F.—

(1) Paragraph (1) of section 954(c) (defining foreign personal holding company income) is amended by adding at the end thereof the following new subparagraph:

"(F) PERSONAL SERVICE CONTRACTS.—

"(i) Amounts received under a contract under which the corporation is to furnish personal

services, if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract.

"(ii) Amounts received from the sale or other disposition of such contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services. For purposes of the preceding sentence, the attribution rules of section 544 shall apply, determined as if any reference to section 543(a)(7) were a reference to this subparagraph."

(2) Clause (iii) of section 904(d)(2)(A) is amended by striking "and" at the end of subclause (III), by striking the period at the end of subclause (IV) and inserting ", and", and by adding at the end thereof the following new subclause:

"(V) any income described in section 954(c)(1)(F) (relating to personal service contracts)."

SEC. 4402. REPLACEMENT FOR PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—Part VI of subchapter P of chapter 1 (relating to treatment of certain passive foreign investment companies) is amended to read as follows:

"PART VI—TREATMENT OF PASSIVE FOREIGN CORPORATIONS

"Subpart A. Current taxation rules.

"Subpart B. Interest on holdings to which subpart A does not apply.

"Subpart C. General provisions.

"Subpart A—Current Taxation Rules

"Sec. 1291. Stock in certain passive foreign corporations marked to market.

"Sec. 1292. Inclusion of income of certain passive foreign corporations.

"SEC. 1291. STOCK IN CERTAIN PASSIVE FOREIGN CORPORATIONS MARKED TO MARKET.

"(a) GENERAL RULE.—In the case of marketable stock in a passive foreign corporation which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person—

"(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall include in gross income for such taxable year an amount equal to the amount of such excess.

"(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

"(A) the amount of such excess, or

"(B) the unreversed inclusions with respect to such stock.

"(b) BASIS ADJUSTMENTS.—

"(1) IN GENERAL.—The adjusted basis of stock in a passive foreign corporation—

"(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

"(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

"(2) SPECIAL RULE FOR STOCK CONSTRUCTIVELY OWNED.—In the case of stock in a passive foreign corporation which the United States

person is treated as owning under subsection (g)—

"(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

"(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

"(c) CHARACTER AND SOURCE RULES.—

"(1) ORDINARY TREATMENT.—

"(A) GAIN.—Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign corporation, shall be treated as ordinary income.

"(B) LOSS.—Any—

"(i) amount allowed as a deduction under subsection (a)(2), and

"(ii) loss on the sale or other disposition of marketable stock in a passive foreign corporation to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

"(2) SOURCE.—The source of any amount included in gross income under subsection (a)(1) (or allowed as a deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign corporation.

"(d) UNREVERSED INCLUSIONS.—For purposes of this section, the term "unreversed inclusions" means, with respect to any stock in a passive foreign corporation, the excess (if any) of—

"(1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over

"(2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1293.

"(e) COORDINATION WITH SECTION 1292.—This section shall not apply with respect to any stock in a passive foreign corporation—

"(1) which is U.S. controlled,

"(2) which is a qualified electing fund with respect to the United States person for the taxable year, or

"(3) in which the United States person is a 25-percent shareholder.

"(f) TREATMENT OF CONTROLLED FOREIGN CORPORATIONS WHICH ARE SHAREHOLDERS IN PASSIVE FOREIGN CORPORATIONS.—In the case of a foreign corporation which is a controlled foreign corporation (or is treated as a controlled foreign corporation under section 1292) and which owns (or is treated under subsection (g) as owning) stock in a passive foreign corporation—

"(1) this section (other than subsection (c)(2) thereof) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

"(2) for purposes of subpart F of part III of subchapter N—

"(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

"(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

"(g) STOCK OWNED THROUGH CERTAIN FOREIGN ENTITIES.—Except as provided in regulations—

"(1) IN GENERAL.—For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(2) TREATMENT OF CERTAIN DISPOSITIONS.—In any case in which a United States person is treated as owning stock in a passive foreign corporation by reason of paragraph (1)—

"(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

"(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign corporation.

"(h) COORDINATION WITH SECTION 851(b).—For purposes of paragraphs (2) and (3) of section 851(b), any amount included in gross income under subsection (a) shall be treated as a dividend.

"(i) TRANSITION RULES.—

"(1) INDIVIDUALS BECOMING SUBJECT TO U.S. TAX.—If any individual becomes a United States person in a taxable year beginning after December 31, 1992, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign corporation owned (or treated as owned under subsection (g)) by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

"(2) MARKETABLE STOCK HELD BEFORE EFFECTIVE DATE.—

"(A) IN GENERAL.—If any marketable stock in a passive foreign corporation is owned (or treated under subsection (g) as owned) by a United States person on the first day of such person's first taxable year, beginning after December 31, 1992—

"(i) paragraph (2) of section 1294(a) shall apply to such stock as if it became marketable during such first taxable year, except that—

"(I) section 1293 shall not apply to the amount included in gross income under subsection (a) to the extent such amount is attributable to increases in fair market value during such first taxable year, and

"(II) the taxpayer's holding period shall be treated as having ended on the last day of the preceding taxable year for purposes of allocating amounts under section 1293(a)(1)(A), and

"(ii) such person may elect to extend the time for the payment of the applicable section 1293 deferred tax as provided in subparagraph (B).

"(B) ELECTION TO EXTEND TIME FOR PAYMENT.—

"(i) IN GENERAL.—At the election of the taxpayer, the time for the payment of the applicable section 1293 deferred tax shall be extended to the extent and subject to the limitations provided in this subparagraph.

"(ii) TERMINATION OF EXTENSION.—

"(1) DISTRIBUTIONS.—If any distribution is received with respect to any stock to which an extension under clause (i) relates and such distribution would be an excess distribution within the meaning of section 1293 if such section applied to such stock, then the extension under clause (i) for the appropriate portion (as determined under regulations) of the applicable section 1293 deferred tax shall expire on the last

day prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which the distribution is received.

“(II) REVERSAL OF INCLUSION.—If an amount is allowable as a deduction under subsection (a)(2) with respect to any stock to which an extension under clause (i) relates and the amount so allowable is allocable to the amount which gave rise to the applicable section 1293 deferred tax, then the extension under clause (i) for the appropriate portion (as determined under regulations) of the applicable section 1293 deferred tax shall expire on the last day prescribed by law (determined without regard to extensions) for filing the return of the tax for the taxable year for which such deduction is allowed.

“(III) DISPOSITIONS, ETC.—If stock in a passive foreign corporation is disposed of during the taxable year, all extensions under clause (i) for payment of the applicable section 1293 deferred tax attributable to such stock which have not expired before the date of such disposition shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such disposition occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a disposition in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the person acquiring such stock in such transaction shall succeed to the treatment under this section of the person making such disposition.

“(iii) OTHER RULES.—

“(I) ELECTION.—The election under clause (i) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the first taxable year referred to in subparagraph (A).

“(II) TREATMENT OF LOANS TO SHAREHOLDER.—For purposes of this subparagraph, any loan by a passive foreign corporation (directly or indirectly) to a shareholder of such corporation shall be treated as a distribution to such shareholder.

“(C) CROSS REFERENCE.—

“For provisions providing for interest for the period of the extension under this paragraph, see section 6601.

“(D) APPLICABLE SECTION 1293 DEFERRED TAX.—For purposes of this paragraph, the term ‘applicable section 1293 deferred tax’ means the deferred tax amount determined under section 1293 with respect to the amount which, but for section 1293, would have been included in gross income for the first taxable year referred to in subparagraph (A). Such term also includes the tax imposed by this chapter for such first taxable year to the extent attributable to the amounts allocated under section 1293(a)(1)(A) to a period described in section 1293(a)(1)(B)(ii).

“(3) SPECIAL RULES FOR REGULATED INVESTMENT COMPANIES.—

“(A) IN GENERAL.—If any marketable stock in a passive foreign corporation is owned (or treated under subsection (g) as owned) by a regulated investment company on the first day of such company's first taxable year beginning after December 31, 1992—

“(i) section 1293 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

“(ii) such company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1293(c)(3) if section 1293 were applied without regard to this subparagraph.

“(B) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

“SEC. 1292. CURRENT INCLUSION OF INCOME OF CERTAIN PASSIVE FOREIGN CORPORATIONS.

“(a) PASSIVE FOREIGN CORPORATIONS WHICH ARE U.S. CONTROLLED.—

“(1) TREATMENT UNDER SUBPART F.—

“(A) IN GENERAL.—If a passive foreign corporation is United States controlled, then for purposes of subpart F of part III of subchapter N—

“(i) such corporation, if not otherwise a controlled foreign corporation, shall be treated as a controlled foreign corporation,

“(ii) the term ‘United States shareholder’ means, with respect to such corporation, any United States person who owns (within the meaning of section 958(a)) any stock in such corporation,

“(iii) the entire gross income of such corporation shall, after being reduced under the principles of paragraph (5) of section 954(b), be treated as foreign base company income, and

“(iv) sections 970 and 971 shall not apply.

Except as provided in regulations, the preceding sentence shall also apply for purposes of section 904(d).

“(B) SPECIAL RULES.—If any taxpayer is treated as being a United States shareholder in a controlled foreign corporation solely by reason of this section—

“(i) section 954(b)(4) (relating to exception for certain income subject to high foreign taxes) shall not apply for purposes of determining the amount included in the gross income of such taxpayer under section 951 by reason of being so treated with respect to such corporation, and

“(ii) the amount so included in the gross income of such taxpayer under section 951 with respect to such corporation shall be treated as long-term capital gain to the extent attributable to the net capital gain of such corporation.

“(2) U.S. CONTROLLED.—For purposes of this subpart, a passive foreign corporation is United States controlled if—

“(A) such corporation is a controlled foreign corporation determined without regard to this subsection, or

“(B) at any time during the taxable year more than 50 percent of—

“(i) the total combined voting power of all classes of stock of such corporation entitled to vote, or

“(ii) the total value of the stock of such corporation,

is owned directly or indirectly by 5 or fewer United States persons.

“(3) CONSTRUCTIVE OWNERSHIP RULES FOR PURPOSES OF PARAGRAPH (2)(B).—For purposes of paragraph (2)(B), the attribution rules provided in section 544 shall apply, determined as if any reference to a personal holding company were a reference to a corporation described in paragraph (2)(B) (and any reference to the stock ownership requirement provided in section 542(a)(2) were a reference to the requirement of paragraph (2)(B)); except that—

“(A) subsection (a)(4) of such section shall be applied by substituting ‘Paragraphs (1), (2), and (3)’ for ‘Paragraphs (2) and (3)’.

“(B) stock owned by a nonresident alien individual shall not be considered by reason of attribution through family membership as owned by a citizen or resident alien individual who is not the spouse of the nonresident alien individual and who does not otherwise own stock in the foreign corporation (determined after the application of such attribution rules other than attribution through family membership), and

“(C) stock of a corporation owned by any foreign person shall not be considered by reason of attribution through partners as owned by a citizen or resident of the United States who does not otherwise own stock in the foreign corporation (determined after the application of such

attribution rules and subparagraph (A), other than attribution through partners).

“(b) TAXPAYERS ELECTING CURRENT INCLUSION AND 25-PERCENT SHAREHOLDERS.—

“(1) IN GENERAL.—If a passive foreign corporation which is not United States controlled is a qualified electing fund with respect to any taxpayer or the taxpayer is a 25-percent shareholder in such corporation, then for purposes of subpart F of part III of subchapter N—

“(A) such passive foreign corporation shall be treated as a controlled foreign corporation with respect to such taxpayer,

“(B) such taxpayer shall be treated as a United States shareholder in such corporation, and

“(C) the modifications of clauses (iii) and (iv) of subsection (a)(1)(A) and of subparagraph (B) of subsection (a)(1) shall apply in determining the amount included under such subpart F in the gross income of such taxpayer (and the character of the amount so included).

For purposes of section 904(d), any amount included in the gross income of the taxpayer under the preceding sentence shall be treated as a dividend from a foreign corporation which is not a controlled foreign corporation.

“(2) QUALIFIED ELECTING FUND.—For purposes of this subpart, the term ‘qualified electing fund’ means any passive foreign corporation if—

“(A) an election by the taxpayer under paragraph (3) applies to such corporation for the taxable year of the taxpayer, and

“(B) such corporation complies with such requirements as the Secretary may prescribe for purposes of carrying out the purposes of this subpart.

“(3) ELECTION.—

“(A) IN GENERAL.—A taxpayer may make an election under this paragraph with respect to any passive foreign corporation for any taxable year of the taxpayer. Such an election, once made with respect to any corporation, shall apply to all subsequent taxable years of the taxpayer with respect to such corporation unless revoked by the taxpayer with the consent of the Secretary.

“(B) WHEN MADE.—An election under this subsection may be made for any taxable year of the taxpayer at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believes that the corporation was not a passive foreign corporation.

“(4) 25-PERCENT SHAREHOLDER.—For purposes of this subpart, the term ‘25-percent shareholder’ means, with respect to any passive foreign corporation, any United States person who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of section 958(b), 25 percent or more (by vote or value) of the stock of such corporation.

“Subpart B—Interest on Holdings To Which Subpart A Does Not Apply

“Sec. 1293. Interest on tax deferral.

“Sec. 1294. Definitions and special rules.

“SEC. 1293. INTEREST ON TAX DEFERRAL.

“(a) TREATMENT OF DISTRIBUTIONS AND STOCK DISPOSITIONS.—

“(1) DISTRIBUTIONS.—If a United States person receives an excess distribution in respect of stock to which this section applies, then—

“(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

“(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

"(i) the current year, or
 "(ii) any period in the taxpayer's holding period before the first day of the first taxable year of the corporation which begins after December 31, 1986, and for which it was a passive foreign corporation, and

"(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

"(2) DISPOSITIONS.—If the taxpayer disposes of stock to which this section applies, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

"(3) DEFINITIONS.—For purposes of this subpart—

"(A) HOLDING PERIOD.—The taxpayer's holding period shall be determined under section 1223; except that—

"(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

"(ii) if section 1291 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1291 so applied.

"(B) CURRENT YEAR.—The term 'current year' means the taxable year in which the excess distribution or disposition occurs.

"(b) EXCESS DISTRIBUTION.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess distribution' means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

"(2) TOTAL EXCESS DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'total excess distribution' means the excess (if any) of—

"(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

"(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer's holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

"(B) NO EXCESS FOR FIRST YEAR.—The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer's holding period in such stock begins.

"(3) ADJUSTMENTS.—Under regulations prescribed by the Secretary—

"(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

"(B) proper adjustments shall be made for stock splits and stock dividends,

"(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

"(D) if the taxpayer's holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

"(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

"(F) proper adjustment shall be made for amounts not includable in gross income by rea-

son of section 959(a) or for which a deduction is allowable under section 245(c), and

"(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign corporation.

For purposes of subparagraph (F), any amount not includable in gross income by reason of section 551(d) (as in effect on January 1, 1992) or 1293(c) (as so in effect) shall be treated as an amount not includable in gross income by reason of section 959(a).

"(c) DEFERRED TAX AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The term 'deferred tax amount' means, with respect to any distribution or disposition to which subsection (a) applies, an amount equal to the sum of—

"(A) the aggregate increases in taxes described in paragraph (2), plus

"(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

"(2) AGGREGATE INCREASES IN TAXES.—For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than the current year) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

"(3) COMPUTATION OF INTEREST.—

"(A) IN GENERAL.—The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

"(i) beginning on the due date for such taxable year, and

"(ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

"(B) DUE DATE.—For purposes of this subsection, the term 'due date' means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

"(C) SPECIAL RULE.—For purposes of determining the amount of interest referred to in paragraph (1)(B), the amount of any increase in tax determined under paragraph (2) shall be determined without regard to any reduction under section 1294(d) for a tax described in paragraph (2)(A)(ii) thereof.

"SEC. 1294. DEFINITIONS AND SPECIAL RULES.

"(a) STOCK TO WHICH SECTION 1293 APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this paragraph, section 1293 shall apply to any stock in a passive foreign corporation unless—

"(A) such stock is marketable stock as of the time of the distribution or disposition involved, or

"(B)(i) with respect to each of such corporation's taxable years which begin after December 31, 1992, and include any portion of the taxpayer's holding period in such stock—

"(I) such corporation was U.S. controlled (within the meaning of section 1292(a)(2)), or

"(II) such corporation was treated as a controlled foreign corporation under section 1292(b) with respect to the taxpayer, and

"(ii) with respect to each of such corporation's taxable years which begin after December

31, 1986, and before January 1, 1993, and include any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part (as in effect on January 1, 1992) with respect to the taxpayer.

"(2) TREATMENT WHERE STOCK BECOMES MARKETABLE.—If any stock in a passive foreign corporation becomes marketable stock after the beginning of the taxpayer's holding period in such stock, section 1293 shall apply to—

"(A) any distributions with respect to, or disposition of, such stock in the taxable year of the taxpayer in which it becomes so marketable, and

"(B) any amount which, but for section 1293, would have been included in gross income under section 1291(a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

"(3) ELECTION TO RECOGNIZE GAIN WHERE COMPANY BECOMES SUBJECT TO CURRENT INCLUSIONS.—

"(A) IN GENERAL.—If—

"(i) a passive foreign corporation first meets the requirements of clause (i) of paragraph (1)(B) with respect to the taxpayer for a taxable year of such taxpayer which begins after December 31, 1992,

"(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

"(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

"(B) ADDITIONAL ELECTION FOR SHAREHOLDER OF CONTROLLED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(1) a passive foreign corporation first meets the requirements of subclause (1) of paragraph (1)(B)(i) with respect to the taxpayer for a taxable year of such taxpayer which begins after December 31, 1992,

"(II) the taxpayer holds stock in such corporation on the first day of such taxable year, and

"(III) such corporation is a controlled foreign corporation without regard to this part,

the taxpayer may elect to be treated as receiving a dividend on such first day in an amount equal to the portion of the post-1986 earnings and profits of such corporation attributable (under regulations prescribed by the Secretary) to the stock in such corporation held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under section 1293(a)(1)(A) only two days during periods taken into account in determining the post-1986 earnings and profits so attributable.

"(ii) POST-1986 EARNINGS AND PROFITS.—For purposes of clause (i), the term 'post-1986 earnings and profits' means earnings and profits which were accumulated in taxable years of the corporation beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the corporation was a passive foreign corporation.

"(iii) COORDINATION WITH SECTION 959(e).—For purposes of section 959(e), any amount treated as a dividend under this subparagraph shall be treated as included in gross income under section 1248(a).

"(C) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) or (B) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

"(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

“(b) RULES RELATING TO STOCK ACQUIRED FROM A DECEDENT.—

“(1) BASIS.—In the case of stock of a passive foreign corporation acquired by bequest, devise, or inheritance (or by the decedent's estate), notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this paragraph).

“(2) DEDUCTION FOR ESTATE TAX.—If stock in a passive foreign corporation is acquired from a decedent, the taxpayer shall, under regulations prescribed by the Secretary, be allowed (for the taxable year of the sale or exchange) a deduction from gross income equal to that portion of the decedent's estate tax deemed paid which is attributable to the excess of (A) the value at which such stock was taken into account for purposes of determining the value of the decedent's gross estate, over (B) the basis determined under paragraph (1).

“(3) EXCEPTIONS.—This subsection shall not apply to any stock in a passive foreign corporation if—

“(A) section 1293 would not have applied to a disposition of such stock by the decedent immediately before his death, or

“(B) the decedent was a nonresident alien at all times during his holding period in such stock.

“(c) RECOGNITION OF GAIN.—Except as otherwise provided in regulations, in the case of any transfer of stock in a passive foreign company to which section 1293 applies, where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

“(1) the fair market value of such stock, over

“(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of property for gain recognized under the preceding sentence.

“(d) COORDINATION WITH FOREIGN TAX CREDIT RULES.—

“(1) IN GENERAL.—If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign corporation—

“(A) the amount of such distribution shall be determined for purposes of section 1293 with regard to section 78,

“(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

“(C) to the extent—

“(i) that such excess distribution taxes are allocated to a taxable year referred to in section 1293(a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

“(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904 and not below zero) the increase in tax determined under section 1293(c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) CREDITABLE FOREIGN TAXES.—The term ‘creditable foreign taxes’ means, with respect to any distribution—

“(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

“(ii) any withholding tax imposed with respect to such distribution,

but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

“(B) EXCESS DISTRIBUTION TAXES.—The term ‘excess distribution taxes’ means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

“(C) SECTION 1248 GAIN.—The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.

“(e) ATTRIBUTION OF OWNERSHIP.—For purposes of this subpart—

“(1) ATTRIBUTION TO UNITED STATES PERSONS.—This subsection—

“(A) shall apply to the extent that the effect is to treat stock of a passive foreign corporation as owned by a United States person, and

“(B) except as provided in paragraph (3) or in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

“(2) CORPORATIONS.—

“(A) IN GENERAL.—If 50 percent or more in value of the stock of a corporation (other than an S corporation) is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

“(B) 50-PERCENT LIMITATION NOT TO APPLY IN CERTAIN CASES.—For purposes of determining whether a shareholder of a passive foreign corporation (or whether a United States shareholder of a controlled foreign corporation which is not a passive foreign corporation) is treated as owning stock owned directly or indirectly by or for such corporation, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein.

“(C) FAMILY AND PARTNER ATTRIBUTION FOR 50-PERCENT LIMITATION.—For purposes of determining whether the 50-percent limitation of subparagraph (A) is met, the constructive ownership rules of section 544(a)(2) shall apply in addition to the other rules of this subsection.

“(3) PARTNERSHIPS, ETC.—Except as provided in regulations, stock owned, directly or indirectly, by or for a partnership, S corporation, estate, or trust shall be considered as being owned proportionately by its partners, shareholders, or beneficiaries (as the case may be).

“(4) OPTIONS.—To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

“(5) SUCCESSIVE APPLICATION.—Stock considered to be owned by a person by reason of the application of paragraph (2), (3), or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

“(f) OTHER SPECIAL RULES.—For purposes of this subpart—

“(1) TIME FOR DETERMINATION.—Stock held by a taxpayer shall be treated as stock in a passive foreign corporation if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign corporation. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign corporation) under rules similar to the rules of subsection (a)(3)(A).

“(2) APPLICATION OF SUBPART WHERE STOCK HELD BY OTHER ENTITY.—Under regulations—

“(A) IN GENERAL.—In any case in which a United States person is treated as owning stock

in a passive foreign corporation by reason of subsection (e)—

“(i) any transaction which results in the United States person being treated as no longer owning such stock,

“(ii) any disposition of such stock by the person owning such stock, and

“(iii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign corporation.

“(B) AMOUNT TREATED IN SAME MANNER AS PREVIOUSLY TAXED INCOME.—Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) in respect of stock which the taxpayer is treated as owning under subsection (e).

“(C) COORDINATION WITH SECTION 951.—If, but for this subparagraph, an amount would be taken into account under section 1293 by reason of subparagraph (A) and such amount would also be included in the gross income of the taxpayer under section 951, such amount shall only be taken into account under section 1293.

“(3) DISPOSITIONS.—Except as provided in regulations, if a taxpayer uses any stock in a passive foreign corporation as security for a loan, the taxpayer shall be treated as having disposed of such stock.

“Subpart C—General Provisions

“Sec. 1296. Passive foreign corporation.

“Sec. 1297. Special rules.

“SEC. 1296. PASSIVE FOREIGN CORPORATION.

“(a) IN GENERAL.—For purposes of this part, except as otherwise provided in this subpart, the term ‘passive foreign corporation’ means any foreign corporation if—

“(1) 60 percent or more of the gross income of such corporation for the taxable year is passive income,

“(2) the average percentage of assets (by value) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent, or

“(3) such corporation is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), either as a management company or as a unit investment trust.

A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.

“(b) PASSIVE INCOME.—For purposes of this section—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the term ‘passive income’ means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c) without regard to paragraph (3) thereof.

“(2) EXCEPTIONS.—Except as provided in regulations, the term ‘passive income’ does not include any income—

“(A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

“(B) derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation,

“(C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

“(D) any foreign trade income of a FSC.

For purposes of subparagraph (C), the term ‘related person’ has the meaning given such term by section 954(d)(3) determined by substituting ‘foreign corporation’ for ‘controlled foreign corporation’ each place it appears in section 954(d)(3).

“(3) TREATMENT OF INCOME FROM CERTAIN ASSETS.—To the extent that any asset is properly treated as not held for the production of passive income for purposes of subsection (a)(2), all income from such asset shall be treated as income which is not passive income.

“(c) LOOK-THROUGH IN CASE OF 25-PERCENT OWNED CORPORATION.—If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign corporation, such foreign corporation shall be treated as if it—

“(1) held its proportionate share of the assets of such other corporation, and

“(2) received directly its proportionate share of the income of such other corporation.

“SEC. 1297. SPECIAL RULES.

“(a) UNITED STATES PERSON.—For purposes of this part, the term ‘United States person’ has the meaning given to such term by section 7701(a)(30).

“(b) CONTROLLED FOREIGN CORPORATION.—For purposes of this part, the term ‘controlled foreign corporation’ has the meaning given such term by section 957(a).

“(c) MARKETABLE STOCK.—For purposes of this part—

“(1) IN GENERAL.—The term ‘marketable stock’ means—

“(A) any stock which is regularly traded on—

“(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

“(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part, and

“(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value.

“(2) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign corporation which it owns (or is treated under section 1291(g) as owning) shall be treated as marketable stock for purposes of this part. Except as provided in regulations, a similar rule shall apply in the case of any other regulated investment company.

“(d) OTHER SPECIAL RULES.—For purposes of this part—

“(1) CERTAIN CORPORATIONS NOT TREATED AS PASSIVE.—A corporation shall not be treated as a passive foreign corporation for the 1st taxable year such corporation has gross income (hereinafter in this paragraph referred to as the ‘start-up year’) if—

“(A) no predecessor of such corporation was a passive foreign corporation,

“(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign corporation for either of the 1st 2 taxable years following the start-up year, and

“(C) such corporation is not a passive foreign corporation for either of the 1st 2 taxable years following the start-up year.

“(2) CERTAIN CORPORATIONS CHANGING BUSINESSES.—A corporation shall not be treated as a

passive foreign corporation for any taxable year if—

“(A) neither such corporation (nor any predecessor) was a passive foreign corporation for any prior taxable year,

“(B) it is established to the satisfaction of the Secretary that—

“(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

“(ii) such corporation will not be a passive foreign corporation for either of the 1st 2 taxable years following the taxable year, and

“(C) such corporation is not a passive foreign corporation for either of such 2 taxable years.

For purposes of section 1296(c), any passive income referred to in subparagraph (B)(i) shall be treated as income which is not passive income and any assets which produce income so described shall be treated as assets producing income other than passive income.

“(3) TREATMENT OF CERTAIN FOREIGN CORPORATIONS OWNING STOCK IN 25-PERCENT OWNED DOMESTIC CORPORATION.—

“(A) IN GENERAL.—If a foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation, for purposes of determining whether such foreign corporation is a passive foreign corporation, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

“(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term ‘qualified stock’ means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

“(4) TREATMENT OF CORPORATION WHICH WAS A PFIC.—A corporation shall be treated as a passive foreign corporation for any taxable year beginning before January 1, 1993, if and only if such corporation was a passive foreign investment company under this part as in effect for such taxable year.

“(5) SEPARATE INTERESTS TREATED AS SEPARATE CORPORATIONS.—Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

“(e) TREATMENT OF CERTAIN LEASED PROPERTY.—For purposes of section 1296(a)(2)—

“(1) IN GENERAL.—Any tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

“(2) DETERMINATION OF VALUE.—

“(A) IN GENERAL.—The value of any asset to which paragraph (1) applies shall be the lesser of—

“(i) the fair market value of such property, or

“(ii) the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

“(B) PRESENT VALUE.—For purposes of subparagraph (A), the present value of payments described in subparagraph (A)(ii) shall be determined in the manner provided in regulations prescribed by the Secretary—

“(i) as of the beginning of the lease term, and

“(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

“(I) by substituting the lease term for the term of the debt instrument, and

“(II) without regard to paragraph (2) or (3) thereof.

“(3) EXCEPTIONS.—This subsection shall not apply in any case where—

“(A) the lessor is a related person (as defined in the last sentence of section 1296(b)(2)) with respect to the foreign corporation, or

“(B) a principal purpose of leasing the property was to avoid the provisions of this part.

“(f) ELECTION BY CERTAIN PASSIVE FOREIGN CORPORATIONS TO BE TREATED AS A DOMESTIC CORPORATION.—

“(1) IN GENERAL.—For purposes of this title, if—

“(A) a passive foreign corporation would qualify as a regulated investment company under part I of subchapter M if such passive foreign corporation were a domestic corporation,

“(B) such passive foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this title on such passive foreign corporation are paid, and

“(C) such passive foreign corporation makes an election to have this paragraph apply and waives all benefits which are granted by the United States under any treaty and to which such corporation would otherwise be entitled by reason of being a resident of another country, such corporation shall be treated as a domestic corporation.

“(2) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2), (3), (4)(A), and (5) of section 953(d) shall apply with respect to any corporation making an election under paragraph (1).

“(g) SPECIAL RULES FOR CERTAIN TAXPAYERS.—

“(1) TAX-EXEMPT ORGANIZATIONS.—In the case of any organization exempt from tax under section 501—

“(A) this part shall apply to any stock in a passive foreign corporation owned (or treated as owned under section 1294(e)) by such organization only to the extent that a dividend on such stock would be taken into account in determining the unrelated business taxable income of such organization, and

“(B) to the extent that this part applies to any such stock, this part shall be applied in the same manner as if such organization were not exempt from tax under section 501(a).

“(2) TREATMENT OF STOCK HELD BY POOLED INCOME FUND.—If stock in a passive foreign corporation is owned (or treated as owned under section 1294(e)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

“(A) section 1293 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1293) a deduction would be allowable with respect to such gain under section 642(c)(3),

“(B) subpart A shall not apply with respect to such stock, and

“(C) in determining whether section 1293 applies to any distribution in respect of such stock, such stock shall be treated as failing to qualify for the exceptions under section 1294(a)(1).

“(h) INFORMATION FROM SHAREHOLDERS.—Every United States person who owns stock in any passive foreign corporation shall furnish with respect to such corporation such information as the Secretary may prescribe.

“(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations—

“(1) providing that gross income shall be determined without regard to section 1293 for such purposes as may be specified in such regulations, and

“(2) to prevent avoidance of the provisions of this part through changes in citizenship or residence status.”

(b) **INSTALLMENT SALES TREATMENT NOT AVAILABLE.**—Paragraph (2) of section 453(k) is amended by striking “or” at the end of subparagraph (A), by inserting “or” at the end of subparagraph (B), and by adding at the end thereof the following new subparagraph:

“(C) stock in a passive foreign corporation (as defined in section 1296) if section 1293 applies to such sale.”

(c) **TREATMENT OF MARK-TO-MARKET GAIN UNDER SECTION 4982.**—

(1) Subsection (e) of section 4982 is amended by adding at the end thereof the following new paragraph:

“(6) **TREATMENT OF GAIN RECOGNIZED UNDER SECTION 1291.**—For purposes of determining a regulated investment company’s ordinary income—

“(A) notwithstanding paragraph (1)(C), section 1291 shall be applied as if such company’s taxable year ended on October 31, and

“(B) any ordinary gain or loss from an actual disposition of stock in a passive foreign corporation during the portion of the calendar year after October 31 shall be taken into account in determining such company’s ordinary income for the following calendar year.

In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company’s taxable year for October 31.”

(2) Subsection (b) of section 852 is amended by adding at the end thereof the following new paragraph:

“(10) **SPECIAL RULE FOR CERTAIN LOSSES ON STOCK IN PASSIVE FOREIGN CORPORATIONS.**—To the extent provided in regulations, the taxable income of a regulated investment company (other than a company to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in the value of any stock of a passive foreign corporation to which section 1291 applies occurring after October 31 of the taxable year, and any such reduction shall be treated as occurring on the first day of the following taxable year.”

(3) Subsection (c) of section 852 is amended by inserting after “October 31 of such year” the following: “, without regard to any net reduction in the value of any stock of a passive foreign corporation to which section 1291 applies occurring after December 31 of such year.”

(d) **TREATMENT OF CERTAIN PREVIOUSLY TAXED AMOUNTS.**—Subsection (e) of section 959 is amended—

(1) by adding at the end thereof the following new sentence: “A similar rule shall apply in the case of amounts included in gross income under section 1293 (as in effect on January 1, 1992).”, and

(2) by striking “AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248” in the subsection heading and inserting “CERTAIN PREVIOUSLY TAXED AMOUNTS”.

SEC. 4403. TECHNICAL AND CONFORMING AMENDMENTS.

(a) **GENERAL RULE.**—

(1) Paragraph (2) of section 171(c) is amended—

(A) by striking “, or by a foreign personal holding company, as defined in section 552”, and

(B) by striking “, or a foreign personal holding company”.

(2) Section 312 is amended by striking subsection (j).

(3) Subsection (m) of section 312 is amended by striking “, a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)” and inserting “or a passive foreign corporation (as defined in section 1296)”.

(4) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating

paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(5) Clause (ii) of section 465(c)(7)(B) is amended to read as follows:

“(ii) a passive foreign corporation with respect to which the stock ownership requirements of section 1292(a)(2)(B) are met, or”.

(6) Subsection (b) of section 535 is amended by striking paragraph (9).

(7) Subsection (d) of section 535 is hereby repealed.

(8) Paragraph (1) of section 543(b) is amended by inserting “and” at the end of subparagraph (A), by striking “, and” at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(9) Paragraph (1) of section 562(b) is amended by striking “or a foreign personal holding company described in section 552”.

(10) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking “subsection (a), (b), or (c)” in subsection (c) (as so redesignated) and inserting “subsection (a) or (b)”.

(11) Paragraph (2) of section 751(d) is amended by striking “subsection (a) of section 1246 (relating to gain on foreign investment company stock)” and inserting “section 1291 (relating to stock in certain passive foreign corporations marked to market)”.

(12) Subsection (b) of section 851 is amended by striking the sentence following paragraph (4)(B) which contains a reference to section 1293(a).

(13) Subsection (d) of section 904 is amended by striking paragraphs (2)(A)(ii), (2)(E)(iii), and (3)(1).

(14)(A) Subparagraph (A) of section 904(g)(1) is amended to read as follows:

“(A) Any amount included in gross income under section 951(a) (relating to amounts included in gross income of United States shareholders).”

(B) The paragraph heading of paragraph (2) of section 904(g) is amended by striking “AND FOREIGN PERSONAL HOLDING OR PASSIVE FOREIGN INVESTMENT COMPANY”.

(15) Section 951 is amended by striking subsections (c), (d), and (f), and by redesignating subsection (e) as subsection (c).

(16) Paragraph (1) of section 986(c) is amended by striking “or 1293(c)”.

(17) Paragraph (3) of section 989(b) is amended by striking “, 551(a), or 1293(a)”.

(18) Paragraph (5) of section 1014(b) is hereby repealed.

(19) Subsection (a) of section 1016 is amended by striking paragraph (13) and by redesignating the following paragraphs accordingly.

(20) Paragraph (3) of section 1212(a) is amended—

(A) by striking subparagraph (A),

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(C) by amending subparagraph (D) to read as follows:

“(C) for which it is a passive foreign corporation.”

(21) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(22) Subsection (d) of section 1248 is amended by striking paragraphs (5) and (7).

(23)(A) Subsection (a) of section 6035 is amended by striking “foreign personal holding company (as defined in section 552)” and inserting “passive foreign corporation with respect to which the stock ownership requirements of section 1292(a)(2)(B) are met”.

(B) The section heading for section 6035 is amended by striking “foreign personal holding

companies” and inserting “closely held passive foreign corporations”.

(C) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking “foreign personal holding companies” in the item relating to section 6035 and inserting “closely-held passive foreign corporations”.

(24) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(25) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

“(B) **CONSTRUCTIVE DIVIDENDS.**—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.”

(26) Section 4947 and section 4948(c)(4) are each amended by striking “556(b)(2),” each place it appears.

(b) **CLERICAL AMENDMENTS.**—

(1) The table of parts for subchapter G of chapter I is amended by striking the item relating to part III.

(2) The table of sections for part IV of subchapter P of chapter I is amended by striking the items relating to sections 1246 and 1247.

(3) The table of parts for subchapter P of chapter I is amended by striking the item relating to part VI and inserting the following:

“Part VI. Treatment of passive foreign corporations.”

SEC. 4404. EFFECTIVE DATE.

(a) **GENERAL RULE.**—Except as otherwise provided in this section, the amendments made by this part shall apply to—

(1) taxable years of United States persons beginning after December 31, 1992, and

(2) taxable years of foreign corporations ending with or within such taxable years of United States persons.

(b) **DENIAL OF INSTALLMENT SALES TREATMENT.**—The amendment made by section 3402(b) shall apply to dispositions after December 31, 1992.

(c) **BASIS RULE.**—The amendments made by this part shall not affect the determination of the basis of any stock acquired from a decedent in a taxable year beginning before January 1, 1993.

PART II—TREATMENT OF CONTROLLED FOREIGN CORPORATIONS

SEC. 4411. GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.

(a) **GENERAL RULE.**—Section 964 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new subsection:

“(f) **GAIN ON CERTAIN STOCK SALES BY CONTROLLED FOREIGN CORPORATIONS TREATED AS DIVIDENDS.**—

“(1) **IN GENERAL.**—If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

“(2) **SAME COUNTRY EXCEPTION NOT APPLICABLE.**—Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

“(3) **CLARIFICATION OF DEEMED SALES.**—For purposes of this subsection, a controlled foreign

corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock."

(b) AMENDMENT OF SECTION 904(d).—Clause (i) of section 904(d)(2)(E) is amended by striking "and except as provided in regulations, the taxpayer was a United States shareholder in such corporation".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to gain recognized on transactions occurring after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to distributions after the date of the enactment of this Act.

SEC. 4412. AUTHORITY TO PRESCRIBE SIMPLIFIED METHOD FOR APPLYING SECTION 960(b)(2).

(a) GENERAL RULE.—Paragraph (2) of section 960(b) is amended by adding at the end thereof the following new sentence: "The Secretary may prescribe regulations requiring the use of simplified methods set forth in such regulations for determining the amount of the increase referred to in the preceding sentence."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4413. MISCELLANEOUS MODIFICATIONS TO SUBPART F.

(a) SECTION 1248 GAIN TAKEN INTO ACCOUNT IN DETERMINING PRO RATA SHARE.—

(1) IN GENERAL.—Paragraph (2) of section 951(a) (defining pro rata share of subpart F income) is amended by adding at the end thereof the following new sentence: "For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to dispositions after the date of the enactment of this Act.

(b) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—

(1) IN GENERAL.—Section 961 (relating to adjustments to basis of stock in controlled foreign corporations and of other property) is amended by adding at the end thereof the following new subsection:

"(c) BASIS ADJUSTMENTS IN STOCK HELD BY FOREIGN CORPORATION.—Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 959(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1992.

(c) DETERMINATION OF PREVIOUSLY TAXED INCOME IN SECTION 304 DISTRIBUTIONS, ETC.—

(1) IN GENERAL.—Section 959 (relating to exclusion from gross income of previously taxed

earnings and profits) is amended by adding at the end thereof the following new subsection:

"(f) ADJUSTMENTS FOR CERTAIN TRANSACTIONS.—If by reason of—

"(1) a transaction to which section 304 applies,

"(2) the structure of a United States shareholder's holdings in controlled foreign corporations, or

"(3) other circumstances, there would be a multiple inclusion of any item in income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of this subpart, the Secretary may prescribe regulations providing such modifications in the application of this subpart as may be necessary to eliminate such multiple inclusion or provide such basis adjustment, as the case may be."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) CLARIFICATION OF TREATMENT OF BRANCH TAX EXEMPTIONS OR REDUCTIONS.—

(1) IN GENERAL.—Subsection (b) of section 952 is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

PART III—OTHER PROVISIONS

SEC. 4421. EXCHANGE RATE USED IN TRANSLATING FOREIGN TAXES.

(a) ACCRUED TAXES TRANSLATED BY USING AVERAGE RATE FOR YEAR TO WHICH TAXES RELATE.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to translation of foreign taxes) is amended to read as follows:

"(a) FOREIGN INCOME TAXES.—

"(1) TRANSLATION OF ACCRUED TAXES.—

"(A) IN GENERAL.—For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

"(B) EXCEPTION FOR TAXES NOT PAID WITHIN FOLLOWING 2 YEARS.—

"(i) Subparagraph (A) shall not apply to any foreign income taxes paid after the date 2 years after the close of the taxable year to which such taxes relate.

"(ii) Subparagraph (A) shall not apply to taxes paid before the beginning of the taxable year to which such taxes relate.

"(C) EXCEPTION FOR INFLATIONARY CURRENCIES.—To the extent provided in regulations, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency determined to be an inflationary currency under such regulations.

"(D) CROSS REFERENCE.—

"For adjustments where tax is not paid within 2 years, see section 905(c).

"(2) TRANSLATION OF TAXES TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) of paragraph (1) does not apply—

"(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of such taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

"(3) FOREIGN INCOME TAXES.—For purposes of this subsection, the term 'foreign income taxes' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States."

(2) ADJUSTMENT WHEN NOT PAID WITHIN 2 YEARS AFTER YEAR TO WHICH TAXES RELATE.—Subsection (c) of section 905 is amended to read as follows:

"(c) ADJUSTMENTS TO ACCRUED TAXES.—

"(1) IN GENERAL.—If—

"(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

"(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

"(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

"(2) SPECIAL RULE FOR TAXES NOT PAID WITHIN 2 YEARS.—In making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1). Any such taxes if subsequently paid shall be taken into account for the taxable year in which paid and no redetermination under this section shall be made on account of such payment.

"(3) ADJUSTMENTS.—The amount of tax due on any redetermination under paragraph (1) (if any) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

"(4) BOND REQUIREMENTS.—In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

"(5) OTHER SPECIAL RULES.—In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period."

(b) AUTHORITY TO USE AVERAGE RATES.—

(1) IN GENERAL.—Subsection (a) of section 986 (relating to foreign taxes) is amended by adding at the end thereof the following new paragraph:

"(3) AUTHORITY TO PERMIT USE OF AVERAGE RATES.—To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment."

(2) DETERMINATION OF AVERAGE RATES.—Subsection (c) of section 989 is amended by striking

"and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(6) setting forth procedures for determining the average exchange rate for any period."

(3) CONFORMING AMENDMENTS.—Subsection (b) of section 989 is amended by striking "weight- ed" each place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after December 31, 1991.

SEC. 4422. ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION FOR ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subsection (a) of section 59 (relating to alternative minimum tax foreign tax credit) is amended by adding at the end thereof the following new paragraph:

"(3) ELECTION TO USE SIMPLIFIED SECTION 904 LIMITATION.—

"(A) IN GENERAL.—In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

"(i) subparagraph (B) of paragraph (1) shall not apply, and

"(ii) the limitation of section 904 shall be based on the proportion which—

"(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

"(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

"(B) ELECTION.—

"(i) IN GENERAL.—An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1992, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

"(ii) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 4423. MODIFICATION OF SECTION 1491.

(a) GENERAL RULE.—So much of chapter 5 (relating to tax on transfers to avoid income tax) as precedes section 1492 is amended to read as follows:

"CHAPTER 5—TREATMENT OF TRANSFERS TO AVOID INCOME TAX

"Sec. 1491. Recognition of gain.

"Sec. 1492. Exceptions.

"SEC. 1491. RECOGNITION OF GAIN.

"In the case of any transfer of property by a United States person to a foreign corporation as paid-in surplus or as a contribution to capital, to a foreign estate or trust, or to a foreign partnership, for purposes of this subtitle, such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

"(1) the fair market value of the property so transferred, over

"(2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor."

(b) CONFORMING AMENDMENTS.—

(1) Section 1057 is hereby repealed.

(2) Section 1492 is amended to read as follows:

"SEC. 1492. EXCEPTIONS.

"The provisions of section 1491 shall not apply—

"(1) if the transferee is an organization exempt from income tax under part I of subchapter

F of chapter 1 (other than an organization described in section 401(a)).

"(2) To a transfer described in section 367, or

"(3) To any other transfer, to the extent provided in regulations in accordance with principles similar to the principles of section 367 or otherwise consistent with the purpose of section 1491."

(3) Section 1494 is hereby repealed.

(4) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1057.

(5) The table of chapters for subtitle A is amended by striking "Tax on" in the item relating to chapter 5 and inserting "Treatment of".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after the date of the enactment of this Act.

SEC. 4424. MODIFICATION OF SECTION 367(b).

(a) GENERAL RULE.—Paragraph (1) of section 367(b) is amended to read as follows:

"(1) IN GENERAL.—In the case of any transaction described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a general condition for nonrecognition by 1 or more of the parties to the transaction, income shall be required to be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This subsection shall not apply to a transaction in which the foreign corporation is not treated as a corporation under subsection (a)(1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transfers after December 31, 1993.

Subtitle E—Other Income Tax Provisions

PART I—PROVISIONS RELATING TO SUBCHAPTER S CORPORATIONS

SEC. 4501. DETERMINATION OF WHETHER CORPORATION HAS 1 CLASS OF STOCK.

(a) GENERAL RULE.—Paragraph (4) of section 1361(c) is amended to read as follows:

"(4) DETERMINATION OF WHETHER CORPORATION HAS 1 CLASS OF STOCK.—For purposes of subsection (b)(1)(D), a corporation shall be treated as having 1 class of stock if all outstanding shares of stock of the corporation confer identical rights to distributions and liquidation proceeds. The preceding sentence shall apply whether or not there are differences in voting rights among such shares."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1982.

SEC. 4502. AUTHORITY TO VALIDATE CERTAIN INVALID ELECTIONS.

(a) GENERAL RULE.—Subsection (f) of section 1362 (relating to inadvertent terminations) is amended to read as follows:

"(f) INADVERTENT INVALID ELECTIONS OR TERMINATIONS.—If—

"(1) an election under subsection (a) by any corporation—

"(A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or

"(B) was terminated under paragraph (2) or (3) of subsection (d),

"(2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent,

"(3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken—

"(A) so that the corporation is a small business corporation, or

"(B) to acquire the required shareholder consents, and

"(4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary."

(b) LATE ELECTIONS.—Subsection (b) of section 1362 is amended by adding at the end thereof the following new paragraph:

"(5) AUTHORITY TO TREAT LATE ELECTIONS AS TIMELY.—If—

"(A) an election under subsection (a) is made for any taxable year (determined without regard to paragraph (3)) after the date prescribed by this subsection for making such election for such taxable year, and

"(B) the Secretary determines that there was reasonable cause for the failure to timely make such election,

the Secretary may treat such election as timely made for such taxable year (and paragraph (3) shall not apply)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to elections for taxable years beginning after December 31, 1982.

SEC. 4503. TREATMENT OF DISTRIBUTIONS DURING LOSS YEARS.

(a) ADJUSTMENTS FOR DISTRIBUTIONS TAKEN INTO ACCOUNT BEFORE LOSSES.—

(1) Subparagraph (A) of section 1366(d)(1) is amended by striking "paragraph (1)" and inserting "paragraphs (1) and (2)(A)".

(2) Subsection (d) of section 1368 is amended by adding at the end thereof the following new sentence:

"In the case of any distribution made during any taxable year, the adjusted basis of the stock shall be determined with regard to the adjustments provided in paragraph (1) of section 1367(a) for the taxable year."

(b) ACCUMULATED ADJUSTMENTS ACCOUNT.—Paragraph (1) of section 1368(e) (relating to accumulated adjustments account) is amended by adding at the end thereof the following new subparagraph:

"(C) NET LOSS FOR YEAR DISREGARDED.—

"(i) IN GENERAL.—In applying this section to distributions made during any taxable year, the amount in the accumulated adjustments account as of the close of such taxable year shall be determined without regard to any net negative adjustment for such taxable year.

"(ii) NET NEGATIVE ADJUSTMENT.—For purposes of clause (i), the term "net negative adjustment" means, with respect to any taxable year, the excess (if any) of—

"(I) the reductions in the account for the taxable year (other than for distributions), over

"(II) the increases in such account for such taxable year."

(c) CONFORMING AMENDMENTS.—Subparagraph (A) of section 1368(e)(1) is amended—

(1) by striking "as provided in subparagraph (B)" and inserting "as otherwise provided in this paragraph", and

(2) by striking "section 1367(b)(2)(A)" and inserting "section 1367(a)(2)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 1991.

SEC. 4504. OTHER MODIFICATIONS.

(a) TREATMENT OF S CORPORATIONS UNDER SUBCHAPTER C.—Subsection (a) of section 1371 (relating to application of subchapter C rules) is amended to read as follows:

"(a) APPLICATION OF SUBCHAPTER C RULES.—Except as otherwise provided in this title, and except to the extent inconsistent with this sub-

chapter, subchapter C shall apply to an S corporation and its shareholders."

(b) S CORPORATIONS PERMITTED TO HOLD SUBSIDIARIES.—

(1) IN GENERAL.—Paragraph (2) of section 1361(b) (defining ineligible corporation) is amended by striking subparagraph (A) and by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Subsection (c) of section 1361 is amended by striking paragraph (6).

(B) Subsection (b) of section 1504 (defining includible corporation) is amended by adding at the end thereof the following new paragraph:

"(8) An S corporation."

(c) ELIMINATION OF PRE-1983 EARNINGS AND PROFITS.—

(1) IN GENERAL.—If—

(A) a corporation was an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1983, and

(B) such corporation is an S corporation under subchapter S of chapter 1 of such Code for its first taxable year beginning after December 31, 1991,

the amount of such corporation's accumulated earnings and profits (as of the beginning of such first taxable year) shall be reduced by an amount equal to the portion (if any) of such accumulated earnings and profits which were accumulated in any taxable year beginning before January 1, 1983, for which such corporation was an electing small business corporation under such subchapter S.

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (3) of section 1362(d) is amended—

(i) by striking "subchapter C" in the paragraph heading and inserting "accumulated",

(ii) by striking "subchapter C" in subparagraph (A)(i)(I) and inserting "accumulated", and

(iii) by striking subparagraph (B) and redesignating the following subparagraphs accordingly.

(B)(i) Subsection (a) of section 1375 is amended by striking "subchapter C" in paragraph (1) and inserting "accumulated".

(ii) Paragraph (3) of section 1375(b) is amended to read as follows:

"(3) PASSIVE INVESTMENT INCOME, ETC.—The terms 'passive investment income' and 'gross receipts' have the same respective meanings as when used in paragraph (3) of section 1362(d)."

(iii) The section heading for section 1375 is amended by striking "subchapter c" and inserting "accumulated".

(iv) The table of sections for part III of subchapter S of chapter 1 is amended by striking "subchapter C" in the item relating to section 1375 and inserting "accumulated".

(C) Clause (i) of section 1042(c)(4)(A) is amended by striking "section 1362(d)(3)(D)" and inserting "section 1362(d)(3)(C)".

(d) ADJUSTMENTS TO BASIS OF INHERITED S STOCK TO REFLECT CERTAIN ITEMS OF INCOME.—Subsection (b) of section 1367 (relating to adjustments to basis of stock of shareholders, etc.) is amended by adding at the end thereof the following new paragraph:

"(4) ADJUSTMENTS IN CASE OF INHERITED STOCK.—

"(A) IN GENERAL.—If any person acquires stock in an S corporation by reason of the death of a decedent or by bequest, devise, or inheritance, section 691 shall be applied with respect to any item of income of the S corporation in the same manner as if the decedent had held directly his pro rata share of such item.

"(B) ADJUSTMENTS TO BASIS.—The basis determined under section 1014 of any stock in an S

corporation shall be reduced by the portion of the value of the stock which is attributable to items constituting income in respect of the decedent."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1991.

(2) SUBSECTION (d).—The amendment made by subsection (d) shall apply in the case of decedents dying after the date of the enactment of this Act.

PART II—ACCOUNTING PROVISIONS

SEC. 4511. MODIFICATIONS TO LOOK-BACK METHOD FOR LONG-TERM CONTRACTS.

(a) LOOK-BACK METHOD NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 460 (relating to percentage of completion method) is amended by adding at the end thereof the following new paragraph:

"(6) ELECTION TO HAVE LOOK-BACK METHOD NOT APPLY IN DE MINIMIS CASES.—

"(A) AMOUNTS TAKEN INTO ACCOUNT AFTER COMPLETION OF CONTRACT.—Paragraph (1)(B) shall not apply with respect to any taxable year (beginning after the taxable year in which the contract is completed) if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of such taxable year, is within

"(ii) 10 percent of the cumulative look-back taxable income (or loss) under the contract as of the close of the most recent taxable year to which paragraph (1)(B) applied (or would have applied but for subparagraph (B)).

"(B) DE MINIMIS DISCREPANCIES.—Paragraph (1)(B) shall not apply in any case to which it would otherwise apply if—

"(i) the cumulative taxable income (or loss) under the contract as of the close of each prior contract year, is within

"(ii) 10 percent of the cumulative look-back income (or loss) under the contract as of the close of such prior contract year.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) CONTRACT YEAR.—The term 'contract year' means any taxable year for which income is taken into account under the contract.

"(ii) LOOK-BACK INCOME OR LOSS.—The look-back income (or loss) is the amount which would be the taxable income (or loss) under the contract if the allocation method set forth in paragraph (2)(A) were used in determining taxable income.

"(iii) DISCOUNTING NOT APPLICABLE.—The amounts taken into account after the completion of the contract shall be determined without regard to any discounting under the 2nd sentence of paragraph (2).

"(D) CONTRACTS TO WHICH PARAGRAPH APPLIES.—This paragraph shall only apply if the taxpayer makes an election under this subparagraph. Unless revoked with the consent of the Secretary, such an election shall apply to all long-term contracts completed during the taxable year for which such election is made or during any subsequent taxable year."

(b) MODIFICATION OF INTEREST RATE.—

(1) IN GENERAL.—Subparagraph (C) of section 460(b)(2) is amended by striking "the overpayment rate established by section 6621" and inserting "the adjusted overpayment rate (as defined in paragraph (7))".

(2) ADJUSTED OVERPAYMENT RATE.—Subsection (b) of section 460 is amended by adding at the end thereof the following new paragraph:

"(7) ADJUSTED OVERPAYMENT RATE.—

"(A) IN GENERAL.—The adjusted overpayment rate for any interest accrual period is the overpayment rate in effect under section 6621 for the calendar quarter in which such interest accrual period begins.

"(B) INTEREST ACCRUAL PERIOD.—For purposes of subparagraph (A), the term 'interest accrual period' means the period—

"(i) beginning on the day after the return due date for any taxable year of the taxpayer, and

"(ii) ending on the return due date for the following taxable year.

For purposes of the preceding sentence, the term 'return due date' means the date prescribed for filing the return of the tax imposed by this chapter (determined without regard to extensions)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts completed in taxable years ending after the date of the enactment of this Act.

SEC. 4512. SIMPLIFIED METHOD FOR CAPITALIZING CERTAIN INDIRECT COSTS.

(a) GENERAL RULE.—Subsection (i) of section 263A (relating to regulations) is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end thereof the following:

"(3) regulations providing that allocations of costs of any administrative, service, or support function or department may be made on the basis of the base period percentage of the current costs of such function or department.

For purposes of paragraph (3), the term 'base period percentage' means, with respect to any function or department, the percentage of the costs of such function or department during a base period specified in regulations which were allocable to property to which this section applies."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

PART III—TAX-EXEMPT BOND PROVISIONS

SEC. 4521. REPEAL OF \$100,000 LIMITATION ON UNSPENT PROCEEDS UNDER 1-YEAR EXCEPTION FROM REBATE.

Subclause (1) of section 148(f)(4)(B)(ii) (relating to additional period for certain bonds) is amended by striking "the lesser of 5 percent of the proceeds of the issue or \$100,000" and inserting "5 percent of the proceeds of the issue".

SEC. 4522. EXCEPTION FROM REBATE FOR EARNINGS ON BONA FIDE DEBT SERVICE FUND UNDER CONSTRUCTION BOND RULES.

Subparagraph (C) of section 148(f)(4) is amended by adding at the end thereof the following new clause:

"(xvii) TREATMENT OF BONA FIDE DEBT SERVICE FUNDS.—If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue."

SEC. 4523. AUTOMATIC EXTENSION OF INITIAL TEMPORARY PERIOD FOR CONSTRUCTION ISSUES.

Subsection (c) of section 148 (relating to temporary period exception) is amended by adding at the end thereof the following new paragraph:

"(3) EXTENSION OF INITIAL TEMPORARY PERIOD FOR CONSTRUCTION ISSUES.—If—

"(A) at least 85 percent of the available construction proceeds (as defined in subsection (f)(4)(C)) of a construction issue (as defined in such subsection) are spent as of the close of the initial temporary period (determined without regard to this paragraph), and

"(B) the issuer reasonably expects (as of the close of such period) that the remaining available construction proceeds of such issue will be spent within 1 year after the close of such period, then such initial temporary period shall be extended 1 year."

SEC. 4524. AGGREGATION OF ISSUES RULES NOT TO APPLY TO TAX OR REVENUE ANTICIPATION BONDS.

Section 150 (relating to definitions and special rules) is amended by adding at the end thereof the following new subsection:

“(f) TAX OR REVENUE ANTICIPATION BONDS TREATED AS SEPARATE ISSUES.—For purposes of this part, if—

“(1) all of the bonds which are part of an issue are qualified 501(c)(3) bonds or bonds which are not private activity bonds, and

“(2) any portion of such issue consists of tax or revenue anticipation bonds which are reasonably expected to meet the requirements of section 148(f)(4)(B)(iii),

then such portion shall, subject to appropriate allocations specified in regulations prescribed by the Secretary, be treated as a separate issue.”

SEC. 4525. ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST.

(a) EXCEPTION FROM PRO RATA ALLOCATION OF INTEREST EXPENSE OF FINANCIAL INSTITUTIONS TO TAX-EXEMPT INTEREST FOR SMALL ISSUERS INCREASED TO \$25,000,000.—

(1) IN GENERAL.—Subparagraphs (C) and (D) of section 265(b)(3) (relating to exception for certain tax-exempt obligations) are each amended by striking “\$10,000,000” each place it appears and inserting “\$25,000,000”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to obligations issued in calendar years beginning after December 31, 1992.

(b) DEDUCTIBILITY AVAILABLE TO PARTICIPANTS IN POOLED ISSUES.—

(1) IN GENERAL.—Subparagraph (A) of section 265(b)(3) is amended by inserting “and any qualified tax-exempt pooled obligation acquired after December 31, 1992,” after “after August 7, 1986.”

(2) QUALIFIED TAX-EXEMPT POOLED OBLIGATION DEFINED.—Section 265(b)(3) is amended by adding at the end thereof the following new subparagraph:

“(G) QUALIFIED TAX-EXEMPT POOLED OBLIGATION.—For purposes of subparagraph (A), the term ‘qualified tax-exempt pooled obligation’ means a tax-exempt obligation—

“(i) which is issued after December 31, 1992,

“(ii) which is not a private activity bond (as defined in section 141),

“(iii) which is designated by the issuer for purposes of this paragraph, and

“(iv) the proceeds of which are used exclusively (other than to pay the issuance costs of such obligation) to acquire from the issuer obligations—

“(I) which satisfy the requirements of this paragraph but are not designated for purposes of this paragraph, and

“(II) the weighted average maturity of which equals or exceeds the weighted average maturity of such obligation.”

SEC. 4526. TAX TREATMENT OF 501(c)(3) BONDS SIMILAR TO GOVERNMENTAL BONDS.

(a) IN GENERAL.—Subsection (a) of section 150 (relating to definitions and special rules) is amended by striking paragraphs (2) and (4), by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

“(2) EXEMPT PERSON.—

“(A) IN GENERAL.—The term ‘exempt person’ means—

“(i) a governmental unit, or

“(ii) a 501(c)(3) organization, but only with respect to its activities which do not constitute unrelated trades or businesses as determined by applying section 513(a).

“(B) GOVERNMENTAL UNIT NOT TO INCLUDE FEDERAL GOVERNMENT.—The term ‘governmental

unit’ does not include the United States or any agency or instrumentality thereof.

“(C) 501(c)(3) ORGANIZATION.—The term ‘501(c)(3) organization’ means any organization described in section 501(c)(3) and exempt from tax under section 501(a).”

(b) REPEAL OF QUALIFIED 501(c)(3) BOND DESIGNATION.—Section 145 (relating to qualified 501(c)(3) bonds) is repealed.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 141(b) is amended—

(A) by striking “government use” in subparagraph (A)(ii)(I) and subparagraph (B)(ii) and inserting “exempt person use”,

(B) by striking “a government use” in subparagraph (B) and inserting “an exempt person use”,

(C) by striking “related business use” in subparagraph (A)(ii)(II) and subparagraph (B) and inserting “related private business use”,

(D) by striking “RELATED BUSINESS USE” in the heading of subparagraph (B) and inserting “RELATED PRIVATE BUSINESS USE”, and

(E) by striking “GOVERNMENT USE” in the heading thereof and inserting “EXEMPT PERSON USE”.

(2) Subparagraph (A) of section 141(b)(6) is amended by striking “a governmental unit” and inserting “an exempt person”.

(3) Paragraph (7) of section 141(b) is amended—

(A) by striking “government use” and inserting “exempt person use”, and

(B) by striking “GOVERNMENT USE” in the heading thereof and inserting “EXEMPT PERSON USE”.

(4) Section 141(b) is amended by striking paragraph (9).

(5) Paragraph (1) of section 141(c) is amended by striking “governmental units” and inserting “exempt persons”.

(6) Section 141 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) CERTAIN ISSUES USED TO PROVIDE RESIDENTIAL RENTAL HOUSING FOR FAMILY UNITS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of this title, the term ‘private activity bond’ includes any bond issued as part of an issue if any portion of the net proceeds of the issue are to be used (directly or indirectly) by an exempt person described in section 150(a)(2)(A)(ii) to provide residential rental property for family units.

“(2) EXCEPTION FOR BONDS USED TO PROVIDE QUALIFIED RESIDENTIAL RENTAL PROJECTS.—Paragraph (1) shall not apply to any bond issued as part of an issue if the portion of such issue which is to be used as described in paragraph (1) is to be used to provide—

“(A) a residential rental property for family units if the first use of such property is pursuant to such issue,

“(B) qualified residential rental projects (as defined in section 142(d)), or

“(C) property which is to be substantially rehabilitated in a rehabilitation beginning within the 2-year period ending 1 year after the date of the acquisition of such property.

“(3) SUBSTANTIAL REHABILITATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), rules similar to the rules of section 47(c)(1)(C) shall apply in determining for purposes of paragraph (2)(C) whether property is substantially rehabilitated.

“(B) EXCEPTION.—For purposes of subparagraph (A), clause (ii) of section 47(c)(1)(C) shall not apply, but the Secretary may extend the 24-month period in section 47(c)(1)(C)(i) where appropriate due to circumstances not within the control of the owner.

“(4) CERTAIN PROPERTY TREATED AS NEW PROPERTY.—Solely for purposes of determining

under paragraph (2)(A) whether the 1st use of property is pursuant to tax-exempt financing—

“(A) IN GENERAL.—If—

“(i) the 1st use of property is pursuant to taxable financing,

“(ii) there was a reasonable expectation (at the time such taxable financing was provided) that such financing would be replaced by tax-exempt financing, and

“(iii) the taxable financing is in fact so replaced within a reasonable period after the taxable financing was provided,

then the 1st use of such property shall be treated as being pursuant to the tax-exempt financing.

“(B) SPECIAL RULE WHERE NO OPERATING STATE OR LOCAL PROGRAM FOR TAX-EXEMPT FINANCING.—If, at the time of the 1st use of property, there was no operating State or local program for tax-exempt financing of the property, the 1st use of the property shall be treated as pursuant to the 1st tax-exempt financing of the property.

“(C) DEFINITIONS.—For purposes of this paragraph—

“(i) TAX-EXEMPT FINANCING.—The term ‘tax-exempt financing’ means financing provided by tax-exempt bonds.

“(ii) TAXABLE FINANCING.—The term ‘taxable financing’ means financing which is not tax-exempt financing.”

(7) Section 141(f), as redesignated by paragraph (6), is amended—

(A) by adding “or” at the end of subparagraph (E),

(B) by striking “, or” at the end of subparagraph (F), and inserting in lieu thereof a period, and

(C) by striking subparagraph (G).

(8) The last sentence of section 144(b)(1) is amended by striking “(determined)” and all that follows to the period.

(9) Clause (ii) of section 144(c)(2)(C) is amended by striking “governmental unit” and inserting “exempt person”.

(10) Section 146(g) is amended—

(A) by striking paragraph (2), and

(B) by redesignating the remaining paragraphs after paragraph (1) as paragraphs (2) and (3), respectively.

(11) The heading of section 146(k)(3) is amended by striking “GOVERNMENTAL” and inserting “EXEMPT PERSON”.

(12) The heading of section 146(m) is amended by striking “GOVERNMENT” and inserting “EXEMPT PERSON”.

(13) Subsection (h) of section 147 is amended to read as follows:

“(h) CERTAIN RULES NOT TO APPLY TO MORTGAGE REVENUE BONDS AND QUALIFIED STUDENT LOAN BONDS.—Subsections (a), (b), (c), and (d) shall not apply to any qualified mortgage bond, qualified veterans’ mortgage bond, or qualified student loan bond.”

(14) Section 147 is amended by striking paragraph (4) of subsection (b) and redesignating paragraph (5) of such subsection as paragraph (4).

(15) Subparagraph (F) of section 148(d)(3) is amended—

(A) by striking “or which is a qualified 501(c)(3) bond”, and

(B) by striking “GOVERNMENTAL USE BONDS AND QUALIFIED 501(c)(3)” in the heading thereof and inserting “EXEMPT PERSON”.

(16) Subclause (II) of section 148(f)(4)(B)(ii) is amended by striking “(other than a qualified 501(c)(3) bond)”.

(17) Clause (iv) of section 148(f)(4)(C) is amended—

(A) by striking “a governmental unit or a 501(c)(3) organization” each place it appears and inserting “an exempt person”, and

(B) by striking “qualified 501(c)(3) bonds”.

(18) Subparagraph (A) of section 148(f)(7) is amended by striking "(other than a qualified 501(c)(3) bond)".

(19) Paragraph (2) of section 149(d) is amended—

(A) by striking "(other than a qualified 501(c)(3) bond)", and

(B) by striking "CERTAIN PRIVATE" in the heading thereof and inserting in lieu thereof "PRIVATE".

(20) Section 149(e)(2) is amended—

(A) by striking "which is not a private activity bond" in the second sentence and inserting "which is a bond issued for an exempt person described in section 150(a)(2)(A)(i)", and

(B) by adding at the end thereof the following new sentence: "Subparagraph (D) shall not apply to any bond which is not a private activity bond but which would be such a bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person."

(21) The heading of subsection (b) of section 150 is amended by striking "TAX-EXEMPT PRIVATE ACTIVITY BONDS" and inserting "CERTAIN TAX-EXEMPT BONDS".

(22) Paragraph (3) of section 150(b) is amended—

(A) by inserting "owned by a 501(c)(3) organization" after "any facility" in subparagraph (A),

(B) by striking "any private activity bond which, when issued, purported to be a tax-exempt qualified 501(c)(3) bond" in subparagraph (A) and inserting "any bond which, when issued, purported to be a tax-exempt bond, and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person", and

(C) by striking the heading thereof and inserting "BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—"

(23) Paragraph (5) of section 150(b) is amended—

(A) by striking "private activity" in subparagraph (A),

(B) by inserting "and which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person" after "tax-exempt bond" in subparagraph (A),

(C) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) such facility is required to be owned by an exempt person, and", and

(D) by striking "GOVERNMENTAL UNITS OR 501(c)(3) ORGANIZATIONS" in the heading thereof and inserting "EXEMPT PERSONS".

(24) Section 150, as amended by section 4525, is amended by adding at the end thereof the following new subsection:

"(g) CERTAIN RULES TO APPLY TO BONDS FOR EXEMPT PERSONS OTHER THAN GOVERNMENTAL UNITS.—

"(1) IN GENERAL.—Nothing in section 103(a) or any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond which would be a private activity bond if the 501(c)(3) organization using the proceeds thereof were not an exempt person unless such bond satisfies the requirements of subsections (b) and (f) of section 147.

"(2) SPECIAL RULE FOR POOLED FINANCING OF 501(C)(3) ORGANIZATION.—

"(A) IN GENERAL.—At the election of the issuer, a bond described in paragraph (1) shall be treated as meeting the requirements of section 147(b) if such bond meets the requirements of subparagraph (B).

"(B) REQUIREMENTS.—A bond meets the requirements of this subparagraph if—

"(i) 95 percent or more of the net proceeds of the issue of which such bond is a part are to be used to make or finance loans to 2 or more 501(c)(3) organizations or governmental units

for acquisition of property to be used by such organizations,

"(ii) each loan described in clause (i) satisfies the requirements of section 147(b) (determined by treating each loan as a separate issue),

"(iii) before such bond is issued, a demand survey was conducted which shows a demand for financing greater than an amount equal to 120 percent of the lendable proceeds of such issue, and

"(iv) 95 percent or more of the net proceeds of such issue are to be loaned to 501(c)(3) organizations or governmental units within 1 year of issuance and, to the extent there are any unspent proceeds after such 1-year period, bonds issued as part of such issue are to be redeemed as soon as possible thereafter (and in no event later than 18 months after issuance).

A bond shall not meet the requirements of this subparagraph if the maturity date of any bond issued as part of such issue is more than 30 years after the date on which the bond was issued (or, in the case of a refunding or series of refundings, the date on which the original bond was issued)."

(25) Section 1302 of the Tax Reform Act of 1986 is repealed.

(26) Subparagraph (C) of section 57(a)(5) is amended by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(27) Paragraph (3) of section 103(b) is amended by inserting "and section 150(f)" after "section 149".

(28) Paragraph (3) of section 265(b) is amended—

(A) by striking clause (ii) of subparagraph (B) and inserting the following:

"(ii) CERTAIN BONDS NOT TREATED AS PRIVATE ACTIVITY BONDS.—For purposes of clause (i)(II), there shall not be treated as a private activity bond any obligation issued to refund (or which is part of a series of obligations issued to refund) an obligation issued before August 8, 1986, which was not an industrial development bond (as defined in section 103(b)(2)) as in effect on the day before the date of the enactment of the Tax Reform Act of 1986 (or a private loan bond (as defined in section 103(o)(2)(A)), as so in effect, but without regard to any exemption from such definition other than section 103(o)(2)(A))"; and

(B) by striking "(other than a qualified 501(c)(3) bond, as defined in section 145)" in subparagraph (C)(ii)(I).

(f) EFFECTIVE DATE; SPECIAL RULE.—The amendments made by this section shall apply to bonds issued after December 31, 1992.

(2) SPECIAL RULE FOR CERTAIN BONDS ISSUED AFTER DATE OF ENACTMENT.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any bond which—

(i) is issued after the date of the enactment of this Act, and

(ii) is part of an issue which is subject to any transitional rule under subtitle B of title XIII of the Tax Reform Act of 1986.

(B) ELECTION OUT.—This paragraph shall not apply to any issue with respect to which the issuer elects not to have this paragraph apply.

SEC. 4527. AUTHORITY TO TERMINATE REQUIRED INCLUSION OF TAX-EXEMPT INTEREST ON RETURN.

Subsection (d) of section 6012 (relating to tax-exempt interest required to be shown on return) is amended by adding at the end thereof the following new sentence: "The Secretary may by regulations provide that the preceding sentence shall not apply in any case in which the Secretary determines that the disclosure of such interest is not useful for tax administration."

SEC. 4528. REPEAL OF EXPIRED PROVISIONS.

(a) Paragraph (2) of section 148(c) is amended by striking subparagraph (B) and by redesignat-

ing subparagraphs (C), (D), and (E) as subparagraph (B), (C), and (D), respectively.

(b) Paragraph (4) of section 148(f) is amended by striking subparagraph (E).

SEC. 4529. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall apply to bonds issued after the date of the enactment of this Act.

PART IV—ELECTION OF ALTERNATIVE TAXABLE YEARS

SEC. 4531. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR.

(a) LIMITATIONS ON TAXABLE YEARS WHICH MAY BE ELECTED.—Subsection (b) of section 444 (relating to limitations on taxable years which may be elected) is amended to read as follows:

"(b) TAXABLE YEAR MUST BE SAME AS REPORTING PERIOD.—If an entity has annual reports or statements—

"(1) which ascertain income, profit, or loss of the entity, and

"(2) which are—

"(A) provided to shareholders, partners, or other proprietors, or

"(B) used for credit purposes, the entity may make an election under subsection (a) only if the taxable year elected covers the same period as such reports or statements."

(b) PERIOD OF ELECTION.—Section 444(d)(2) (relating to period of election) is amended to read as follows:

"(2) PERIOD OF ELECTION.—

"(A) IN GENERAL.—An election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation terminates the election and adopts the required taxable year.

"(B) CHANGE NOT TREATED AS TERMINATION.—For purposes of subparagraph (A), a change from a taxable year which is not a required taxable year to another such taxable year shall not be treated as a termination."

(c) EXCEPTION FOR TRUSTS.—Section 444(d)(3) (relating to tiered structures) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR CERTAIN STRUCTURES THAT INCLUDE TRUSTS.—An entity shall not be considered to be part of a tiered structure to which subparagraph (A) applies solely because a trust owning an interest in such entity is a trust all of the beneficiaries of which use a calendar year for their taxable year."

(d) REGULATIONS.—Subsection (g) of section 444 (relating to regulations) is amended to read as follows:

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations—

"(1) to prevent the avoidance of the provisions of this section through a change in entity or form of an entity,

"(2) to prevent the carryback to any preceding taxable year of a net operating loss (or similar item) arising in any short taxable year created pursuant to an election or termination of an election under this section, and

"(3) to provide for the termination of an election under subsection (a) if an entity does not continue to meet the requirements of subsection (b)."

SEC. 4532. REQUIRED PAYMENTS FOR ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR.

(a) ADDITIONAL REQUIRED PAYMENT.—

(1) IN GENERAL.—Section 7519(b) (defining required payment) is amended to read as follows:

"(b) REQUIRED PAYMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'required payment' means, with respect to any applicable election year of a partnership or S corporation, an amount equal to the excess (if any) of—

"(A) the adjusted highest section 1 rate, multiplied by the net base year income of the entity, over

"(B) the net required payment balance.

For purposes of paragraph (1)(A), the term 'adjusted highest section 1 rate' means the highest rate of tax in effect under section 1 as of the close of the first required taxable year ending within such year, plus 2 percentage points.

"(2) ADDITIONAL PAYMENT FOR NEW APPLICABLE ELECTION YEARS.—

"(A) IN GENERAL.—In the case of a new applicable election year, the required payment shall include, in addition to any amount determined under paragraph (1), the amount determined under subparagraph (C).

"(B) NEW APPLICABLE ELECTION YEAR.—For purposes of this section, the term 'new applicable election year' means any applicable election year—

"(i) with respect to which the preceding taxable year was not an applicable election year, or

"(ii) which covers a different period than the preceding taxable year by reason of a change described in section 444(d)(2)(B).

If any year described in the preceding sentence is a short taxable year which does not include the last day of the required taxable year, the new applicable election year shall be the taxable year following the short taxable year.

"(C) ADDITIONAL AMOUNT.—For purposes of subparagraph (A), the amount determined under this subparagraph shall be—

"(i) in the case of a year described in subparagraph (B)(i), 75 percent of the required payment for the year, and

"(ii) in the case of a year described in subparagraph (B)(ii), 75 percent of the excess (if any) of—

"(I) the required payment for the year, over

"(II) the required payment for the year which would have been computed if the change described in subparagraph (B)(ii) had not occurred.

"(D) REQUIRED PAYMENT.—For purposes of this paragraph, the term 'required payment' means the payment required by this section (determined without regard to this paragraph)."

(2) DUE DATE.—Paragraph (2) of section 7519(f) (defining due date) is amended to read as follows:

"(2) DUE DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any required payment for any applicable election year shall be paid on or before May 15 of the calendar year following the calendar year in which the applicable election year begins.

"(B) SPECIAL RULE WHERE NEW APPLICABLE ELECTION YEAR ADOPTED.—In the case of a new applicable election year, the portion of any required payment determined under subsection (b)(2) shall be paid on or before September 15 of the calendar year in which the applicable election year begins."

(3) PENALTIES.—

(A) IN GENERAL.—Section 7519(f)(4) (relating to penalties) is amended by adding at the end thereof the following new subparagraph:

"(D) FAILURE TO PAY ADDITIONAL AMOUNT.—In the case of any failure by any entity to pay on the date prescribed therefore the portion of any required payment described in subsection (b)(2) for any applicable election year—

"(i) subparagraph (A) shall not apply, but

"(ii) the entity shall, for purposes of this title, be treated as having terminated the election under section 444 for such year and changed to the required taxable year."

(B) CONFORMING AMENDMENT.—Section 7519(f)(4)(A) is amended by striking "In" and inserting "Except as provided in subparagraph (D), in".

(4) REFUNDS.—Section 7519(c)(2)(A) (relating to refund of payments) is amended to read as follows:

"(A) an election under section 444 is not in effect for any year but was in effect for the preceding year, or"

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 7519(c) is amended—

(i) by striking "subsection (b)(2)" and inserting "subsection (b)(1)(B)", and

(ii) by striking "subsection (b)(1)" and inserting "subsection (b)(1)(A)".

(B) Subsection (d) of section 7519 is amended by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) OTHER DEFINITIONS AND SPECIAL RULES.—

(1) REFUND.—Paragraph (3) of section 7519(c) (relating to date on which refund payable) is amended in the matter preceding subparagraph (A) by striking "on the later of" and inserting "by the later of".

(2) DEFERRAL RATIO.—The last sentence of paragraph (1) of section 7519(d) is amended to read as follows: "Except as provided in regulations, the term 'deferral ratio' means the ratio which the number of months in the deferral period of the applicable election year bears to the number of months in the applicable election year."

(3) NET INCOME.—Paragraph (2) of section 7519(d) is amended by adding at the end the following new subparagraph:

"(D) EXCESS APPLICABLE PAYMENTS FOR BASE YEAR.—In the case of any new applicable election year, the net income for the base year shall be increased by the excess (if any) of—

"(i) the applicable payments taken into account in determining net income for the base year, over

"(ii) 120 percent of the average amount of applicable payments made during the first 3 taxable years preceding the base year."

(4) DEFERRAL PERIOD.—Paragraph (1) of section 7519(e) (defining deferral period) is amended to read as follows:

"(1) DEFERRAL PERIOD.—Except as provided in regulations, the term 'deferral period' means, with respect to any taxable year of the entity, the months between—

"(A) the beginning of such year, and

"(B) the close of the first required taxable year (as defined in section 444(e)) ending within such year."

(5) BASE YEAR.—

(A) IN GENERAL.—Paragraph (2)(A) of section 7519(e) (defining base year) is amended to read as follows:

"(A) BASE YEAR.—The term 'base year' means, with respect to any applicable election year, the first taxable year of 12 months (or 52-53 weeks) of the partnership or S corporation preceding such applicable election year."

(B) CONFORMING AMENDMENT.—Paragraph (2) of subsection (g) of section 7519 is amended to read as follows:

"(2) there is no base year described in subsection (e)(2)(A) or no preceding taxable year described in section 280H(c)(1)(A)(i)."

(c) INTEREST.—Section 7519(f)(3) (relating to interest) is amended to read as follows:

"(3) INTEREST.—For purposes of determining interest, any payment required by this section shall be treated as a tax, except that interest shall be allowed with respect to any refund of a payment under this section only for the period from the latest date specified in subsection (c)(3) for such refund to the actual date of payment of such refund."

SEC. 4533. LIMITATION ON CERTAIN AMOUNTS PAID TO EMPLOYEE-OWNERS OF PERSONAL SERVICE CORPORATIONS.

(a) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—Subsection (b) of section 280H (relating to carryover of nondeductible amounts) is amended to read as follows:

"(b) CARRYOVER OF NONDEDUCTIBLE AMOUNTS.—Any amount not allowed as a de-

duction for a taxable year pursuant to subsection (a) shall be allowed as a deduction in the succeeding taxable year."

(b) MINIMUM DISTRIBUTION REQUIREMENT.—Paragraph (1) of section 280H(c) is amended to read as follows:

"(1) IN GENERAL.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid during the deferral period of the taxable year equal or exceed the lesser of—

"(A) 110 percent of the product of—

"(i) the applicable amounts paid during the first preceding taxable year of 12 months (or 52-53 weeks), divided by 12, and

"(ii) the number of months in the deferral period of the taxable year, or

"(B) 110 percent of the amount equal to the applicable percentage of the adjusted taxable income for the deferral period of the taxable year."

(c) DISALLOWANCE OF NOL CARRYBACKS.—Subsection (e) of section 280H (relating to disallowance of net operating loss carrybacks) is amended by striking "to (or from)" and inserting "from".

(d) CONFORMING AMENDMENT.—Subparagraph (A) of section 280H(f)(3) (relating to deferral period) is amended by striking "section 444(b)(4)" and inserting "section 7519(e)(1)".

SEC. 4534. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1991.

PART V—COOPERATIVES

SEC. 4541. TREATMENT OF CERTAIN LOAN REQUIREMENTS.

(a) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking "or" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", or", and by adding at the end the following new clause:

"(i) from the prepayment of any loan under section 2387 of the Food, Agricultural, Conservation, and Trade Act of 1990 (as in effect on January 1, 1992)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 4542. COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.

(a) IN GENERAL.—Section 501 (relating to exemption from tax on corporations, certain trusts, etc.), is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) COOPERATIVE SERVICE ORGANIZATIONS FOR CERTAIN FOUNDATIONS.—

"(1) IN GENERAL.—For purposes of this title, if an organization—

"(A) is organized and operated solely for purposes referred to in subsection (f)(1),

"(B) is comprised solely of members which are exempt from taxation under subsection (a) and are—

"(i) private foundations, or

"(ii) community foundations as to which section 170(b)(1)(A)(vi) applies,

"(C) has at least 20 members,

"(D) does not at any time after the second taxable year beginning after the date of its organization, or, if later, the date of the enactment of this subsection, have a member which holds more than 10 percent (by value) of the interests in the organization,

"(E) is not controlled by any one member and does not have a member which controls another member of the organization, and

"(F) permits members of the organization to require the dismissal of any of the organization's investment advisors, following reasonable notice, upon a vote of the members holding a majority of interest in the account managed by such advisor,

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

"(2) TREATMENT OF INCOME OF MEMBERS.—If any member of an organization described in paragraph (1) is a private foundation (other than an exempt operating foundation, as defined in section 4940(d)), such private foundation's allocable share of the capital gain net income and gross investment income of the organization for any taxable year of the organization shall be treated, for purposes of section 4940, as capital gain net income and gross investment income of such private foundation (whether or not distributed to such foundation) for the taxable year of such private foundation with or within which the taxable year of the organization described in paragraph (1) ends.

"(3) APPLICABLE EXCISE TAXES.—Subchapter A of chapter 42 (other than sections 4940 and 4942) shall apply to any organization described in paragraph (1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 4543. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY A COOPERATIVE TELEPHONE COMPANY.

(a) NONMEMBER INCOME.—

(1) IN GENERAL.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended by adding at the end thereof the following new subparagraph:

"(E) In the case of a mutual or cooperative telephone company (hereafter in this subparagraph referred to as the 'cooperative'), 50 percent of the income received or accrued directly or indirectly from a nonmember telephone company for the performance of communication services by the cooperative shall be treated for purposes of subparagraph (A) as collected from members of the cooperative for the sole purpose of meeting the losses and expenses of the cooperative."

(2) CERTAIN BILLING AND COLLECTION SERVICE FEES NOT TAKEN INTO ACCOUNT.—Subparagraph (B) of section 501(c)(12) is amended by striking "or" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", or", and by adding at the end thereof the following new clause:

"(v) from billing and collection services performed for a nonmember telephone company."

(3) CONFORMING AMENDMENT.—Clause (i) of section 501(c)(12)(B) is amended by inserting before the comma " other than income described in subparagraph (E)".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

(5) NO INFERENCE AS TO UNRELATED BUSINESS INCOME TREATMENT OF BILLING AND COLLECTION SERVICE FEES.—Nothing in the amendments made by this subsection shall be construed to indicate the proper treatment of billing and collection service fees under part III of subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to taxation of business income of certain exempt organizations).

(b) TREATMENT OF CERTAIN INVESTMENT INCOME OF MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—

(1) IN GENERAL.—Paragraph (12) of section 501(c) (relating to list of exempt organizations) is amended by adding at the end thereof the following new subparagraph:

"(F) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account reserve income (as defined in section 512(d)(2)) if such income, when added to other income not collected from members for the sole purpose of meeting

losses and expenses, does not exceed 35 percent of the company's total income."

(2) PORTION OF INVESTMENT INCOME SUBJECT TO UNRELATED BUSINESS INCOME TAX.—Section 512 is amended by adding at the end thereof the following new subsection:

"(d) INVESTMENT INCOME OF CERTAIN MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—

"(1) IN GENERAL.—In determining the unrelated business taxable income of a mutual or cooperative telephone company described in section 501(c)(12)—

"(A) there shall be included, as an item of gross income derived from an unrelated trade or business, reserve income to the extent such reserve income, when added to other income not collected from members for the sole purpose of meeting losses and expenses, exceeds 15 percent of the company's total income, and

"(B) there shall be allowed all deductions directly connected with the portion of the reserve income which is so included.

"(2) RESERVE INCOME.—For purposes of paragraph (1), the term 'reserve income' means income—

"(A) which would (but for this subsection) be excluded under subsection (b), and

"(B) which is derived from assets set aside for the repair or replacement of telephone system facilities of such company."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4544. TAX TREATMENT OF COOPERATIVE HOUSING CORPORATIONS.

(a) SECTION 277 NOT TO APPLY TO COOPERATIVE HOUSING CORPORATIONS.—Section 277(b) (relating to exceptions) is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a comma and "or", and by adding at the end thereof the following new paragraph:

"(5) which for the taxable year is a cooperative housing corporation described in section 216(b)(1) (determined without regard to section 143(k)(9)(E))."

(b) APPLICATION OF RULES RELATING TO TAX TREATMENT OF COOPERATIVES.—

(1) PATRONAGE EARNINGS MAY BE OFFSET ONLY BY PATRONAGE LOSSES.—Section 1388(a) is amended by adding at the end the following new sentence: "In no event shall any patronage losses of an organization described in section 277(b)(5) be used to offset earnings which are not patronage earnings."

(2) PATRONAGE EARNINGS AND LOSSES OF COOPERATIVE HOUSING CORPORATIONS.—Section 1388 is amended by adding at the end the following new subsection:

"(k) PATRONAGE EARNINGS OR LOSSES DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The terms 'patronage earnings' and 'patronage losses' mean earnings and losses, respectively, which are derived from business done with or for patrons of the organization.

"(2) SPECIAL RULES FOR COOPERATIVE HOUSING CORPORATION.—In the case of a cooperative housing corporation, the following earnings shall be treated as patronage earnings:

"(A) Interest on reasonable reserves established in connection with the corporation, including reserves required by a governmental agency or lender.

"(B) Income from laundry and parking facilities to the extent attributable to use of the facilities by tenant-stockholders and their guests.

"(C) In the case of a limited equity cooperative housing corporation, rental income from other than tenant-stockholders to the extent attributable to any project operated by the corporation.

"(3) DEFINITIONS.—For purposes of paragraph (2)—

"(A) COOPERATIVE HOUSING CORPORATION.—The term 'cooperative housing corporation' has the meaning given such term by section 216(b)(1) (without regard to section 143(k)(9)(E)).

"(B) LIMITED EQUITY COOPERATIVE HOUSING CORPORATION.—The term 'limited equity cooperative housing corporation' means a cooperative housing corporation with respect to which the requirements of clause (i) of section 143(k)(9)(D) are met at all times during the taxable year.

"(C) TENANT-STOCKHOLDER.—The term 'tenant-stockholder' has the meaning given such term by section 216(b)(2)."

(3) CONFORMING AMENDMENT.—Section 1388(j) is amended by striking paragraph (4).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

(2) NO INFERENCE.—Nothing in the provisions of this section shall be construed as a change in the treatment of income derived by any cooperative housing corporation, or any corporation operating on a cooperative basis under section 1381 of the Internal Revenue Code of 1986, and the treatment of such income for any year to which the amendments made by this section does not apply shall be made as if this section had not been enacted.

SEC. 4545. TREATMENT OF SAFE HARBOR LEASES INVOLVING RURAL ELECTRIC COOPERATIVES.

(a) IN GENERAL.—In the case of a rural electric cooperative described in section 1381(a)(2)(C) of the Internal Revenue Code of 1986, any interest income in connection with a transaction involving qualified leased property which was treated as a lease under section 168(i) of the Internal Revenue Code of 1986 (as in effect before the amendments made by the Tax Reform Act of 1986) or any corresponding prior provision of law shall be offset by any rental expense in connection with such transaction before allocation of such income or expense to members and nonmembers of such cooperatives for purposes of such Code.

(b) EFFECTIVE DATE.—The provisions of subsection (a) shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

PART VI—EMPLOYMENT

SEC. 4551. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(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 new section:

"SEC. 45. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

"(a) GENERAL RULE.—For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

"(b) EXCESS EMPLOYER SOCIAL SECURITY TAX.—For purposes of this section, the term 'excess employer social security tax' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

"(1) are deemed to have been paid by the employer to the employee pursuant to section 3121(q), and

"(2) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (deter-

mined without regard to section 3(m) of such Act.

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section."

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 of such Code (relating to current year business credit) is amended by striking "plus" at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting ", plus", and by adding at the end the following new paragraph:

"(8) the employer social security credit determined under section 45(a)."

(2) LIMITATION ON CARRYBACKS.—Subsection (d) of section 39 of such Code (relating to transitional rules) is amended—

(A) by redesignating the paragraph added by section 11511(b)(2) of the Revenue Reconciliation Act of 1990 as paragraph (1),

(B) by redesignating the paragraph added by section 11611(b)(2) of such Act as paragraph (2), and

(C) by adding at the end the following new paragraph:

"(3) NO CARRYBACK OF SECTION 45 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the employer social security credit determined under section 45 may be carried back to a taxable year ending before the date of the enactment of section 45."

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 45. Employer social security credit."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to tips received (and wages paid) after the date of the enactment of this Act.

SEC. 4552. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) IN GENERAL.—Section 162 (relating to trade or business expenses), as amended by sections 3006 and 4108, is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) CLUB MEMBERSHIP DUES.—No deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dues paid after the date of the enactment of this Act.

SEC. 4553. CLARIFICATION OF EMPLOYMENT TAX STATUS OF CERTAIN FISHERMEN.

(a) AMENDMENTS OF INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF SIZE OF CREW.—Subsection (b) of section 3121 (defining employment) is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

(2) CERTAIN CASH REMUNERATION PERMITTED.—Subparagraph (A) of section 3121(b)(20) is amended to read as follows:

"(A) such individual does not receive any cash remuneration other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed \$100 per trip;

"(ii) which is contingent on a minimum catch; and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—

(1) DETERMINATION OF SIZE OF CREW.—Subsection (a) of section 210 of the Social Security Act is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (20), the operating crew of a boat shall be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals."

(2) CERTAIN CASH REMUNERATION PERMITTED.—Subparagraph (A) of section 210(a)(20) of such Act is amended to read as follows:

"(A) such individual does not receive any additional compensation other than as provided in subparagraph (B) and other than cash remuneration—

"(i) which does not exceed \$100 per trip;

"(ii) which is contingent on a minimum catch; and

"(iii) which is paid solely for additional duties (such as mate, engineer, or cook) for which additional cash remuneration is traditional in the industry."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to remuneration paid after December 31, 1992.

(2) SPECIAL RULE.—The amendments made by this section shall also apply to remuneration paid after December 31, 1984, and before January 1, 1993, unless the payor treated such remuneration (when paid) as being subject to tax under chapter 21 of the Internal Revenue Code of 1986.

PART VII—OTHER PROVISIONS

SEC. 4561. CLOSING OF PARTNERSHIP TAXABLE YEAR WITH RESPECT TO DECEASED PARTNER.

(a) GENERAL RULE.—Subparagraph (A) of section 706(c)(2) (relating to disposition of entire interest) is amended to read as follows:

"(A) DISPOSITION OF ENTIRE INTEREST.—The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates (whether by reason of death, liquidation, or otherwise)."

(b) CLERICAL AMENDMENT.—The paragraph heading for paragraph (2) of section 706(c) is amended to read as follows:

"(2) TREATMENT OF DISPOSITIONS.—"

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to partnership taxable years beginning after December 31, 1991.

SEC. 4562. REPEAL OF SPECIAL TREATMENT OF OWNERSHIP CHANGES IN DETERMINING ADJUSTED CURRENT EARNINGS.

(a) GENERAL RULE.—Paragraph (4) of section 56(g) (relating to adjustments) is amended by striking subparagraph (G) and by redesignating the following subparagraph as paragraph (G).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to ownership changes after December 31, 1991.

SEC. 4563. AUTHORIZATION FOR BUREAU OF LAND MANAGEMENT USE OF REFORESTATION TRUST FUND.

Section 303 of Public Law 96-451 (16 U.S.C. 1606a) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking "\$30,000,000" and inserting "\$45,000,000"; and

(B) by adding at the end thereof the following new paragraphs:

"(4) Of the amounts transferred to the Trust Fund under paragraph (1) in any fiscal year—

"(A) \$30,000,000 shall be allocated and made available to the Secretary of Agriculture; and

"(B) the remaining balance shall be allocated and made available to the Secretary of the Interior.

"(5)(A) If the remaining balance allocated and made available to the Secretary of the Interior under paragraph (4)(B) is less than \$15,000,000 in any fiscal year, the Secretary of the Treasury shall transfer to the Trust Fund and make available to the Secretary of the Interior, in accordance with subparagraph (B), an amount equal to the difference between \$15,000,000 and the remaining balance.

"(B) The amount transferred pursuant to subparagraph (A) shall be obtained as follows:

"(i) 93½ percent of the amount shall be taken from the Federal portion of the Bureau of Land Management timber receipt payments from the Coos Bay Wagon Road grant lands in Oregon; and

"(ii) the remainder of the amount shall be taken from the Federal portion of the Bureau of Land Management timber receipt payments from public domain lands in the States."

(2) In the first sentence of subsection (c)(1) by inserting "and the Secretary of the Interior" after "Secretary of Agriculture";

(3) in subsection (d)—

(A) by striking "available" and inserting "available to the Secretary of Agriculture"; and

(B) by striking "amounts" and inserting "amounts that were available to the Secretary of Agriculture but"; and

(4) by adding at the end thereof the following new subsection:

"(e)(1) In accordance with paragraph (2), the Secretary of the Interior may obligate, in each fiscal year, such sums as are available to the Secretary of the Interior in the Trust Fund to supplement expenditures of the Bureau of Land Management for, in order of priority—

"(A) reforestation and forest development of public lands administered by the Secretary of the Interior acting through the Bureau of Land Management, including projects to improve the overall health and productivity of the forest ecosystem;

"(B) negotiation and implementation of cooperative relationships, including the acquisition of voluntary cooperative conservation easements, when such relationships promote or enhance successful reforestation or forest development or contribute to the long-term productivity of the forest ecosystem; and

"(C) properly allocable administrative costs of the Federal Government for the activities described in subparagraphs (A) and (B).

"(2) The Secretary of the Interior shall allocate the sums described in paragraph (1) as follows:

"(A) \$14,000,000 for Oregon and California Railroad and Coos Bay Wagon Road grant lands in Oregon; and

"(B) \$1,000,000 for public domain lands, to be allocated among the States in which the lands are located by taking into account, in order of priority—

"(i) the level of timber sales (measured in board feet) from the public domain lands within each State in the previous calendar year;

"(ii) the amount of reforestation backlog in the State;

"(iii) the need for planting as part of the reforestation program; and

"(iv) the need for forest development as part of the reforestation program."

SEC. 4564. REPEAL OF INVESTMENT RESTRICTIONS APPLICABLE TO NUCLEAR DECOMMISSIONING FUNDS.

(a) IN GENERAL.—Subparagraph (C) of section 468A(e)(4) (relating to special rules for nuclear decommissioning funds) is amended by striking "described in section 501(c)(21)(B)(ii)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 4565. MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) **IN GENERAL.**—Subparagraph (A) of section 29(c)(2) (relating to gas from geopressured brine, etc.) is amended by adding at the end the following new sentence: "If the Federal Energy Regulatory Commission ceases to make the determinations described in the preceding sentence, the Secretary shall make such determinations in accordance with section 503 of such Act."

(b) **CONFORMING AMENDMENT.**—Section 29(c)(2)(A) is amended by inserting "(as in effect before its repeal by the Natural Gas Wellhead Decontrol Act of 1989) after "Natural Gas Policy Act of 1978".

Subtitle F—Estate And Gift Tax Provisions

SEC. 4601. CLARIFICATION OF WAIVER OF CERTAIN RIGHTS OF RECOVERY.

(a) **AMENDMENT TO SECTION 2207A.**—Paragraph (2) of section 2207A(a) (relating to right of recovery in the case of certain marital deduction property) is amended to read as follows:

"(2) **DECEDENT MAY OTHERWISE DIRECT.**—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(b) **AMENDMENT TO SECTION 2207B.**—Paragraph (2) of section 2207B(a) (relating to right of recovery where decedent retained interest) is amended to read as follows:

"(2) **DECEDENT MAY OTHERWISE DIRECT.**—Paragraph (1) shall not apply with respect to any property to the extent that the decedent in his will (or a revocable trust) specifically indicates an intent to waive any right of recovery under this subchapter with respect to such property."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4602. ADJUSTMENTS FOR GIFTS WITHIN 3 YEARS OF DECEDENT'S DEATH.

(a) **GENERAL RULE.**—Section 2035 is amended to read as follows:

"SEC. 2035. ADJUSTMENTS FOR CERTAIN GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

"(a) **INCLUSION OF CERTAIN PROPERTY IN GROSS ESTATE.**—If—

"(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

"(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

"(b) **INCLUSION OF GIFT TAX ON GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.**—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

"(c) **OTHER RULES RELATING TO TRANSFERS WITHIN 3 YEARS OF DEATH.**—

"(1) **IN GENERAL.**—For purposes of—

"(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

"(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

"(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

"(2) **COORDINATION WITH SECTION 6166.**—An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of paragraph (1).

"(3) **SMALL TRANSFERS.**—Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life insurance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(a)(2)) to file any gift tax return for such year with respect to transfers to such donee.

"(d) **EXCEPTION.**—Subsection (a) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

"(e) **TREATMENT OF CERTAIN REVOCABLE TRUSTS.**—For purposes of this section and section 2038, any transfer from any portion of a trust with respect to which the decedent was the grantor during any period when the decedent held the power to revert in the decedent title to such portion shall be treated as a transfer made directly by the decedent."

(b) **CLERICAL AMENDMENT.**—The table of sections for part III of subchapter A of chapter 11 is amended by striking "gifts" in the item relating to section 2035 and inserting "certain gifts".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4603. CLARIFICATION OF QUALIFIED TERMINABLE INTEREST RULES.

(a) **GENERAL RULE.**—

(1) **ESTATE TAX.**—Subparagraph (B) of section 2056(b)(7) (defining qualified terminable interest property) is amended by adding at the end thereof the following new clause:

"(v)(i) **TREATMENT OF CERTAIN INCOME DISTRIBUTIONS.**—An income interest shall not fail to qualify as a qualified income interest for life solely because income for the period after the last distribution date and on or before the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse."

(2) **GIFT TAX.**—Paragraph (3) of section 2523(f) is amended by striking "and (iv)" and inserting "(iv), and (vi)".

(b) **CLARIFICATION OF SUBSEQUENT INCLUSIONS.**—Section 2044 is amended by adding at the end thereof the following new subsection:

"(d) **CLARIFICATION OF INCLUSION OF CERTAIN INCOME.**—The amount included in the gross estate under subsection (a) shall include the amount of any income from the property to which this section applies for the period after the last distribution date and on or before the date of the decedent's death if such income is not otherwise included in the decedent's gross estate."

(c) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply with respect to the estates of decedents dying, and gifts made, after the date of the enactment of this Act.

(2) **APPLICATION OF SECTION 2044 TO TRANSFERS BEFORE DATE OF ENACTMENT.**—In the case of the estate of any decedent dying after the date of the enactment of this Act, if there was a transfer of property on or before such date—

(A) such property shall not be included in the gross estate of the decedent under section 2044 of the Internal Revenue Code of 1986 if no prior

marital deduction was allowed with respect to such a transfer of such property to the decedent, but

(B) such property shall be so included if such a deduction was allowed.

SEC. 4604. TREATMENT OF PORTIONS OF PROPERTY UNDER MARITAL DEDUCTION.

(a) **ESTATE TAX.**—Subsection (b) of section 2056 (relating to limitation in case of life estate or other terminable interest) is amended by adding at the end thereof the following new paragraph:

"(10) **SPECIFIC PORTION.**—For purposes of paragraphs (5), (6), and (7)(B)(iv), the term 'specific portion' only includes a portion determined on a fractional or percentage basis."

(b) **GIFT TAX.**—

(1) Subsection (e) of section 2523 is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, the term 'specific portion' only includes a portion determined on a fractional or percentage basis."

(2) Paragraph (3) of section 2523(f) is amended by inserting before the period at the end thereof the following: "and the rules of section 2056(b)(10) shall apply".

(c) **EFFECTIVE DATES.**—

(1) **SUBSECTION (a).**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

(B) **EXCEPTION.**—The amendment made by subsection (a) shall not apply to any interest in property which passes (or has passed) to the surviving spouse of the decedent pursuant to a will (or revocable trust) in existence on the date of the enactment of this Act if—

(i) the decedent dies on or before the date 3 years after such date of enactment, or

(ii) the decedent was, on such date of enactment, under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

The preceding sentence shall not apply if such will (or revocable trust) is amended at any time after such date of enactment in any respect which will increase the amount of the interest which so passes or alters the terms of the transfer by which the interest so passes.

(2) **SUBSECTION (b).**—The amendments made by subsection (b) shall apply to gifts made after the date of the enactment of this Act.

SEC. 4605. TRANSITIONAL RULE UNDER SECTION 2056A.

(a) **GENERAL RULE.**—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990, such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

(b) **EFFECTIVE DATE.**—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990.

SEC. 4606. OPPORTUNITY TO CORRECT CERTAIN FAILURES UNDER SECTION 2032A.

(a) **GENERAL RULE.**—Paragraph (3) of section 2032A(d) (relating to modification of election and agreement to be permitted) is amended to read as follows:

"(3) **MODIFICATION OF ELECTION AND AGREEMENT TO BE PERMITTED.**—The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

"(A) the notice of election, as filed, does not contain all required information, or

"(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to the estates of decedents dying after the date of the enactment of this Act.

SEC. 4607. REPEAL OF CERTAIN THROWBACK RULES APPLICABLE TO DOMESTIC TRUSTS.

(a) **ACCUMULATION DISTRIBUTIONS.**—

(1) **IN GENERAL.**—Section 665 is amended by adding at the end the following new subsection:

"(f) **ACCUMULATION DISTRIBUTIONS AFTER 1992.**—For purposes of this subpart—

"(1) **IN GENERAL.**—In the case of a qualified trust, the accumulation distribution for any taxable year beginning after December 31, 1992, shall be computed without regard to any undistributed net income attributable to any taxable year beginning after December 31, 1992.

"(2) **QUALIFIED TRUST.**—For purposes of this subsection, the term 'qualified trust' means any trust other than—

"(A) a foreign trust, or

"(B) a trust created before March 1, 1984, unless it is established that the trust would not be aggregated with other trusts under section 643(f) if such section applied to such trust."

(2) **CONFORMING AMENDMENT.**—Subsection (b) of section 665 is amended by inserting "except as provided in subsection (b)," after "subpart,"

(b) **PROPERTY TRANSFERRED TO TRUSTS.**—Subsection (e) of section 644 is amended by striking "or" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", or", and by adding at the end the following new paragraph:

"(5) in the case of a qualified trust (as defined in section 665(f)(2)), any sale or exchange of property after December 31, 1992."

(c) **EFFECTIVE DATES.**—

(1) **ACCUMULATION DISTRIBUTION.**—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

(2) **TRANSFERRED PROPERTY.**—The amendments made by subsection (b) shall apply to sales or exchanges after December 31, 1992.

Subtitle G—Excise Tax Simplification

PART I—FUEL TAX PROVISIONS

SEC. 4701. REPEAL OF CERTAIN RETAIL AND USE TAXES.

(a) **IN GENERAL.**—Section 4041 is amended to read as follows:

"SEC. 4041. SPECIAL MOTOR FUELS AND NONCOMMERCIAL AVIATION GASOLINE.

"(a) SPECIAL MOTOR FUELS.—

"(1) **IN GENERAL.**—There is hereby imposed a tax on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle or a motorboat for use as a fuel in such motor vehicle or motorboat, or

"(B) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under subparagraph (A).

"(2) **RATE OF TAX.**—The rate of the tax imposed by this subsection shall be the aggregate rate of tax in effect under section 4081 at the time of such sale or use.

"(3) **CERTAIN FUELS EXEMPT FROM TAX.**—The tax imposed by this subsection shall not apply to gasoline (as defined in section 4082), diesel fuel (as defined in section 4092), kerosene, gas oil, or fuel oil.

"(4) REDUCED RATES OF TAX ON CERTAIN FUELS.—

"(A) QUALIFIED METHANOL AND ETHANOL FUEL.—

"(i) **IN GENERAL.**—In the case of any qualified methanol or ethanol fuel—

"(1) the Highway Trust Fund financing rate applicable under paragraph (2) shall be 5.4 cents per gallon less than the otherwise applicable rate (6 cents per gallon less in the case of a mixture none of the alcohol in which consists of ethanol), and

"(II) the Leaking Underground Storage Tank Trust Fund financing rate applicable under paragraph (2) shall be 0.05 cent per gallon.

"(ii) **QUALIFIED METHANOL OR ETHANOL FUEL.**—The term 'qualified methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from a substance other than petroleum or natural gas.

"(iii) **TERMINATION.**—Clause (i) shall not apply to any sale or use after September 30, 2000.

"(B) NATURAL GAS-DERIVED METHANOL OR ETHANOL FUEL.—

"(i) **IN GENERAL.**—In the case of natural gas-derived methanol or ethanol fuel—

"(1) the Highway Trust Fund financing rate applicable under paragraph (2) shall be 5.75 cents per gallon, and

"(II) the deficit reduction rate applicable under paragraph (2) shall be 1.25 cents per gallon.

"(ii) **NATURAL GAS-DERIVED METHANOL OR ETHANOL FUEL.**—The term 'natural-gas derived methanol or ethanol fuel' means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

"(C) OTHER FUELS CONTAINING ALCOHOL.—

"(i) **IN GENERAL.**—Under regulations prescribed by the Secretary, in the case of any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), the Highway Trust Fund financing rate applicable under paragraph (2) shall be the comparable rate under section 4081.

"(ii) **LATER SEPARATION.**—If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol to which clause (i) applies, such separation shall be treated as a sale of the liquid fuel. Any tax imposed on such sale shall be reduced by the amount (if any) of the tax imposed on the sale of such mixture.

"(iii) **TERMINATION.**—Clause (i) shall not apply to any sale or use after September 30, 2000.

"(D) **LIQUEFIED PETROLEUM GAS.**—The rate of tax applicable under paragraph (2) to liquefied petroleum gas shall be determined without regard to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.

"(5) **EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.**—No tax shall be imposed by paragraph (1) on liquids sold for use or used in an off-highway business use (within the meaning of section 6420(f)).

"(b) **NONCOMMERCIAL AVIATION GASOLINE.**—

"(1) **IN GENERAL.**—There is hereby imposed a tax on gasoline—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft in noncommercial aviation, or

"(B) used by any person as a fuel in an aircraft in noncommercial aviation unless there was a taxable sale of such gasoline under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed by section 4081.

"(2) **RATE OF TAX.**—The rate of the tax imposed by paragraph (1) on any gasoline is the excess of 15 cents a gallon over the sum of the Highway Trust Fund financing rate plus the

deficit reduction rate at which tax was imposed on such gasoline under section 4081.

"(3) **NONCOMMERCIAL AVIATION.**—For purposes of this subsection, the term 'noncommercial aviation' means any use of an aircraft other than use in a business of transporting persons or property for compensation or hire by air. Such term includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

"(4) **EXEMPTION FOR FUELS CONTAINING ALCOHOL.**—No tax shall be imposed by this subsection on any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)).

"(5) **EXEMPTION FOR CERTAIN HELICOPTER USES.**—No tax shall be imposed by this subsection on gasoline sold for use or used in a helicopter for purposes of providing transportation with respect to which the requirements of subsection (e) or (f) of section 4261 are met.

"(6) **REGISTRATION.**—Except as provided in regulations prescribed by the Secretary, if any gasoline is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this subsection that a tax imposed by this subsection applies to the sale of such gasoline unless the purchaser is registered in such manner (and furnished such information in respect of the use of the gasoline) as the Secretary shall by regulations provide.

"(7) **GASOLINE.**—For purposes of this subsection, the term 'gasoline' has the meaning given such term by section 4082.

"(8) **TERMINATION.**—Paragraph (1) shall not apply to any sale or use after December 31, 1995.

"(c) EXEMPTION FOR FARM USE.—

"(1) **IN GENERAL.**—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes (determined in accordance with paragraphs (1), (2), and (3) of section 6420(e)).

"(2) **TERMINATION.**—Except with respect to so much of the tax imposed by subsection (a) as is determined by reference to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, paragraph (1) shall not apply after September 30, 1999.

"(d) EXEMPTIONS FOR STATE AND LOCAL GOVERNMENTS, SCHOOLS, EXPORTATION, AND SUPPLIES FOR VESSELS AND AIRCRAFT.—

"(1) **IN GENERAL.**—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use, or used, in an exempt use described in paragraph (4), (5), (6), or (7) of section 6420(b).

"(2) **TERMINATION.**—Except with respect to so much of the tax imposed by subsection (a) as is determined by reference to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, after September 30, 1999, paragraph (1) shall not apply to exempt uses described in paragraph (4) and (5) of section 6420(b).

"(e) **EXEMPTION FOR USE BY CERTAIN AIRCRAFT MUSEUMS.**—Under regulations prescribed by the Secretary, no tax shall be imposed under this section on any liquid sold for use or used in an exempt use described in section 6420(b)(11)."

(b) CERTAIN ADDITIONAL PURCHASERS OF FUEL TREATED AS PRODUCERS.—

(1) **IN GENERAL.**—Subparagraph (C) of section 4092(b)(1) is amended to read as follows:

"(C) **REDUCED-TAX PURCHASERS TREATED AS PRODUCERS.**—Any person to whom any fuel is sold in a sale on which the amount of tax otherwise required to be paid under section 4091 is reduced under section 4093 shall be treated as the producer of such fuel. The amount of tax imposed by section 4091 on any sale of such fuel by such person shall be reduced by the amount of tax imposed under section 4091 (and not credited or refunded) on any prior sale of such fuel."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 4093 is amended by inserting "(as defined in section 4092(b) without regard to paragraph (1)(C) thereof)" after "producer".

SEC. 4702. REVISION OF FUEL TAX CREDIT AND REFUND PROCEDURES.

(a) REFUNDS TO CERTAIN SELLERS OF DIESEL FUEL AND AVIATION FUEL.—

(1) IN GENERAL.—Paragraph (2) of section 6416(b) is amended by striking "4091 or 4121" and inserting "4121 or 4091"; except that this paragraph shall apply to a person selling diesel fuel or aviation fuel for a use described in the first sentence if such person meets such requirements as the Secretary may by regulations prescribe".

(2) LIMITATIONS ON AMOUNT OF TAX ONLY HIGHWAY TRUST FUND FINANCING RATE TO BE REFUNDABLE.—Paragraph (2) of section 6416(b) is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to the taxes imposed by sections 4081 and 4091 with respect to any use to the same extent that section 6420(a) does not apply to such use by reason of paragraph (1) or (2) of section 6420(c)."

(b) CONSOLIDATION OF REFUND PROVISIONS; REPEAL OF CONSENT REQUIREMENT FOR REFUND OF FUEL TAXES TO CROPDUSTERS, ETC.—Section 6420 (relating to gasoline used on farms) is amended to read as follows:

"SEC. 6420. CERTAIN TAXES ON FUELS USED FOR EXEMPT PURPOSES.

"(a) IN GENERAL.—Except as otherwise provided in this section, if any fuel on which tax was imposed under section 4041, 4081, or 4091 is used in an exempt use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel the amount equal to the aggregate tax imposed on such fuel under such sections.

"(b) EXEMPT USES.—For purposes of this section, the term 'exempt use' means—

"(1) in the case of diesel fuel, use other than as a fuel in a diesel-powered highway vehicle or a diesel-powered motorboat,

"(2) in the case of aviation fuel, use other than as a fuel in an aircraft,

"(3) in the case of gasoline or aviation fuel, use in an aircraft other than in noncommercial aviation (as defined in section 4041(b)),

"(4) use by any State, any political subdivision of a State, or the District of Columbia,

"(5) use by a nonprofit educational organization (as defined in section 4221(d)(5)),

"(6) export,

"(7) use as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)),

"(8) use on a farm for farming purposes (within the meaning of subsection (e)),

"(9) use in an off-highway business use (within the meaning of subsection (f)),

"(10) use in qualified bus transportation (within the meaning of subsection (g)),

"(11) use by an aircraft museum (within the meaning of subsection (h)),

"(12) use in a nonpurpose use (within the meaning of subsection (i)),

"(13) use in a helicopter for purposes of providing transportation with respect to which the requirements of subsection (e) or (f) of section 4261 are met, and

"(14) use in producing a mixture of a fuel if at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)) and if such mixture is sold or used in the trade or business of the person producing such mixture.

Paragraph (14) shall not apply with respect to any mixture sold or used after September 30, 2000.

(c) LIMITATIONS ON AMOUNT OF PAYMENT.—

"(1) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES IN CERTAIN CASES.—Subsection (a) shall not apply to so much of the taxes imposed by sections 4081 and

4091 as are attributable to a Leaking Underground Storage Tank Trust Fund financing rate in the case of—

"(A) fuel used in a train, and

"(B) fuel used in any aircraft (except as supplies for vessels or aircraft within the meaning of section 4221(d)(3)).

"(2) NO REFUND OF DEFICIT REDUCTION TAX ON DIESEL FUEL USED IN TRAINS.—Subsection (a) shall not apply to so much of the tax imposed by section 4091 as is attributable to a deficit reduction rate in the case of diesel fuel used in a diesel-powered train.

"(3) NO REFUND OF PORTION OF TAX ON DIESEL FUEL USED IN CERTAIN BUSES.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate of tax taken into account under subsection (a) with respect to diesel fuel used in qualified bus transportation (within the meaning of subsection (g)(1)) shall be 3.1 cents per gallon less than the aggregate rate of tax imposed on such fuel by section 4091.

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in transportation described in subsection (g)(1)(B).

"(C) EXCEPTION FOR CERTAIN INTRACITY TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

"(i) which is available to the general public, and

"(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

"(D) QUALIFIED LOCAL BUS.—For purposes of this paragraph, the term 'qualified local bus' means any local bus—

"(i) which has a seating capacity of at least 20 adults (not including the driver), and

"(ii) which is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)) to furnish such transportation.

"(4) ALCOHOL FUELS.—

"(A) IN GENERAL.—In the case of a fuel used as described in subsection (b)(14) and on which tax was imposed at regular tax rate, the rate of tax taken into account under subsection (a) with respect to the fuel so used shall equal the excess of the regular tax rate over the incentive tax rate.

"(B) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(C) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof.

"(5) GASOLINE USED IN NONCOMMERCIAL AVIATION.—If—

"(A) tax is imposed by section 4081 at the rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(B) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(b)),

the payment under subsection (a) shall be equal to 1.4 cents (2 cents in the case of gasohol none of the alcohol in which consists of ethanol) per gallon of gasohol so used.

"(d) TIME FOR FILING CLAIMS; PERIOD COVERED.—

"(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), not more than one claim may be filed under this section by any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—If as of the close of any quarter of a person's taxable year, \$750 or more is payable under this section to such person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during such quarter or any prior quarter of such taxable year (and for which no other claim has been filed), a claim may be filed under this section with respect to fuel so used (or qualified diesel powered highway vehicles so purchased).

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed during the first quarter following the last quarter included in the claim.

"(3) SPECIAL RULE FOR GASOLINE CREDIT.—

"(A) IN GENERAL.—A claim may be filed for gasoline used to produce gasohol (as defined in section 4081(c)(1)) for any period—

"(i) for which \$200 or more is payable by reason of subsection (b)(14), and

"(ii) which is not less than 1 week.

"(B) PAYMENT OF CLAIM.—Notwithstanding subsection (a), if the Secretary has not paid a claim filed pursuant to subparagraph (A) within 20 days of the date of the filing of such claim, the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

"(e) USE ON A FARM FOR FARMING.—For purposes of subsection (b)(8)—

"(1) IN GENERAL.—Fuel shall be treated as used on a farm for farming purposes only if used—

"(A) in carrying on a trade or business,

"(B) on a farm situated in the United States, and

"(C) for farming purposes.

"(2) FARM.—The term 'farm' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

"(3) FARMING PURPOSES.—Fuel shall be treated as used for farming purposes only if used—

"(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;

"(B) by the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so

treated during the period with respect to which claim is filed;

"(C) by the owner, tenant, or operator of a farm, in connection with—

"(i) the planting, cultivating, caring for, or cutting of trees, or

"(ii) the preparation (other than milling) of trees for market, incidental to farming operations; or

"(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the fuel, except that

"(B) if the person so using the fuel is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the fuel, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such fuel on a farm for farming purposes.

"(f) OFF-HIGHWAY BUSINESS USE.—For purposes of subsection (b)(9)—

"(1) IN GENERAL.—The term 'off-highway business use' means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

"(A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

"(B) which, in the case of a highway vehicle owned by the United States, is used on the highway.

"(2) USES IN MOTORBOATS.—The term 'off-highway business use' does not include any use in a motorboat; except that such term shall include any use in—

"(A) a vessel employed in the fisheries or in the whaling business, and

"(B) for purposes of the tax imposed under section 4091, a motorboat in the active conduct of—

"(i) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(ii) any other trade or business unless the motorboat is used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement or recreation.

"(g) QUALIFIED BUS TRANSPORTATION.—For purposes of subsection (b)(10)—

"(1) IN GENERAL.—Fuel is used in qualified bus transportation if it is used in an automobile bus while engaged in—

"(A) furnishing (for compensation) passenger land transportation available to the general public, or

"(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)).

"(2) LIMITATION IN THE CASE OF NON-SCHEDULED INTERCITY OR LOCAL BUSES.—Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

"(h) USE BY AN AIRCRAFT MUSEUM.—For purposes of subsection (b)(11)—

"(1) IN GENERAL.—Fuel is used by an aircraft museum if it is used in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in paragraph (2)(C).

"(2) AIRCRAFT MUSEUM.—For purposes of this subsection, the term 'aircraft museum' means an organization—

"(A) described in section 501(c)(3) which is exempt from income tax under section 501(a),

"(B) operated as a museum under charter by a State or the District of Columbia, and

"(C) operated exclusively for the procurement, care, and exhibition of aircraft of the type used for combat or transport in World War II.

"(i) USE IN A NONPURPOSE USE.—For purposes of subsection (b)(12), fuel is used in a nonpurpose use if—

"(1) tax was imposed by section 4041 on the sale thereof and the purchaser—

"(A) uses such fuel other than for the use for which it is sold, or

"(B) resells such fuel, or

"(2) tax was imposed by section 4081 on any gasoline blend stock or product commonly used as an additive in gasoline and the purchaser establishes that the ultimate use of such blend stock or product is not to produce gasoline.

"(j) ADVANCE REPAYMENT OF INCREASED DIESEL FUEL TAX TO ORIGINAL PURCHASERS OF DIESEL-POWERED AUTOMOBILES AND LIGHT TRUCKS.—

"(1) IN GENERAL.—Except as provided in subsection (d), the Secretary shall pay (without interest) to the original purchaser of any qualified diesel-powered highway vehicle an amount equal to the diesel fuel differential amount.

"(2) QUALIFIED DIESEL-POWERED HIGHWAY VEHICLE.—For purposes of this subsection, the term 'qualified diesel-powered highway vehicle' means any diesel-powered highway vehicle which—

"(A) has at least 4 wheels,

"(B) has a gross vehicle weight rating of 10,000 pounds or less, and

"(C) is registered for highway use in the United States under the laws of any State.

"(3) DIESEL FUEL DIFFERENTIAL AMOUNT.—For purposes of this subsection, the term 'diesel fuel differential amount' means—

"(A) except as provided in subparagraph (B), \$102, or

"(B) in the case of a truck or van, \$198.

"(4) ORIGINAL PURCHASER.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'original purchaser' means the first person to purchase the qualified diesel-powered vehicle for use other than resale.

"(B) EXCEPTION FOR CERTAIN PERSONS NOT SUBJECT TO FUELS TAX.—The term 'original purchaser' shall not include any State or local government (as defined in section 4221(d)(4)) or any nonprofit educational organization (as defined in section 4221(d)(5)).

"(C) TREATMENT OF DEMONSTRATION USE BY DEALER.—For purposes of subparagraph (A), use as a demonstrator by a dealer shall not be taken into account.

"(5) VEHICLES TO WHICH SUBSECTION APPLIES.—This subsection shall only apply to qualified diesel-powered highway vehicles originally purchased after January 1, 1985, and before January 1, 1995.

"(6) BASIS REDUCTION.—For the purposes of subtitle A, the basis of any qualified diesel-powered highway vehicle shall be reduced by the amount payable under this subsection with respect to such vehicle.

"(k) INCOME TAX CREDIT IN LIEU OF PAYMENT; OTHER SPECIAL RULES.—

"(1) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

"(A) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under this section only to—

"(i) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumental-

ity of one or more States or political subdivisions, or

"(ii) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a payment of a claim filed under paragraph (2) or (3) of subsection (d).

"(C) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—

"For allowances of credit against the income tax imposed by subtitle A for fuel used by the purchaser in an exempt use, see section 34.

"(2) APPLICABLE LAWS.—

"(A) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the tax with respect to which a payment is claimed under this section shall, insofar as applicable and not inconsistent with this section, apply in respect of such payment to the same extent as if such payment constituted a refund of overpayments of such tax.

"(B) EXAMINATION OF BOOKS AND WITNESSES.—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602(a) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

"(3) COORDINATION WITH SECTION 6416, ETC.—No amount shall be payable under this section to any person with respect to any fuel if the Secretary determines that the amount of tax for which such payment is sought was not included in the price paid by such person for such fuel. The amount which would (but for this sentence) be payable under this section with respect to any fuel shall be reduced by any other amount which the Secretary determines is payable under this section, or is refundable under any other provision of this title, to any person with respect to such fuel.

"(4) REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

"(1) FUELS.—For purposes of this section, the terms 'gasoline', 'diesel fuel', and 'aviation fuel' have the respective meanings given such terms by sections 4082 and 4092.

"(m) TERMINATION.—Except as otherwise provided in this section, this section shall not apply to any liquid purchased after September 30, 1999. The preceding sentence shall not apply to taxes attributable to any Leaking Underground Storage Tank Trust Fund financing rate."

SEC. 4703. AUTHORITY TO PROVIDE EXCEPTIONS FROM INFORMATION REPORTING WITH RESPECT TO DIESEL FUEL AND AVIATION FUEL.

(a) RETURNS BY PRODUCERS AND IMPORTERS.—Subparagraph (A) of section 4093(c)(4) (relating to returns by producers and importers) is amended by striking "Each producer" and inserting "Except as provided by the Secretary by regulations, each producer".

(b) RETURNS BY PURCHASERS.—Subparagraph (C) of section 4093(c)(4) (relating to returns by purchasers) is amended by striking "Each person" and inserting "Except as provided by the Secretary by regulations, each person".

SEC. 4704. TECHNICAL AND CONFORMING AMENDMENTS.

(1) Sections 6421 and 6427 are hereby repealed.

(2) Section 34 is amended to read as follows:

"SEC. 34. EXCISE TAXES ON FUEL USED FOR EXEMPT PURPOSES.

"There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the excess of—

"(1) the aggregate amount payable to the taxpayer under section 6420 (determined without regard to section 6420(k)(1)) with respect to—

"(A) exempt uses (as defined in section 6420(b)) during such taxable year, and

"(B) qualified diesel-powered highway vehicles purchased during such taxable year, over

"(2) the portion of such amount for which a claim payable under section 6420(d) is timely filed."

(3) Subsection (c) of section 40 is amended by striking "subsection (b)(2), (k), or (m)" and inserting "subsection (a)(4) or (b)(4)".

(4) Paragraph (2) of section 451(e) is amended by striking "section 6420(c)(3)" and inserting "section 6420(e)(3)".

(5) Clause (i) of section 1274(c)(3)(A) is amended by striking "section 6420(c)(2)" and inserting "section 6420(e)(2)".

(6) Sections 874(a) and 1366(f)(1) are each amended by striking "gasoline and special" and inserting "taxable".

(7) Paragraph (2) of section 882(c) is amended by striking "gasoline" and inserting "taxable fuels".

(8) Subsection (b) of section 4042 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(9) Subsection (b) of section 4082 is amended by striking "special fuels referred to in section 4041" and inserting "special motor fuels referred to in section 4041(a)".

(10) Section 4083 is amended to read as follows:

"SEC. 4083. CROSS REFERENCE.

"For provision allowing a credit or refund for gasoline used for exempt purposes, see section 6420."

(11) Subsections (c)(2) and (d)(2) of section 4091 are each amended by striking "section 6427(f)(1)" and inserting "section 6420(b)(14)".

(12) Paragraph (1) of section 4093(c) is amended by striking "by the purchaser" and all that follows and inserting "by the purchaser in an exempt use (as defined in section 6420(b) other than paragraph (14) thereof)."

(13) Subparagraph (C) of section 4093(c)(2) is amended by striking "section 6427(b)(2)(A)" and inserting "section 6420(c)(3)(A)".

(14) Clause (i) of section 4093(c)(4)(C) is amended to read as follows:

"(i) whether such use was an exempt use (as defined in section 6420(b)) and the amount of fuel so used,"

(15) Section 4093 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) **USE BY PRODUCER OR IMPORTER.**—If any producer or importer uses any taxable fuel, then such producer or importer shall be liable for tax under section 4091 in the same manner as if such fuel were sold by him for such use."

(16) Subsection (f) of section 4093, as redesignated by paragraph (15), is amended to read as follows:

"(e) **CROSS REFERENCE.**—

"For provision allowing a credit or refund for fuel used for exempt purposes, see section 6420."

(17) Section 6206 is amended to read as follows:

"SEC. 6206. SPECIAL RULES APPLICABLE TO EXCESSIVE FUEL TAX REFUND CLAIMS.

"Any portion of a payment made under section 6420 which constitutes an excessive amount (as defined in section 6675(b)), and any civil penalty provided by section 6675, may be assessed and collected as if—

"(1) it were a tax imposed by the section to which the claim relates, and

"(2) the person making the claim were liable for such tax.

The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for filing the claim under section 6420."

(18) Subparagraph (A) of section 6416(a)(2) is amended by striking "(relating to tax on special fuels)" and inserting "(relating to special motor fuels and noncommercial aviation gasoline)".

(19) Paragraph (2) of section 6416(b) is amended—

(A) in the matter preceding subparagraph (A) by striking "subsection (a) or (d) of section 4041" and inserting "section 4041(a)", and

(B) in subparagraph (F) by striking "special fuels referred to in section 4041" and inserting "special motor fuels referred to in section 4041(a)".

(20) Paragraph (9) of section 6504 is amended to read as follows:

"(9) Assessments to recover excessive amounts paid under section 6420 (relating to certain taxes on fuels used for exempt purposes) and assessments of civil penalties under section 6675 for excessive claims under section 6420, see section 6206."

(21) Subsection (h) of section 6511 is amended by striking paragraphs (5) and (6), by redesignating paragraph (7) as paragraph (6), and by inserting after paragraph (4) the following new paragraph:

"(5) For limitations in the case of payments under section 6420 (relating to certain taxes on fuels used for exempt purposes), see section 6420(d)."

(22) Subsection (c) of section 6612 is amended by striking "6420 (relating to payments in the case of gasoline used on the farm for farming purposes) and 6421 (relating to payments in the case of gasoline used for certain nonhighway purposes or by local transit systems)" and inserting "and 6420 (relating to certain taxes on fuels used for exempt purposes)".

(23) Subsection (a) of section 6675 is amended by striking "section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), or 6427 (relating to fuels not used for taxable purposes)" and inserting "section 6420 (relating to certain taxes on fuels used for exempt purposes)".

(24) Paragraph (1) of section 6675(b) is amended by striking "6421, or 6427, as the case may be,"

(25) Section 7210 is amended by striking "sections 6420(e)(2), 6421(g)(2), 6427(j)(2)" and inserting "sections 6420(k)(3)(B)".

(26) Section 7603, subsections (b) and (c)(2) of section 7604, section 7605, and 7610(c) are each amended by striking "section 6420(e)(2), 6421(g)(2), 6427(j)(2)," each place it appears and inserting "section 6420(k)(2)(B)".

(27) Sections 7605 and 7609(c)(1) are each amended by striking "section 6420(e)(2), 6421(g)(2), or 6427(j)(2)" and inserting "section 6420(k)(2)(B)".

(28) Paragraph (1) of section 9502(b) is amended by striking "subsections (c) and (e) of section 4041 (taxes on aviation fuel)" and inserting "section 4041(b) (relating to taxes on noncommercial aviation gasoline)".

(29) Paragraph (2) of section 9502(d) is amended by striking "fuel used in aircraft" and all that follows and inserting "fuel used in aircraft, under section 6420 (relating to certain taxes on fuels used for exempt purposes)."

(30) Paragraph (1) of section 9502(e) is amended by striking "4041(c)(1) and".

(31) Subparagraph (A) of section 9503(b)(1) is amended to read as follows:

"(A) section 4041 (relating to special motor fuels and noncommercial aviation gasoline)."

(32) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) **CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.**—For purposes

of paragraphs (1) and (2), the taxes imposed by sections 4041, 4081, and 4091 shall be taken into account only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(33)(A) Clause (i) of section 9503(c)(2)(A) is amended to read as follows:

"(i) the amounts paid before July 1, 1996, under section 6420 (relating to certain taxes on fuels used for exempt purposes) on the basis of claims filed for periods ending before October 1, 1995, and".

(B) For purposes of section 9503(c)(2)(A)(i) of the Internal Revenue Code of 1986, the reference to section 6420 shall be treated as including a reference to sections 6420, 6421, and 6427 of such Code as in effect before the enactment of this Act.

(34) Clause (ii) of section 9503(c)(2)(A) is amended by striking "gasoline, special fuels, and lubricating oil" each place it appears and inserting "taxable fuels".

(35) Subparagraph (D) of section 9503(c)(4) is amended by striking "section 4041(a)(2)" and inserting "section 4041(a)".

(36) Subparagraph (A) of section 9503(e)(5) is amended by striking "section 6427(g)" and inserting "section 6420(j)".

(37) Paragraph (1) of section 9508(b) is amended to read as follows:

"(1) taxes received in the Treasury under section 4041 (relating to special motor fuels and noncommercial aviation gasoline) to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rates applicable under such section,"

(38) Subparagraph (A) of section 9508(c)(2) is amended by striking "equivalent to—" and all that follows and inserting the following: "equivalent to—

"(i) amounts paid under section 6420 (relating to certain taxes on fuels used for exempt purposes), and

"(ii) credits allowed under section 34,

with respect to so much of the taxes imposed by sections 4041, 4081, and 4091 as are attributable to the Leaking Underground Storage Tank Trust Fund financing rates applicable under such sections."

(39) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 34 and inserting the following:

"Sec. 34. Excise taxes on fuels used for exempt purposes."

(40) The table of sections for subchapter B of chapter 31 is amended by striking the item relating to section 4041 and inserting the following:

"Sec. 4041. Special motor fuels and noncommercial aviation gasoline."

(41) The table of sections for subpart A of part III of subchapter A of chapter 32 is amended by striking the item relating to section 4083 and inserting the following:

"Sec. 4083. Cross reference."

(42) The table of sections for subchapter B of chapter 65 is amended by striking the items relating to sections 6421 and 6427 and by striking the item relating to section 6420 and inserting the following new item:

"Sec. 6420. Certain taxes on fuels used for exempt purposes."

(43) The table of sections for subchapter A of chapter 63 is amended by striking the item relating to section 6206 and inserting the following new item:

"Sec. 6206. Special rules applicable to excessive fuel tax refund claims."

SEC. 4705. EFFECTIVE DATE.

The amendments made by this part shall take effect on January 1, 1993.

PART II—PROVISIONS RELATED TO DISTILLED SPIRITS, WINES, AND BEER

SEC. 4711. CREDIT OR REFUND FOR IMPORTED BOTTLED DISTILLED SPIRITS RETURNED TO DISTILLED SPIRITS PLANT.

(a) *IN GENERAL.*—Paragraph (1) of section 5008(c) (relating to distilled spirits returned to bonded premises) is amended by striking "with-drawn from bonded premises on payment or de-termination of tax" and inserting "on which tax has been determined or paid".

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4712. AUTHORITY TO CANCEL OR CREDIT EXPORT BONDS WITHOUT SUBMISSION OF RECORDS.

(a) *IN GENERAL.*—Subsection (c) of section 5175 (relating to export bonds) is amended by striking "on the submission of" and all that fol-lows and inserting "if there is such proof of ex-ported as the Secretary may by regulations re-quire."

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4713. REPEAL OF REQUIRED MAINTENANCE OF RECORDS ON PREMISES OF DIS-TILLED SPIRITS PLANT.

(a) *IN GENERAL.*—Subsection (c) of section 5207 (relating to records and reports) is amended by striking "shall be kept on the premises where the operations covered by the record are carried on and".

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4714. FERMENTED MATERIAL FROM ANY BREWERY MAY BE RECEIVED AT A DISTILLED SPIRITS PLANT.

(a) *IN GENERAL.*—Paragraph (2) of section 5222(b) (relating to production, receipt, removal, and use of distilling materials) is amended to read as follows:

"(2) beer conveyed without payment of tax from brewery premises, beer which has been lawfully removed from brewery premises upon determination of tax, or"

(b) *CLARIFICATION OF AUTHORITY TO PERMIT REMOVAL OF BEER WITHOUT PAYMENT OF TAX FOR USE AS DISTILLING MATERIAL.*—Section 5053 (relating to exemptions) is amended by redesignating subsection (f) as subsection (i) and by in-serting after subsection (e) the following new subsection:

"(f) *REMOVAL FOR USE AS DISTILLING MATE-RIAL.*—Subject to such regulations as the Sec-etary may prescribe, beer may be removed from a brewery without payment of tax to any dis-tilled spirits plant for use as distilling material."

(c) *CLARIFICATION OF REFUND AND CREDIT OF TAX.*—Section 5056 (relating to refund and cred-it of tax, or relief from liability) is amended—

(1) by redesignating subsection (c) as sub-section (d) and by inserting after subsection (b) the following new subsection:

"(c) *BEER RECEIVED AT A DISTILLED SPIRITS PLANT.*—Any tax paid by any brewer on beer produced in the United States may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be re-lieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is re-ceived on the bonded premises of a distilled spir-its plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.", and

(2) by striking "or rendering unmerchantable" in subsection (d) (as so redesignated) and insert-ing "rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant".

(d) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4715. REPEAL OF REQUIREMENT FOR WHOLESALE DEALERS IN LIQUORS TO POST SIGN.

(a) *IN GENERAL.*—Section 5115 (relating to sign required on premises) is hereby repealed.

(b) *CONFORMING AMENDMENTS.*—

(1) Subsection (a) section 5681 is amended by striking "and every wholesale dealer in li-quors," and by striking "section 5115(a) or".

(2) Subsection (c) of section 5681 is amended—
(A) by striking "or wholesale liquor establish-ment, on which no sign required by section 5115(a) or" and inserting "on which no sign re-quired by", and

(B) by striking "or wholesale liquor establish-ment, or who" and inserting "or who".

(3) The table of sections for subpart D of part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

(c) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4716. REFUND OF TAX TO WINE RETURNED TO BOND NOT LIMITED TO UNMERCHANTABLE WINE.

(a) *IN GENERAL.*—Subsection (a) of section 5044 (relating to refund of tax on unmerchantable wine) is amended by striking "as unmerchantable".

(b) *CONFORMING AMENDMENTS.*—

(1) Section 5361 is amended by striking "unmerchantable".

(2) The section heading for section 5044 is amended by striking "UNMERCHANTABLE".

(3) The item relating to section 5044 in the table of sections for subpart C of part I of sub-chapter A of chapter 51 is amended by striking "unmerchantable".

(c) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4717. USE OF ADDITIONAL AMELIORATING MATERIAL IN CERTAIN WINES.

(a) *IN GENERAL.*—Subparagraph (D) of section 5384(b)(2) (relating to ameliorated fruit and berry wines) is amended by striking "logan-berries, currants, or gooseberries," and inserting "any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any cor-rection of such fruit or berry)".

(b) *EFFECTIVE DATE.*—The amendment made by this section shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4718. DOMESTICALLY-PRODUCED BEER MAY BE WITHDRAWN FREE OF TAX FOR USE OF FOREIGN EMBASSIES, LEGA-TIONS, ETC.

(a) *IN GENERAL.*—Section 5053 (relating to ex-emptions) is amended by inserting after sub-section (f) the following new subsection:

"(g) *REMOVALS FOR USE OF FOREIGN EMBAS-SIES, LEGATIONS, ETC.*—

"(1) *IN GENERAL.*—Subject to such regulations as the Secretary may prescribe—

"(A) beer may be withdrawn from the brewery without payment of tax for transfer to any cus-toms bonded warehouse for entry pending with-drawal therefrom as provided in subparagraph (B), and

"(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and in-dividuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded ware-house under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Sec-etary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same con-ditions and procedures as imported beer.

"(2) *OTHER RULES TO APPLY.*—Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) of such section shall apply for purposes of this subsection."

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4719. BEER MAY BE WITHDRAWN FREE OF TAX FOR DESTRUCTION.

(a) *IN GENERAL.*—Section 5053 is amended by inserting after subsection (g) the following new subsection:

"(h) *REMOVALS FOR DESTRUCTION.*—Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction."

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4720. AUTHORITY TO ALLOW DRAWBACK ON EXPORTED BEER WITHOUT SUBMIS-SION OF RECORDS.

(a) *IN GENERAL.*—The first sentence of section 5055 (relating to drawback of tax on beer) is amended by striking "found to have been paid" and all that follows and inserting "paid on such beer if there is such proof of exportation as the Secretary may by regulations require."

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall take effect on the 180th day after the date of the enactment of this Act.

SEC. 4721. TRANSFER TO BREWERY OF BEER IM-PORTED IN BULK WITHOUT PAY-MENT OF TAX.

(a) *IN GENERAL.*—Part II of subchapter G of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5418. BEER IMPORTED IN BULK.

"Beer imported or brought into the United States in bulk containers may, under such regu-lations as the Secretary may prescribe, be with-drawn from customs custody and transferred in such bulk containers to the premises of a brew-ery without payment of the internal revenue tax imposed on such beer. The proprietor of a brew-ery to which such beer is transferred shall be-come liable for the tax on the beer withdrawn from customs custody under this section upon release of the beer from customs custody, and the importer, or the person bringing such beer into the United States, shall thereupon be re-lieved of the liability for such tax."

(b) *CLERICAL AMENDMENT.*—The table of sec-tions for such part II is amended by adding at the end thereof the following new item:

"Sec. 5418. Beer imported in bulk."

(c) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the 180th day after the date of the enactment of this Act.

PART III—OTHER EXCISE TAX PROVISIONS

SEC. 4731. AUTHORITY TO GRANT EXEMPTIONS FROM REGISTRATION REQUIRE-MENTS.

(a) *IN GENERAL.*—The first sentence of section 4222 (relating to registration) is amended to read as follows: "Except as provided in subsection (b), section 4221 shall not apply with respect to the sale of any article by or to any person who is required by the Secretary to be registered under this section and who is not so registered."

(b) *EFFECTIVE DATE.*—The amendment made by subsection (a) shall apply to sales after the 180th day after the date of the enactment of this Act.

SEC. 4732. SMALL MANUFACTURERS EXEMPT FROM FIREARMS EXCISE TAX.

(a) *IN GENERAL.*—Section 4182 (relating to ex-emption), is amended by redesignating sub-section (c) as subsection (d) and by inserting after subsection (b) the following new sub-section:

"(c) *SMALL MANUFACTURERS, ETC.*—
"(1) *IN GENERAL.*—The tax imposed by section 4181 shall not apply to any article described in

such section if manufactured, produced, or imported by a manufacturer, producer, or importer who manufactures, produces, or imports less than 50 of such articles during the calendar year.

"(2) CONTROLLED GROUP.—Persons who are members of the same controlled group of corporations shall be treated as 1 manufacturer, producer, or importer. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in such section."

(b) EFFECTIVE DATE; REFUNDS.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 1983.

(2) WAIVER OF STATUTE OF LIMITATIONS.—In the case of any taxable year ending before the date of the enactment of this Act—

(A) the period for claiming a credit or refund of any overpayment of tax resulting from the application of the amendments made by this section shall not expire before the date which is 1 year after the date of the enactment of this Act, and

(B) if, after the application of subparagraph (A), credit or refund of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the close of such 1-year period by the operation of any law or rule of law (including res judicata), credit or refund of such overpayment (to the extent attributable to the application of the amendments made by this section) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 4733. REPEAL OF EXPIRED PROVISIONS.

(a) PIGGY-BACK TRAILERS.—Section 4051 is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) DEEP SEABED MINING.—

(1) Subchapter F of chapter 36 (relating to tax on removal of hard mineral resources from deep seabed) is hereby repealed.

(2) The table of subchapters for chapter 36 is amended by striking the item relating to subchapter F.

Subtitle H—Administrative Provisions

PART I—GENERAL PROVISIONS

SEC. 4801. SIMPLIFICATION OF DEPOSIT REQUIREMENTS FOR SOCIAL SECURITY, RAILROAD RETIREMENT, AND WITHHELD INCOME TAXES.

(a) IN GENERAL.—Subsection (g) of section 6302 (relating to deposits of social security taxes and withheld income taxes) is amended to read as follows:

"(g) DEPOSITS OF SOCIAL SECURITY, RAILROAD RETIREMENT, AND WITHHELD INCOME TAXES.—

"(1) GENERAL RULE.—Except as otherwise provided in this subsection—

"(A) employment taxes attributable to payments on Wednesday, Thursday, or Friday of any week shall be deposited on or before the following Tuesday, and

"(B) employment taxes attributable to payments on Saturday, Sunday, Monday, or Tuesday of any week shall be deposited on or before the following Friday.

"(2) SMALL DEPOSITORS.—

"(A) IN GENERAL.—If any person is a small depositor for any calendar quarter, such person shall make deposits of employment taxes attributable to payments during any month in such quarter on or before the 15th day of the following month.

"(B) SMALL DEPOSITOR.—For purposes of this subsection, a person is a small depositor for any calendar quarter if, for each calendar quarter in the base period, the amount of employment

taxes attributable to payments made by such person during such calendar quarter was \$12,000 or less. For purposes of the preceding sentence, the base period for any calendar quarter is the 4 calendar quarters ending with the second preceding calendar quarter.

"(C) CESSATION AS SMALL DEPOSITOR.—A person shall cease to be treated as a small depositor for a calendar quarter after any day on which such person is required to make a deposit under paragraph (3).

"(3) LARGE DEPOSITORS.—Notwithstanding paragraphs (1) and (2), if, on any day, any person has \$100,000 or more of employment taxes for deposit, such taxes shall be deposited on or before the next day.

"(4) SAFE HARBOR.—

"(A) IN GENERAL.—A person shall be treated as depositing the required amount of employment taxes in any deposit if the shortfall does not exceed the greater of—

"(i) \$100, or

"(ii) 2 percent of the amount of employment taxes required to be deposited in such deposit (determined without regard to this paragraph). Such shortfall shall be deposited as required by the Secretary by regulations.

"(B) SHORTFALL.—For purposes of this paragraph, the term 'shortfall' means, with respect to any deposit, the excess of the amount of employment taxes required to be deposited in such deposit (determined without regard to this paragraph) over the amount (if any) thereof deposited on or before the last date prescribed therefor.

"(5) DEPOSIT REQUIRED ONLY ON BANKING DAYS.—If taxes are required to be deposited under this subsection on any day which is not a banking day, such taxes shall be treated as timely deposited if deposited on the first banking day thereafter.

"(6) EMPLOYMENT TAXES.—For purposes of this subsection, the term 'employment taxes' means the taxes imposed by chapters 21, 22, and 24.

"(7) SUBSECTION TO APPLY ONLY TO REQUIRED DEPOSITS.—This subsection shall not apply to employment taxes which are not required to be deposited under the regulations prescribed by the Secretary under this section.

"(8) REGULATIONS.—The Secretary may prescribe regulations—

"(A) specifying employment tax deposit requirements for persons who fail to comply with the requirements of this subsection,

"(B) specifying circumstances under which a person shall be treated as a small depositor for purposes of this subsection notwithstanding that such person is not described in paragraph (2)(B),

"(C) specifying modifications to the provisions of this subsection for end-of-quarter periods, and

"(D) establishing deposit requirements for taxes imposed by section 3406 which apply in lieu of the requirements of this subsection."

(b) CONFORMING AMENDMENT.—Section 226 of the Railroad Retirement Solvency Act of 1983 is hereby repealed.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts attributable to payments made after December 31, 1992.

SEC. 4802. SIMPLIFICATION OF EMPLOYMENT TAXES ON DOMESTIC SERVICES.

(a) THRESHOLD REQUIREMENT FOR SOCIAL SECURITY TAXES.—

(1) Subparagraph (B) of section 3121(a)(7) (defining wages) is amended to read as follows:

"(B) cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such year by the employer to the employee for such service is less

than \$300. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in subsection (g)(5)."

(2) Subparagraph (B) of section 209(a)(6) of the Social Security Act is amended to read as follows:

"(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such year by the employer to the employee for such service is less than \$300. As used in this subparagraph, the term 'domestic service in a private home of the employer' does not include service described in section 210(f)(5)."

(3) The second sentence of section 3102(a) is amended—

(A) by striking "calendar quarter" each place it appears and inserting "calendar year", and

(B) by striking "\$50" and inserting "\$300".

(b) COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT WITH COLLECTION OF INCOME TAXES.—

(1) IN GENERAL.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by adding at the end thereof the following new section:

"SEC. 3510. COORDINATION OF COLLECTION OF DOMESTIC SERVICE EMPLOYMENT TAXES WITH COLLECTION OF INCOME TAXES.

"(a) GENERAL RULE.—Except as otherwise provided in this section—

"(1) returns with respect to domestic service employment taxes shall be made on a calendar year basis,

"(2) any such return for any calendar year shall be filed on or before the 15th day of the fourth month following the close of the employer's taxable year which begins in such calendar year, and

"(3) no requirement to make deposits (or to pay installments under section 6157) shall apply with respect to such taxes.

"(b) DOMESTIC SERVICE EMPLOYMENT TAXES SUBJECT TO ESTIMATED TAX PROVISIONS.—

"(1) IN GENERAL.—Solely for purposes of section 6654, domestic service employment taxes imposed with respect to any calendar year shall be treated as a tax imposed by chapter 2 for the taxable year of the employer which begins in such calendar year.

"(2) ANNUALIZATION.—Under regulations prescribed by the Secretary, appropriate adjustments shall be made in the application of section 6654(d)(2) in respect of the amount treated as tax under paragraph (1).

"(3) TRANSITIONAL RULE.—For purposes of applying section 6654 to a taxable year beginning in 1992, the amount referred to in clause (ii) of section 6654(d)(1)(B) shall be increased by 90 percent of the amount treated as tax under paragraph (1) for such taxable year.

"(c) DOMESTIC SERVICE EMPLOYMENT TAXES.—For purposes of this section, the term 'domestic service employment taxes' means—

"(1) any taxes imposed by chapter 21 or 23 on remuneration paid for domestic service in a private home of the employer, and

"(2) any amount withheld from such remuneration pursuant to an agreement under section 3402(p).

For purposes of this subsection, the term 'domestic service in a private home of the employer' does not include service described in section 3121(g)(5).

"(d) EXCEPTION WHERE EMPLOYER LIABLE FOR OTHER EMPLOYMENT TAXES.—To the extent provided in regulations prescribed by the Secretary, this section shall not apply to any employer for any calendar year if such employer is liable for any tax under this subtitle with respect to remuneration for services other than domestic service in a private home of the employer.

"(e) AUTHORITY TO ENTER INTO AGREEMENTS TO COLLECT STATE UNEMPLOYMENT TAXES.—"

"(1) **IN GENERAL.**—The Secretary is hereby authorized to enter into an agreement with any State to collect, as the agent of such State, such State's unemployment taxes imposed on remuneration paid for domestic service in a private home of the employer. Any taxes to be collected by the Secretary pursuant to such an agreement shall be treated as domestic service employment taxes for purposes of this section.

"(2) **TRANSFERS TO STATE ACCOUNT.**—Any amount collected under an agreement referred to in paragraph (1) shall be transferred by the Secretary to the account of the State in the Unemployment Trust Fund.

"(3) **SUBTITLE F MADE APPLICABLE.**—For purposes of subtitle F, any amount required to be collected under an agreement under paragraph (1) shall be treated as a tax imposed by chapter 23.

"(4) **STATE.**—For purposes of this subsection, the term 'State' has the meaning given such term by section 3306(j)(1)."

(2) **CLERICAL AMENDMENT.**—The table of sections for chapter 25 is amended by adding at the end thereof the following:

"Sec. 3510. Coordination of collection of domestic service employment taxes with collection of income taxes."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to remuneration paid in calendar years after 1992.

SEC. 4803. USE OF REPRODUCTIONS OF RETURNS STORED IN DIGITAL IMAGE FORMAT.

(a) **IN GENERAL.**—Paragraph (2) of section 6103(p) (relating to procedure and record-keeping) is amended by adding at the end thereof the following new subparagraph:

"(D) **REPRODUCTION FROM DIGITAL IMAGES.**—For purposes of this paragraph, the term 'reproduction' includes a reproduction from digital images."

(b) **STUDY.**—The Comptroller General of the United States shall conduct a study of available digital image technology for the purpose of determining the extent to which reproductions of documents stored using that technology accurately reflect the data on the original document and the appropriate period for retaining the original document. Not later than 1 year after the date of the enactment of this Act, a report on the results of such study shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 4804. REPEAL OF AUTHORITY TO DISCLOSE WHETHER PROSPECTIVE JUROR HAS BEEN AUDITED.

(a) **IN GENERAL.**—Subsection (h) of section 6103 (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by striking paragraph (5) and by redesignating paragraph (6) as paragraph (5).

(b) **CONFORMING AMENDMENT.**—Paragraph (4) of section 6103(p) is amended by striking "(h)(6)" each place it appears and inserting "(h)(5)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to judicial proceedings pending on, or commenced after, the date of the enactment of this Act.

SEC. 4805. REPEAL OF SPECIAL AUDIT PROVISIONS FOR SUBCHAPTER S ITEMS.

(a) **GENERAL RULE.**—Subchapter D of chapter 63 (relating to tax treatment of subchapter S items) is hereby repealed.

(b) **CONSISTENT TREATMENT REQUIRED.**—Section 6037 (relating to return of S corporation) is amended by adding at the end thereof the following new subsection:

"(c) **SHAREHOLDER'S RETURN MUST BE CONSISTENT WITH CORPORATE RETURN OR SECRETARY NOTIFIED OF INCONSISTENCY.**—

"(1) **IN GENERAL.**—A shareholder of an S corporation shall, on such shareholder's return, treat a subchapter S item in a manner which is consistent with the treatment of such item on the corporate return.

"(2) **NOTIFICATION OF INCONSISTENT TREATMENT.**—

"(A) **IN GENERAL.**—In the case of any subchapter S item, if—

"(i)(I) the corporation has filed a return but the shareholder's treatment on his return is (or may be) inconsistent with the treatment of the item on the corporate return, or

"(II) the corporation has not filed a return, and

"(ii) the shareholder files with the Secretary a statement identifying the inconsistency, paragraph (1) shall not apply to such item.

"(B) **SHAREHOLDER RECEIVING INCORRECT INFORMATION.**—A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a subchapter S item if the shareholder—

"(i) demonstrates to the satisfaction of the Secretary that the treatment of the subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation, and

"(ii) elects to have this paragraph apply with respect to that item.

"(3) **EFFECT OF FAILURE TO NOTIFY.**—In any case—

"(A) described in subparagraph (A)(i)(I) of paragraph (2), and

"(B) in which the shareholder does not comply with subparagraph (A)(ii) of paragraph (2), any adjustment required to make the treatment of the items by such shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of mathematical or clerical errors and assessed according to section 6213(b)(1). Paragraph (2) of section 6213(b) shall not apply to any assessment referred to in the preceding sentence.

"(4) **SUBCHAPTER S ITEM.**—For purposes of this subsection, the term 'subchapter S item' means any item of an S corporation to the extent that regulations prescribed by the Secretary provide that, for purposes of this subtitle, such item is more appropriately determined at the corporation level than at the shareholder level.

"(5) **ADDITION TO TAX FOR FAILURE TO COMPLY WITH SECTION.**—

"For addition to tax in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section, see part II of subchapter A of chapter 68."

(c) **CONFORMING AMENDMENTS.**—

(1) Section 1366 is amended by striking subsection (g).

(2) Subsection (b) of section 6233 is amended to read as follows:

"(b) **SIMILAR RULES IN CERTAIN CASES.**—If a partnership return is filed for any taxable year but it is determined that there is no entity for such taxable year, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply."

(3) The table of subchapters for chapter 63 is amended by striking the item relating to subchapter D.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 4806. CLARIFICATION OF STATUTE OF LIMITATIONS.

(a) **IN GENERAL.**—Subsection (a) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new sentence: "For purposes of this chapter, the term 'return' means

the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

PART II—TAX COURT PROCEDURES**SEC. 4811. OVERPAYMENT DETERMINATIONS OF TAX COURT.**

(a) **APPEAL OF ORDER.**—Paragraph (2) of section 6512(b) (relating to jurisdiction to enforce) is amended by adding at the end the following new sentence: "An order of the Tax Court disposing of a motion under this paragraph shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) **DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.**—Subsection (b) of section 6512 (relating to overpayment determined by Tax Court) is amended by adding at the end the following new paragraph:

"(4) **DENIAL OF JURISDICTION REGARDING CERTAIN CREDITS AND REDUCTIONS.**—The Tax Court shall have no jurisdiction under this subsection to restrain or review any credit or reduction made by the Secretary under section 6402."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4812. AWARDED OF ADMINISTRATIVE COSTS.

(a) **RIGHT TO APPEAL TAX COURT DECISION.**—Subsection (f) of section 7430 (relating to right of appeal) is amended by adding at the end the following new paragraph:

"(3) **APPEAL OF TAX COURT DECISION.**—An order of the Tax Court disposing of a petition under paragraph (2) shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) **PERIOD FOR APPLYING TO IRS FOR COSTS.**—Subsection (b) of section 7430 (relating to limitations) is amended by adding at the end the following new paragraph:

"(5) **PERIOD FOR APPLYING TO IRS FOR ADMINISTRATIVE COSTS.**—An award may be made under subsection (a) for reasonable administrative costs only if the prevailing party files an application for such costs before the 91st day after the date on which the party was determined to be the prevailing party under subsection (c)(4)(B)."

(c) **PERIOD FOR PETITIONING OF TAX COURT FOR REVIEW OF DENIAL OF COSTS.**—Paragraph (2) of section 7430(f) (relating to right of appeal) is amended—

(1) by striking "appeal to" and inserting "the filing of a petition for review with", and

(2) by adding at the end the following new sentence: "If the Secretary sends by certified or registered mail a notice of such decision to the petitioner, no proceeding in the Tax Court may be initiated under this paragraph unless such petition is filed before the 91st day after the date of such mailing."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to civil actions or proceedings commenced after the date of the enactment of this Act.

SEC. 4813. REDETERMINATION OF INTEREST PURSUANT TO MOTION.

(a) **IN GENERAL.**—Paragraph (3) of section 7481(c) (relating to jurisdiction over interest determinations) is amended by striking "petition" and inserting "motion".

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 4814. APPLICATION OF NET WORTH REQUIREMENT FOR AWARDS OF LITIGATION COSTS.

(a) *IN GENERAL.*—Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end thereof the following new subparagraph:

“(C) *SPECIAL RULES FOR APPLYING NET WORTH REQUIREMENT.*—In applying the requirements of section 2412(d)(2)(B) of title 28, United States Code, for purposes of subparagraph (A)(iii) of this paragraph—

“(i) the net worth limitation in clause (i) of such section shall apply to—

“(I) an estate but shall be determined as of the date of the decedent’s death, and

“(II) a trust but shall be determined as of the last day of the taxable year involved in the proceeding, and

“(ii) individuals filing a joint return shall be treated as 1 individual for purposes of clause (i) of such section, except in the case of a spouse relieved of liability under section 6013(e).”

(b) *EFFECTIVE DATE.*—The amendment made by this section shall apply to proceedings commenced after the date of the enactment of this Act.

PART III—AUTHORITY FOR CERTAIN COOPERATIVE AGREEMENTS

SEC. 4821. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

(a) *GENERAL RULE.*—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

“SEC. 7524. COOPERATIVE AGREEMENTS WITH STATE TAX AUTHORITIES.

“(a) *AUTHORIZATION OF AGREEMENTS.*—The Secretary is hereby authorized to enter into cooperative agreements with State tax authorities for purposes of enhancing joint tax administration. Such agreements may provide for—

“(1) joint filing of Federal and State income tax returns,

“(2) single processing of such returns,

“(3) joint collection of taxes (other than Federal income taxes), and

“(4) such other provisions as may enhance joint tax administration.

“(b) *SERVICES ON REIMBURSABLE BASIS.*—Any agreement under subsection (a) may require reimbursement for services provided by either party to the agreement.

“(c) *AVAILABILITY OF FUNDS.*—Any funds appropriated for purposes of the administration of this title shall be available for purposes of carrying out the Secretary’s responsibility under an agreement entered into under subsection (a). Any reimbursement received pursuant to such an agreement shall be credited to the amount so appropriated.

“(d) *STATE TAX AUTHORITY.*—For purposes of this section, the term ‘State tax authority’ means agency, body, or commission referred to in section 6103(d)(1).”

(b) *CLERICAL AMENDMENT.*—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

“Sec. 7524. Cooperative agreements with State tax authorities.”

TITLE V—TAXPAYER BILL OF RIGHTS 2

SEC 5000. SHORT TITLE.

This title may be cited as the “Taxpayer Bill of Rights 2”.

Subtitle A—Taxpayer Advocate

SEC. 5001. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

(a) *GENERAL RULE.*—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end thereof the following new subsection:

“(d) *OFFICE OF TAXPAYER ADVOCATE.*—

“(1) *IN GENERAL.*—There is established in the Internal Revenue Service an office to be known as the ‘Office of the Taxpayer Advocate’. Such office, including all problem resolution officers, shall be under the supervision and direction of an official to be known as the ‘Taxpayer Advocate’ who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the Chief Counsel for the Internal Revenue Service.

“(2) *FUNCTIONS OF OFFICE.*—

“(A) *IN GENERAL.*—It shall be the function of the Office of Taxpayer Advocate to—

“(i) assist taxpayers in resolving problems with the Internal Revenue Service,

“(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

“(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

“(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

“(B) *ANNUAL REPORTS.*—

“(i) *OBJECTIVES.*—Not later than October 31 of each calendar year after 1991, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the following calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

“(ii) *ACTIVITIES.*—Not later than December 31 of each calendar year after 1991, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

“(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

“(II) contain recommendations received from individuals with the authority to issue taxpayer assistance orders (within the meaning of section 7811(f)),

“(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

“(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

“(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

“(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

“(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

“(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers, and

“(IX) include such other information as the Taxpayer Advocate may deem advisable.

“(3) *RESPONSIBILITIES OF COMMISSIONER OF INTERNAL REVENUE SERVICE.*—The Commis-

sioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate.”

(b) *CONFORMING AMENDMENTS.*—

(1) Section 7811 (relating to taxpayer assistance orders) is amended—

(A) by striking “the Office of Ombudsman” in subsection (a) and inserting “the Office of the Taxpayer Advocate”, and

(B) by striking “Ombudsman” each place it appears (including in the headings of subsections (e) and (f)) and inserting “Taxpayer Advocate”.

(2) The heading for section 7802 is amended to read as follows:

“SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE.”

(3) The table of sections for subchapter A of chapter 80 of subtitle F is amended by striking the item relating to section 7802 and inserting the following new item:

“Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate.”

(c) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5002. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

(a) *TAXPAYER’S HARDSHIP.*—Section 7811(a) (relating to authority to issue) is amended by striking “significant”.

(b) *TERMS OF ORDERS.*—Subsection (b) of section 7811 (relating to terms of taxpayer assistance orders) is amended—

(1) by inserting “within a specified time period” after “the Secretary”, and

(2) by striking “cease any action” and inserting “cease any action, take any action”.

(c) *LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.*—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

“(c) *AUTHORITY TO MODIFY OR RESCIND.*—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded only by the Taxpayer Advocate, the Commissioner, or any superior of either.”

(d) *EFFECTIVE DATE.*—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Modifications to Installment Agreement Provisions

SEC. 5101. NOTIFICATION OF REASONS FOR TERMINATION OR DENIAL OF INSTALLMENT AGREEMENTS.

(a) *TERMINATIONS.*—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end thereof the following new paragraph:

“(5) *NOTICE REQUIREMENTS.*—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

“(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

“(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.”

(b) *DENIALS.*—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by adding at the end thereof the following new subsection:

“(c) *NOTICE REQUIREMENTS FOR DENIALS.*—The Secretary may not deny any request for an installment agreement under this section unless—

"(1) a notice of the proposed denial is provided to the taxpayer not later than the day 30 days before the date of such denial, and

"(2) such notice includes an explanation why the Secretary intends to deny such request.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which a request for an agreement under this section relates is in jeopardy."

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 6159(b) is amended to read as follows:

"(3) SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 5102. ADMINISTRATIVE REVIEW OF DENIAL OF REQUEST FOR, OR TERMINATION OF, INSTALLMENT AGREEMENT.

(a) GENERAL RULE.—Section 6159 (relating to agreements for payment of tax liability in installments), as amended by section 5101, is amended by adding at the end thereof the following new subsection:

"(d) ADMINISTRATIVE REVIEW.—The Secretary shall establish procedures for an independent administrative review of denials of requests for, or terminations of, installment agreements under this section."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle C—Interest

SEC. 5201. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) GENERAL RULE.—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by striking "any error or delay" each place it appears and inserting "any unreasonable and excessive error or delay";

(2) by striking "in performing a ministerial act" each place it appears;

(3) by striking "may abate" and inserting "shall abate (or refund)";

(4) by inserting "the taxpayer has fully cooperated in resolving outstanding issues," after "taxpayer involved," and

(5) by adding at the end thereof the following new sentence: "In order to allow the taxpayer to develop the facts of such error or delay, the Internal Revenue Service shall provide to the taxpayer, within 30 days of the taxpayer's written request (in such form as the Secretary provides), all information and copies of relevant records in the possession of the Internal Revenue Service with respect to such taxpayer's case."

(b) CLERICAL AMENDMENT.—The subsection heading for subsection (e) of section 6404 is amended by striking "ASSESSMENTS" and inserting "ABATEMENT".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

SEC. 5202. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) GENERAL RULE.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

"(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 days (10 days

if the amount for which such notice and demand is made equals or exceeds \$100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply in the case of any notice and demand given after the date 6 months after the date of the enactment of this Act.

Subtitle D—Joint Returns

SEC. 5301. REQUIREMENT OF SEPARATE DEFICIENCY NOTICES IN CERTAIN CASES.

(a) GENERAL RULE.—Paragraph (2) of section 6212(b) (relating to address for notice of deficiency) is amended to read as follows:

"(2) JOINT INCOME TAX RETURN.—In the case of a joint income tax return filed by a husband and wife, any notice of deficiency (described in paragraph (1)) may be a single joint notice, except that if—

"(A) such spouses did not file a joint return with each other for the most recent taxable year for which data are available on the master files of the Internal Revenue Service, or

"(B) the Secretary has been notified by either spouse that separate residences have been established,

then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at such spouse's last known address."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 5302. DISCLOSURE OF COLLECTION ACTIVITIES.

(a) GENERAL RULE.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end thereof the following new paragraph:

"(8) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing of either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5303. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 5304. REPRESENTATION OF ABSENT DIVORCED OR SEPARATED SPOUSE BY OTHER SPOUSE.

(a) IN GENERAL.—Section 7605 (relating to time and place of examination) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) REPRESENTATION OF ABSENT DIVORCED OR SEPARATED SPOUSE BY OTHER SPOUSE.—In the case of an examination of an individual with respect to a joint income tax return filed by such individual and the individual's spouse who is no longer married to such individual or no

longer resides in the same household and is absent from such examination, the individual may not represent the absent spouse at the examination unless the absent spouse acknowledges such representation in writing."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle E—Collection Activities

SEC. 5401. NOTICE OF PROPOSED DEFICIENCY.

(a) IN GENERAL.—Subchapter B of chapter 63 (relating to assessment) is amended by inserting after section 6211 the following new section:

"SEC. 6211A. NOTICE OF PROPOSED DEFICIENCY.

"(a) IN GENERAL.—If, after the examination of a return, the Secretary determines that there may be a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43, 44, or 45, the Secretary shall send a notice of proposed deficiency to the taxpayer by certified mail or registered mail to an address as determined under section 6212(b).

"(b) TIMING OF NOTICE.—

"(1) IN GENERAL.—The mailing of the notice of proposed deficiency shall precede any mailing of a deficiency notice under section 6212 by at least 60 days.

"(2) AGREEMENT TO SUSPEND PERIOD OF LIMITATIONS.—If less than a 6-month period remains in the period of limitations provided in section 6501, 6502, or 6229, the taxpayer may agree, in writing, to a period of suspension of such period of limitations in order to allow the Secretary to send a notice of proposed deficiency.

"(c) NO NOTICE IN JEOPARDY ASSESSMENT.—Paragraph (1) shall not apply if the Secretary makes a jeopardy assessment."

(b) CONFORMING AMENDMENT.—Section 6503 (relating to suspension of running of period of limitation) is amended by inserting after subsection (i) the following new subsection:

"(j) SUSPENSION PENDING NOTICE.—The running of the period of limitations provided in section 6501, 6502, or 6229 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency defined in section 6211A(a) shall be suspended for any period described in section 6211A(b)(2)."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 63 is amended by inserting after the item relating to section 6211 the following new item:

"Sec. 6211A. Notice of proposed deficiency."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to deficiencies determined on or after 1 year after the date of the enactment of this Act.

SEC. 5402. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

(a) WITHDRAWAL OF CERTAIN NOTICES.—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end thereof the following new subsection:

"(j) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.—

"(1) IN GENERAL.—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

"(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer and the United States.

Any such withdrawal shall be made by filing notice thereof at the same office as the withdrawn notice.

"(2) NOTICE TO CREDIT AGENCIES, ETC.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and financial institutions specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe."

(b) RETURN OF LEVIED PROPERTY IN CERTAIN CASES.—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end thereof the following new subsection:

"(d) RETURN OF PROPERTY IN CERTAIN CASES.—If—

"(1) any property has been levied upon, and

"(2) the Secretary determines that—

"(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the return of such property will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)."

(c) MODIFICATIONS IN CERTAIN LEVY EXEMPTION AMOUNTS.—

(1) FUEL, ETC.—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(A) by striking "If the taxpayer is the head of a family, so" and inserting "So", and

(B) by striking "\$1,650 (\$1,500 in the case of levies issued during 1989)" and inserting "\$1,700".

(2) BOOKS, ETC.—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession exempt from levy) is amended by striking "\$1,100 (\$1,050 in the case of levies issued during 1989)" and inserting "\$1,200".

(3) INDEXED FOR INFLATION.—Section 6334 (relating to property exempt from levy) is amended by adding at the end thereof the following new subsection:

"(f) INFLATION ADJUSTMENTS.—

"(1) IN GENERAL.—In the case of any calendar year beginning after 1993, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3), for such calendar year, by substituting 'calendar year 1992' for 'calendar year 1989' in subparagraph (B) thereof.

"(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10)."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXEMPT AMOUNTS.—The amendments made by subsection (c) shall take effect with respect to levies issued after December 31, 1992.

SEC. 5403. OFFERS-IN-COMPROMISE.

(a) GENERAL RULE.—Subsection (a) of section 7122 (relating to compromises) is amended by adding at the end thereof the following new sentence: "The Secretary may make such a compromise in any case where the Secretary determines that such compromise would be in the best interests of the United States."

(b) REVIEW REQUIREMENTS.—Subsection (b) of section 7122 (relating to records) is amended by striking "\$500." and inserting "\$50,000. However, such compromise shall be subject to continuing quality review by the Secretary."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5404. NOTIFICATION OF EXAMINATION.

(a) IN GENERAL.—Subsection (b) of section 7605 (relating to restrictions on examination of taxpayer) is amended by inserting "No examination described in subsection (a) shall be made unless the Secretary notifies the taxpayer in writing by mail to an address determined under section 6212(b) that the taxpayer is under examination and provides the taxpayer with an explanation of the process as described in section 7521(b)(1)." before "No taxpayer".

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 7521(b) (relating to safeguards) is amended by striking "or at".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5405. MODIFICATION OF CERTAIN LIMITS ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) STANDARD OF CONDUCT.—Subsection (a) of section 7433 (relating to civil damages for certain unauthorized collection actions) is amended by striking "recklessly or intentionally" and inserting "negligently, or recklessly or intentionally".

(b) DOLLAR LIMITS WITH RESPECT TO STANDARD OF CONDUCT.—Section 7433(b) (relating to damages) is amended—

(1) by inserting "\$1,000,000, in the case of reckless or intentional disregard" after "\$100,000", and

(2) by inserting "negligent, or" before "reckless or intentional" in paragraph (1).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 5406. SAFEGUARDS RELATING TO DESIGNATED SUMMONS.

(a) STANDARD OF REVIEW.—Subparagraph (A) of section 6503(k)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,".

(b) NOTICE REQUIREMENTS FOR ISSUANCE.—Section 6503(k) is amended by adding at the end thereof the following new paragraph:

"(4) NOTICE REQUIREMENTS.—With respect to any summons referred to in paragraph (1)(A) issued to any person other than the corporation, the Secretary shall promptly notify the corporation, in writing, that such summons has been issued with respect to such corporation's return of tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to summons issued after the date of the enactment of this Act.

Subtitle F—Information Returns

SEC. 5501. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking "name and address" and inserting "name, address, and phone number of the information contact":

- (1) Section 6041(d)(1).
- (2) Section 6041A(e)(1).
- (3) Section 6042(c)(1).
- (4) Section 6044(e)(1).
- (5) Section 6045(b)(1).
- (6) Section 6049(c)(1)(A).
- (7) Section 6050B(b)(1).
- (8) Section 6050H(d)(1).
- (9) Section 6050I(e)(1).
- (10) Section 6050J(e).
- (11) Section 6050K(b)(1).
- (12) Section 6050N(b)(1).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1992 (determined without regard to any extension).

SEC. 5502. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) GENERAL RULE.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

"SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

"(a) IN GENERAL.—If any person willfully files a false or fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

"(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the false or fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing), and

"(2) the costs of the action.

"(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within 6 years after the filing of the false or fraudulent information return.

"(d) INFORMATION RETURN.—For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

"Sec. 7434. Civil damages for fraudulent filing of information returns.

"Sec. 7435. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to false or fraudulent information returns filed after the date of the enactment of this Act.

SEC. 5503. REQUIREMENT TO VERIFY ACCURACY OF INFORMATION RETURNS.

(a) GENERAL RULE.—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on

an information return filed with the Secretary under chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary, the Secretary, in presenting evidence of the deficiency based on such information return, shall present reasonable evidence of such deficiency in addition to such information return."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle G—Modifications to Penalty for Failure To Collect and Pay Over Tax

SEC. 5601. TRUST FUND TAXES.

(a) **IN GENERAL.**—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) **PRELIMINARY NOTICE AND DECLARATORY JUDGMENT PROCEEDING.**—

"(1) **PRELIMINARY NOTICE.**—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty and provides the taxpayer with an explanation of the declaratory judgment process under paragraph (3).

"(2) **TIMING OF NOTICE.**—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

"(3) **DECLARATORY JUDGMENT.**—

"(A) **IN GENERAL.**—In a case of an actual controversy involving a determination by the Secretary with respect to the taxpayer's liability for the penalty imposed under subsection (a), upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to such liability. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(B) **EXHAUSTION OF ADMINISTRATIVE REMEDIES.**—The Tax Court shall not issue a declaratory judgment or decree under this paragraph in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to the petitioner within the Internal Revenue Service.

"(C) **TIME FOR BRINGING ACTION.**—No proceeding may be initiated under this paragraph by any person unless the pleading is filed before the 31st day after the day the notice under paragraph (1) is mailed to such person."

(b) **CONFORMING AMENDMENTS.**—Section 6672 is amended—

(1) by striking paragraphs (4) and (5) of subsection (c) (as redesignated by this section), and

(2) by adding at the end thereof the following new subsections:

"(e) **SUSPENSION OF RUNNING OF PERIOD OF LIMITATIONS ON COLLECTION.**—The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect to any penalty under subsection (a) shall be suspended for the period during which the Secretary is prohibited from collecting the penalty by levy or a proceeding in court.

"(f) **JEOPARDY COLLECTION.**—If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this section shall prevent the immediate collection of such penalty."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply in the case of failures after the date of the enactment of this Act.

SEC. 5602. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY.

(a) **IN GENERAL.**—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 402, is amended by adding at the end thereof the following new paragraph:

"(9) **DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.**—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

"(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

"(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5603. PENALTIES UNDER SECTION 6672.

(a) **PUBLIC INFORMATION REQUIREMENTS.**—The Secretary of the Treasury or the Secretary's delegate (hereafter in this section referred to as the "Secretary") shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(1) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(2) the development of a special information packet.

(b) **BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.**—

(1) **VOLUNTARY BOARD MEMBERS.**—The penalty under section 6672 of the Internal Revenue Code of 1986 shall not be imposed on unpaid, volunteer members of any board of trustees or directors of an organization referred to in section 501 of such Code to the extent such members do not participate in the day-to-day or financial operations of the organization.

(2) **DEVELOPMENT OF EXPLANATORY MATERIALS.**—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) **IRS INSTRUCTIONS.**—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.

(c) **PROMPT NOTIFICATION.**—To the maximum extent practicable, the Secretary shall notify all persons who have failed to make timely and complete deposit of any taxes of such failure within 30 days after the date on which the Secretary is first aware of such failure.

Subtitle H—Awarding of Costs and Certain Fees

SEC. 5701. COMMENCEMENT DATE OF REASONABLE ADMINISTRATIVE COSTS.

(a) **IN GENERAL.**—The second sentence of section 7430(c)(2) (defining reasonable administrative costs) is amended to read as follows:

"Such term shall only include costs incurred on or after the earlier of (i) the date of the notice of proposed deficiency under section 6211A or similar notice of assessment or proposed assessment, or (ii) the date of the notice of deficiency."

(b) **CONFORMING AMENDMENT.**—Clause (i) of section 7430(c)(7)(B) (defining position of United States) is amended to read as follows:

"(i) the date of the notice of proposed deficiency under section 6211A or similar notice of assessment or proposed assessment, or"

SEC. 5702. INTERIM NOTICE REQUIREMENT.

Paragraph (4) of section 7430(c) (defining prevailing party) is amended by adding at the end thereof the following new subparagraph:

"(C) **INTERIM NOTICE.**—Once a taxpayer substantially prevails as described in subparagraph (A)(ii) and in order to allow such taxpayer to develop the facts relating to the position of the United States, the Internal Revenue Service shall provide to the taxpayer, within 30 days of the taxpayer's written request (in such form as the Secretary provides), all information and copies of relevant records in the possession of the Internal Revenue Service with respect to such taxpayer's case and the substantial justification for the position taken by the Internal Revenue Service."

SEC. 5703. INCREASED LIMIT ON ATTORNEY FEES.

Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended by inserting after clause (iii) the following:

"In the case of any calendar year beginning after 1981, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount, multiplied by the cost-of-living adjustment determined under section 1(f)(3), for such calendar year, by substituting 'calendar year 1980' for 'calendar year 1989' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10)."

SEC. 5704. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end thereof the following new sentence: "Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence."

SEC. 5705. EFFECTIVE DATE.

The amendments made by this subtitle shall apply in the case of notices made and proceedings commenced after the date of the enactment of this Act.

Subtitle I—Other Provisions

SEC. 5801. REQUIRED CONTENT OF CERTAIN NOTICES.

(a) **GENERAL RULE.**—Subsection (a) of section 7522 (relating to content of tax due, deficiency, and other notices) is amended by striking "shall describe the basis for, and identify" and inserting "shall set forth the adjustments which are the basis for, and shall identify".

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to notices sent after the date 6 months after the date of the enactment of this Act.

SEC. 5802. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

(a) **IN GENERAL.**—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

"(b) **RETROACTIVITY OF REGULATIONS.**—

"(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), any temporary or proposed regulation issued by the Secretary shall apply prospectively from the date of publication of such regulation in the Federal Register.

"(2) **CONGRESSIONAL AUTHORIZATION.**—The prospective only treatment of paragraph (1) may be superseded by a specific legislative grant from Congress authorizing the Secretary to prescribe

the effective date with respect to a statutory provision.

"(3) ELECTION TO APPLY RETROACTIVELY.—The Secretary may provide for any taxpayer to elect to apply any temporary or proposed regulation retroactively from the date of publication of such regulation in the Federal Register.

"(4) APPLICATION TO FINAL REGULATIONS.—The Secretary may provide that any final regulation relating to any temporary or proposed regulation take effect from the date of publication of such temporary or proposed regulation in the Federal Register."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to—

(1) any temporary or proposed regulation published on or after February 20, 1992, and

(2) any temporary or proposed regulation published before February 20, 1992, and published as a final regulation after such date.

SEC. 5803. REQUIRED NOTICE OF CERTAIN PAYMENTS.

If any payment is received by the Secretary of the Treasury or the Secretary's delegate (hereafter in the section referred to as the "Secretary") from any taxpayer and the Secretary cannot associate such payment with any outstanding tax liability of such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

SEC. 5804. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) IN GENERAL.—Part 1 of chapter 75 of subtitle F (relating to crimes, other offenses, and forfeitures) is amended by adding at the end thereof the following section:

"SEC. 7217. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

"Any officer or employee of the United States who defers or offers to defer, or forgives or offers to forgive, the determination or collection of any tax due to an attorney, certified public accountant, or enrolled agent representing a taxpayer, in exchange for information concerning such taxpayer, shall be guilty of a felony, and upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both, together with the costs of the prosecution."

(b) CLERICAL AMENDMENT.—The table of sections for part 1 of chapter 75 of subtitle F is amended by adding at the end thereof the following new item:

"Sec. 7217. Unauthorized enticement of information disclosure."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

Mr. BENTSEN. Mr. President, today the Senate begins to work on a tax bill that tries to bring about three objectives. One, to bring about more fairness to the Tax Code. Two, to provide some real incentives to get this economy moving again. And three, to do it all without busting the budget, and to do it within the discipline of the budget agreement.

Enactment of this legislation is going to help middle-income families. It is going to help those families that wait for the supermarket ads and look for the coupons to be able to take them to the grocery store before they decide which groceries to buy that week and which not to; families that, when they start thinking about their kids going to college, look more at the economic assistance for the student than they do

at the academic qualities of that college to start with; families that, when they have a child who is running a fever and they have to go to a doctor, realize they are making not just a medical decision but they are making a financial decision.

Recent studies show that middle-income families have to work a month longer than they did a decade ago in order to make ends meet. Parents have 40 percent less discretionary time. That means less time with their children and all the problems that result therefrom.

The cost of feeding, clothing, and educating our children have risen, but middle-income Americans are having to work harder just to stay in place. This proposal is aimed specifically at those families that have taken the hardest hit over the last decade and they are middle-income families with children, those that have seen their taxes go up and their incomes go down.

We are looking for honest answers that will create jobs and opportunity for the long term. We are doing this in a fiscally responsible manner. And we are doing our part to try to comply with the President's directive by getting this legislation before him by a March 20 deadline, the deadline that he has laid down.

This was not an easy package to put together. The easy way would have been to resort to the shifting sand of creative accounting that the administration's proposal was built upon.

But we insisted it would not be a budget buster. Democrats in the Finance Committee were unanimous in agreeing that every item in this bill had to be paid for. And it is. This bill pays for itself. It does not add a nickel to the Federal deficit over the next 6 years. In fact, it lowers that deficit by \$6.5 billion during that period.

We are not shifting the cost back to the working families of America. Nor are we shifting the costs on to our children. That is because, unlike the President's plan, we paid for every tax cut in our bill.

According to the Congressional Budget Office, the President's proposal would increase the deficit by \$27 billion over those 5 years—break that budget agreement wide open.

After reading a deficit-increasing proposal like that, you have to conclude that the administration's computers that calculated it must have been struck by the Michelangelo virus.

What this legislation will do is start putting fairness into our tax system. At the heart of the bill is a permanent \$300 tax credit for each child, each year until that child turns 16. For a family of four making the median income, which in this country today is \$35,000, a family of four—two children—that is a \$600 tax reduction, a 25-percent cut in their income tax bill.

Oh, I know to some that sounds like peanuts, inside the Beltway, but I will

tell you it is serious money to a family in Abilene, TX, or Aurora, IL, or any number of places around this country. For a child born this year, that is nearly \$5,000 by the time he or she gets a driver's license. With \$5,000 per child, a family can have better quality day care; help pay the orthodontist, buy better health insurance, or pay for medical expenses that are not covered. Or they could set aside that money to pay for college expenses. If it is invested at 8 percent, that \$300 credit each year would add up to \$15,000 by the time that child was ready to go to college. About 20 million middle-income families would benefit from that tax credit alone. Millions more would benefit from other tax provisions.

It would restore the fully deductible IRA's for all American workers, allow early withdrawals to buy a house, go to college, fight a costly illness. Those are the provisions of the Bentsen-Roth IRA bill. And I am delighted to see my cosponsor on that bill chairing the representation of the minority. We have some 78 Senators on that bill; bipartisan support for it.

It would establish, also, a fair, progressive capital gains tax cut. It gives 65 percent of the benefits to people who earn less than \$100,000 a year. And it would simplify and expand the earned income tax credit to help families where the parents work but at low-paying jobs.

This bill takes a good first step toward dealing with our Nation's health care crisis, focusing on the small business owners, the millions of Americans who work for small business.

In traveling across Texas and meeting with small business employers and their employees, listening to their concerns, their first response when finances get tight is to raise the deductible. Then they arise the coinsurance. Then they drop the dependents. And then they drop the policy altogether because last year health insurance premiums went up 24 percent and the year before that 24 percent—almost 50 percent in 2 years. So small business says, "We just cannot stop it; we cannot handle it."

This bill includes the Better Access to Health Care Act—a bipartisan measure that I introduced last October with Senators DURENBERGER, MITCHELL, ROCKEFELLER, PRYOR, RIEGLE, and others. This bill takes some important steps to address problems in our health care system. More than 34 million Americans, most of whom have jobs or live in families where someone works, lacks health insurance and needs our help.

We are stepping up to that issue of "job lock," the problem when someone has a preexisting condition, or has a spouse that does, or they have a dependent that does, and they cannot change jobs. They hear of a better offer but they cannot really consider it be-

cause they are afraid they will not get the coverage, the health insurance, in that next job. Or you have some insurance companies that will come in and say, "Look, we can take 23 of your employees but that 24th one, that woman there with the heart condition, we cannot take her." Yet she is the one who probably needs it the most. It puts a stop to that. It stops those insurance companies who "cherry pick" only the healthiest workers for a company red line companies—denying insurance to all their workers there.

Workers and their family members will be protected from gaps in health insurance coverage when they change jobs. New rules will be established for health insurance sold to small businesses so that individual employees, or their dependents, cannot just be singled out and excluded from the coverage. Their policies cannot be canceled when someone gets sick. Farmers and other self-employed taxpayers will be able to deduct 100 percent of their health insurance premiums.

A Health Care Cost Commission will be created to advise the President and the Congress on ways to make health care more affordable and more accessible.

These actions are not a substitute for comprehensive overall health reform, but they are first steps. We can agree on that while the debate on comprehensive reform continues. Comprehensive change is needed and this is a step toward it, not a substitute for it. But the fact is, right now there is no agreement on what form a comprehensive solution should take. There is agreement, bipartisan agreement, that these provisions we are talking about here will make a difference.

After we have introduced this bill, the President can then incorporate many of the proposals in our legislation into a health care reform bill of his own.

So once again we are trying to bring about a bipartisan solution to help move this country forward. Some Republicans have taken to calling this bill a tax increase. It is not. It is revenue neutral. For every tax increase, there is a tax cut. It is no more a tax increase that President Reagan's tax reform legislation was in 1986. His bill, like the bill the Finance Committee reported to the Senate, it raised some taxes in order to lower others.

Our bill will mean that higher taxes will be paid by a few—fewer than 800,000 people at the top of the income scale—in order to cut taxes for the 31 million American families who would benefit from the child tax credit, from the earned income tax credit, and progressive capital gains provisions.

Those whose taxes would increase are the same group who enjoyed a \$16,000-a-year tax cut in the eighties. The President dismisses our tax cut for middle-income Americans as insignificant.

How can he say that a 25 percent income tax cut for a family of four, average income family, has little meaning, while simultaneously staking his Presidency on opposition to a 5-percent tax increase for those earning more than \$175,000?

Let me give an example of that. Mr. President, do you know what the tax rate is for people making \$35,000 a year, as compared to someone making \$1 million, the difference in the rate? It is 3 percent. That is the difference in the rate.

When we are talking about putting this legislation into effect, it will still mean that this country will have a substantially smaller top-income tax rate than will our principal economic competitors like Japan and Germany, who have a 50- and 53-percent rate.

I think the way we have addressed this is a fair and fiscally responsible way for putting some fairness back into the tax system. The plan would increase that marginal tax rate from 31 to 36 percent for families with a taxable income of over \$175,000. That is taxable income. That is after you remove all the deductions. That means the gross income is certainly higher than that.

Back in 1985, I can recall that President Reagan proposed a 35-percent rate on everyone earning more than \$70,000. We are keeping the rate at 28 percent for the vast majority of those taxpayers. We are also asking for a 10-percent surtax on the most fortunate, those who have an income of over \$1 million a year.

Even with these changes, the wealthiest Americans will remain far ahead of where they were in the sixties, when the top tax bracket was 91 percent; and in the seventies, when it was 70 percent. The top bracket will be approximately half the seventies rate and, again, remains substantially lower than top rates of our principal economic competitors. If the President feels that is veto bait, so be it. I am more than happy to let the American people decide that one.

Instead, though, I hope the President will change his mind. If he wants people to believe his March 20 deadline represents a real desire for action and not just an arbitrary rhetorical marker, he should regard our effort to enact this legislation. If he will just quit worrying about Pat Buchanan, the President will see this bill for what it is: An honest effort at finding a solution. For despite the differences that attract these headlines, the deep, dark secret about this bill is that it seeks common ground among Congress and the President, among Democrats and Republicans.

The health provisions that the President has endorsed are included. He proposed a seven-point growth program. We accepted all seven, with some minor modifications, and that includes

his cherished capital gains cut. His State of the Union proposal on capital gains turned out to be so far off the mark that the administration was forced to amend it in the budget.

But their proposal would have given 66 percent of the benefits to people with incomes over \$200,000—66 percent to less than 1 percent of the people. Our proposal gives 66 percent to those making under \$100,000.

Americans really want results. They do not want bickering. We keep hoping this economy is going to rebound. Economists have been telling us that the recovery is just 6 months away. They have been telling us that for 18 months now. One of these days, they are going to be right, and I sure hope it is soon. Some hopeful signs of recovery were overpowered by the news last Friday, though, when our unemployment rate soared to 7.3 percent in February. That is the highest it has been in more than 6 years.

We are laying the foundation for real jobs and prosperity in the future. This legislative package stimulates savings and investment. It makes it easier to save for college, easier to get and pay back a college loan. It addresses some of the serious health care problems that are facing working Americans.

Throughout our history, America has meant opportunity, the chance for a step up in life. But opportunity sure became a scarce commodity in the eighties. Today we are talking about turning that one around. This bill can help Americans better cope with today's financial pressures and shore up our economy to provide our children with a better future.

Over the past decade, the middle-income families with children saw their taxes go up while their incomes went down by an average of \$1,600. It is only right that we pass this legislation to bring their taxes down and restore a measure of fairness to our tax system.

Mr. President, I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware [Mr. ROTH].

Mr. ROTH. Mr. President, with baseball season quickly approaching, there is a story about the remarkable Lou Gehrig that I believe might help us put some perspective on this tax debate. One day, in the last inning of a critical game, Gehrig let the umpire call the third strike on him. The fans were outraged at the call. From the point of view of those in the grandstands, Gehrig appeared equally upset. He threw down his bat and muttered something to the umpire.

It was totally out of character for Gehrig. Shortly after the game, as Lou Gehrig left the clubhouse, a reporter asked him what he was complaining about to the umpire. Gehrig answered: "I wasn't complaining. I simply told him that I'd give a million dollars for another chance at that last ball."

Here we are, Mr. President, at the bottom of the ninth in a critical game of our own. In the balance are jobs for Americans and a strong competitive future for America. Nothing less. And what we do on the floor of this Senate will either send the ball sailing into the bleachers over the centerfield wall, or—if we continue to let politics get the best of us—will find us taking the third strike on a full count without even swinging the bat. If that happens, how many of us—like Lou Gehrig—will find ourselves muttering that we would give a million dollars for another chance at the ball.

We cannot afford to miss.

And frankly, I am of the opinion that we will not. I believe that each one of us realizes what's at stake in this tax debate. Plain and simple, the issue is one of jobs—jobs for today and jobs in a competitive U.S. economy tomorrow. The question is how do we come together as political parties with differing agendas—especially in this election year—to do, not what is politically expedient, but to do what is right for the American people? How do we give American workers, American families, American commerce the hope and promise being sought?

These are the questions, and they go far beyond politics. They cut to the very core of America's future. And as a consequence, they demand the very best effort we have to offer.

We cannot continue to let politics get in the way of progress. And, Mr. President, they are getting in the way. Is there any question why voters are disheartened, frustrated and even angry. Frankly, I cannot blame them. What they are asking for is what—because of politics only—Congress is showing itself unable to deliver. Americans want us to forge a program that promises jobs, growth and a bright—internationally competitive—future.

It can be done. It has been done before.

To paraphrase the great John Dickenson, Delaware's representative to the Continental Congress: Politics will mislead us; Experience must be our guide. And we, Mr. President, have that experience. And I am here today to ask my colleagues to return with me to the basics of good government.

That is what this tax debate should be about. Putting one more bandage over an infected wound simply because we're in an election year—and because Congress might be able to fool some of the people for nothing more than political gain—is not only wrong; in this crucial game, it is also dangerous.

America is still dazed from Congress' last bandage—the record-setting tax increase of 1990. That increase—according to its outspoken proponents—was supposed to cure the wound. It was supposed to cut the deficit. It was supposed to ignite the economy. Only last week, President Bush admitted it was

one of the most regrettable mistakes of his first term. In each and every case, that tax increase had the opposite effect. The deficit is today at a record high. Following the increase, the economy dipped deeper into recession. And Government waste and inefficiency continues unabated.

Let experience be our guide. Compare the outcome of that tax increase to the outcome of the Roth-Kemp tax cuts of 1981. Within months after Roth-Kemp began to take effect, the economy was on a rebound—real Gross Domestic Product was growing almost 4 percent in 1983 and almost 7 percent in 1984. The unemployment rate fell by more than 2 percentage points in the first full year after the Roth-Kemp tax cuts took effect. By the end of 1984, four million additional jobs had been created and real median family income had begun a rebound that would reach 13 percent by the end of the expansion.

On the other hand, after the recordsetting tax increase of 1990, employment dropped by over a million jobs, median family income declined \$709 in 1990 alone, and real GDP bottomed out.

It is important to mention here that following Roth-Kemp, Treasury revenues were at an all-time high. Between 1980 and 1990, Federal revenues climbed \$514 billion. The problem is that unchecked congressional spending grew even faster—\$661 billion over the same period. The difference between these two numbers completely explains the increase in the deficit during this time and proves that the deficit problem is not that Americans are under taxed—or that the Treasury is starved of revenue; the problem is that Congress cannot control its insatiable appetite for spending.

The problem, Mr. President, resides in this body, and over there in the House of Representatives. The problem is not with the taxpayer. The problem is not with small businesses and farmers struggling to stay alive amid a sea of tax increases and over regulation. The problem is here. And the problem must be solved here!

I know that some try to dismiss the Reagan, Roth-Kemp expansion years as a decade of greed—a decade of over-indulgence—a decade of deficits. If that is good for their politics, let them continue to distort the truth. The honest know otherwise. Charitable giving, economic growth, and Federal revenues were at an all time high. Across the board, Americans were better off. And if we will set aside politics and return to the fundamental principles we embraced in 1981, Americans will be better off again.

All the bashing of the Reagan expansion years—popular in the liberal community—relies almost entirely on disinformation coming from sources such as the Congressional Budget Office. And the American people know

this. They know that the years following Roth-Kemp were much more secure than those following the 1990 tax increase. That is why Congress is facing the cynicism it is today; that is why Congress—if we are to promote jobs, growth and opportunity, if we are to prepare America for a bright economic future—must set aside partisan politics and find a consensus on real tax incentives for a lasting recovery.

Unfortunately, there are those who seek to undermine our effort. These are the big-spending liberals—those out of touch with mainstream America—those who will do almost anything to augment their power base. To them I respond not so much in anger as with sorrow. They have got to come clean before we can make meaningful progress on this critical debate. They have thrown truth as well as history out the window to embrace deliberately fabricated erroneous statistics to tell a story that just is not true.

Even last week, Joint Economic Committee Republicans exposed a horrendous mistake—and subsequent coverup—by the liberal-controlled CBO. In trying to prove that during the record-setting economic recovery of the 1980's the rich got richer while the poor got poorer, CBO—along with the liberal-controlled Joint Tax Committee—made a gross error of \$134 billion. One hundred and thirty-four billion dollars.

The CBO and Joint Tax Committee's estimate of capital gains income was off by over 100 percent. How in the world can the liberals be expected to make reasonable and rational economic policy when their own economists are off by over 100 percent, when they try to cover up an error of \$134 billion? Frankly, I do not blame the economists who made the mistake. Under the system as it is now, they are paid by the liberals—the masters whom they serve.

When the big-spending liberals—for political reasons—say this is the outcome we want: we want to prove that the rich are getting richer while the poor are getting poorer, and we do not care how you bend the numbers. The economists are only doing what their politicians are telling them.

But when those numbers come to this floor and are used to make economic policy that will significantly affect the well-being of American families—the future competitive strength of our economy—that is when, as Benjamin Disraeli said, lies, damn lies, and politicized statistics must be exposed. In the name of fairness, I encourage all my colleagues on the other side of the aisle to look into these fraudulent statistics before you determine the course of future economic policy.

I encourage you to read an honest and insightful article by the well-respected Stanford economist, Thomas Sowell, that appeared in *Forbes* maga-

zine. I ask unanimous consent that this article and the other one appear in the RECORD following my remarks, but I would also like to read a very telling passage.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ROTH. According to Dr. Sowell:

Statistics on income distribution are a much more reliable guide to political fashions than to economic reality. In an era when indignation has become a way of life, statistics are defined and compiled in ways that exaggerate income at the top and understate income at the bottom.

Then, referring to the exact CBO report I have cited, Dr. Sowell writes:

Recently, a much-publicized study by the Congressional Budget Office set off predictable cries in the media that the rich were getting richer and the poor were getting poorer. But the definitions and statistical methods used reveal more than numbers themselves.

First, of all, most of the \$184 billion in Government welfare benefits to low-income Americans simply does not get counted. Food stamps, public housing and Medicaid are among the noncash benefits that are left out.

At the other end of the income distribution, capital gains are treated in the CBO statistics in a way that would get a student flunked in elementary economics or statistics.

Dr. Sowell goes on to explain exactly what the CBO did to politicize the statistics. And frankly, what they did, should raise the dander of every responsible American. To those Americans the reason why the liberals refuse to come clean is simple: They want your money.

The liberals in Congress honestly believe they can spend your money better than you can spend it. Frankly, that's just what the bosses in the Kremlin thought up until a few years ago. And that inflated opinion by the liberals in Congress is at the very foundation of this tax debate.

For meaningful progress—to get the results the American people want—we have to break the mold. We have to literally redefine the tax debate.

We are not here to decide what Congress should do with its money, with revenue it has earned through honest labor. We are here to decide how to responsibly use the money allocated to Government by the American people. And I think the liberals in Congress—those who have succeeded in defining this debate—have forgotten that.

This is not their money we are talking about. They did not earn it. It does not belong to them. The U.S. Government has no money of its own. The Government is not a profitable corporate entity. It is not a small business struggling to survive. It is not a hard-working lineman or a diligent woman on a factory floor. It is not a teacher in a classroom, or a homemaker administering to the needs of family.

But from what I have heard so far in this tax debate, you'd think the Gov-

ernment was deciding what to do with its money and that the hard-working, risk-taking, family-supporting taxpayer had little if any say in the matter. Worse yet, you would think that the money of these hard-working Americans—the taxes Congress has yet to levy—was already being taken for granted.

Well, that is wrong. It is dead wrong. And as we consider how the trusted funds needed to run government—needed to provide essential services and provide for the common defense—as we decide how these trusted funds should be used, let us keep straight whose money it is in the first place. That is how we must redefine this debate. That is how we must let history be our guide.

Every time hard-earned dollars are taken from farmers in Sussex County, Delaware, to finance one more Federal boondoggle—every time taxes are used to finance inefficient and needless Government programs—Congress has forgotten whose money it is using to pay for the pork; and, perhaps more importantly, Congress has missed another chance to do what is right rather than what is politically expedient.

If we are to meet the bright future that could be ours, we must get back to the basics, Mr. President. Americans will not suffer tax-hiking fools much longer. Just ask King George. And in these last few years, tax hikes have grown out of control. The liberals in this body look at them as a right, not as a stewardship of responsibility and trust. And that is very, very dangerous, especially when these liberals are willing to bend the statistics in their efforts to increase taxes even further. In this effort, their attempt to play one economic group against another—the middle class against the wealthy class—has no place on the floor of the U.S. Congress.

Toward real progress—progress that I believe can be achieved—our objective must be straightforward and understandable. Our course for the future must be one of incentives rather than penalties. Americans must be rewarded for their labors rather than penalized through excessive taxation. Americans must be rewarded for saving and investing; they must be encouraged to play vital and necessary roles in an internationally competitive community—a community in which America must be seen as first among equals—and a community in which the entrepreneurial and disciplined spirit of our past plays an equal part in our future.

Under no circumstances can we afford another tax increase. Let me say this again so there is no mistaking: Under no circumstances can America afford another tax increase. Just as it happened with the ill-conceived luxury tax, a tax increase of any kind will come back to haunt our economy and to penalize even those it intended to

help. And quite frankly, I am surprised that given the current economic environment—the need to spark the economy—that some in this Congress would even consider a tax increase. Feeding Congress' money-burning appetite at this time is like giving a man with a heart condition a high-fat, high-cholesterol diet. There is no sense to it and the result is bound to be terminal.

Rather than tax increases, Mr. President, we must come together with positive economic policies, policies that equal growth and jobs. And time is of the essence. Every day we delay action—every day we allow politics to get in the way of real reform—we put off recovery and force Americans in real need to struggle for another 24 hours. I, for one, am fed up. Without breaking the mold on this debate and going back to the basics of real reform, the liberals in Congress are going to fulfill the prediction headlining a front-page story in a recent edition of the New York Times. They write: "Despite all the talk of tax cuts, people can expect to pay more."

Frankly, this is exactly what the House Democrats proposed with their recent bill. A 2-year tax cut charade in an election year for the middle class followed by record-setting increases that are scheduled to last forever.

As I say, the tax cut was for 2 years, but the tax increases are scheduled forever.

The intention of the bill is not to spark the economy, it is not even to administer real and lasting tax relief for the middle class. The intention, quite simply, is to foment class warfare, dangerous class warfare for nothing more than political gain. And the tax bill now introduced here by Senate Democrats has the same objective.

Frankly, as for the Senate proposal, with the exception of the Bentsen-Roth IRA proposal, I regret that this tax bill does little to meet the criteria for real economic reform. It does little for growth, little for a strong American future. In reality, it is little more than a tax increase orchestrated by big spenders who, quite honestly, will never have enough of the taxpayers' hard-earned money. They will always have one more multibillion-dollar program to fund, one more port barrel project, one more needless bureaucratic, inefficient government office to keep open.

How long can we allow this to go on? Unless we begin now to break the mold, to shatter the economic debate that the big spenders have controlled throughout the last three decades, this tax increase—proposed by Senate Democrats—will be only one more milestone along the road to America's economic ruin.

The big spenders control the money. The big spenders created the deficit. It is that simple. They can use all the smoke and mirrors they want, they can get the CBO to twist the statistics, but

the American people are fully aware of the game. And they will not allow it to go on much longer.

I am here today because I do not believe it has to be that way. I believe we can begin now to turn the economy around. We can begin now to answer the real demands of Americans—to offer them the hope and promise they are seeking. We proved that we could do it in 1981. John F. Kennedy proved it 20 years earlier. I believe we can prove it again. Immediately, we can prove it by limiting our honest approach to three specific initiatives:

First, we must pass the Bentsen-Roth super IRA. America's rate of saving is the lowest of the G-7. Where Japan's rate of personal saving is 15.9 percent, America's is 4.6. The next lowest is the United Kingdom at 8.7 percent. We cannot modernize, we cannot compete if this discrepancy in savings is not addressed. I was honored and happy to join my distinguished chairman in the Bentsen-Roth super IRA which offers the incentives needed to increase personal saving. The super IRA is the most widely accepted savings package before Congress, and it works.

It works not only for those planning for retirement, but for those buying their first homes, for those seeking higher education, and for those who are confronted with catastrophic health care costs. The Bentsen-Roth super IRA—in the wide and majority support it has already received in the House and the Senate—also demonstrates the ability of both sides of the aisle to come together for the common good.

Second, we must pass an investment tax credit to spur buying of equipment and plant modernization. Comparing the period from 1985 to 1989, Japan invested a much larger portion of its GNP, 29.2 percent as compared to only 17.2 percent in the United States. What is more, in Japan—where the economy is just over one-half that of the United States, they are investing more in absolute dollar amounts than we are. In 1990, Japan's nonresidential fixed investment equaled \$675 billion while the comparable United States figure was only \$524 billion. This cannot stand. We must encourage our businesses and factories to modernize, to compete, and to prosper. This means jobs. And frankly, job creation is the bottom line in this debate.

Third, we must pass a capital gains tax cut. The March 16 issue of *Forbes* magazine explains in graphic clarity the importance of creating incentives for investment not only to strengthen the economy, but to increase Federal revenues. According to the *Forbes* article, " * * * when taxes on capital gains were reduced—1965, 1978, and 1982—realizations doubled to around 4 percent of the GNP * * * based on past performance—a cut in the Capital Gains tax—would * * * increase realizations by at least 2 percent of GNP, equal to around \$117 billion this year."

Mr. President, it is clear—and once CBO admits its errant ways in estimating the effectiveness and fairness of a capital gains tax cut both sides of the aisle will readily see—that cutting the taxes on capital gains is not a divisive political issue as some try to make it out to be. Rather, it is a necessary measure to spark our economy in the short-term and to prepare us for international competition in the long run.

Frankly, Mr. President, there are other initiatives that given a wish list, I believe Americans would like to have us pass. I outlined them last year and introduced them as the Roth package for jobs, opportunity, and growth. I have been impressed that that package is receiving national support and has been adopted by a growing grassroots political and economic movement. Perhaps, like Roth-Kemp in the early 1980's, the time will also soon come for the jobs, opportunity, and growth package.

At the foundation of the package is an income tax rate reduction—not just for taxpayers with children, or taxpayers in specific income groups, but for all taxpayers, except the very wealthiest.

I will continue to push the JOG American plan. But that has not been my intention today. What I have outlined today are initiatives that, given current politics, we could begin with, and pass, immediately. They are initiatives that can be paid for with responsible reductions in defense spending—responsible reductions that I began calling for following the thaw in the cold war almost 2 years ago. Likewise, these initiatives can be paid for through a much needed reduction in the hiring of civilian Government personnel through attrition. Let me be specific; this reduction in personnel staff would also include Congress.

Mr. President, if we can combine these three responsible economic initiatives with an effort to make government efficient and cost-effective, we will position America for a prosperous and competitive future. I believe we can do it. Likewise, I believe that with the spirit of bipartisan cooperation that we develop to meet these immediate economic needs, we can also turn our attention toward the pressing needs of health care, education, and the many other domestic issues that must be addressed quickly and soundly.

But let this be our starting point. Let it be said of this Congress that at this critical moment when Americans are looking to Washington for leadership—when they are looking to us to restore the economic security they knew in the 1980's—let it be said—that in restoring that prosperous environment we put people and productive policies above politics.

I yield the floor.

EXHIBIT 1

[From *Forbes*, July 8, 1991]

LIES, DAMN LIES AND POLITICIZED STATISTICS

(By Thomas Sowell)

Statistics on income distribution are a much more reliable guide to political fashions than to economic reality. In an era when indignation has become a way of life, statistics are defined and compiled in ways that exaggerate income at the top and under-state income at the bottom.

Recently, a much-publicized study by the Congressional Budget Office set off predictable cries in the media that the rich were getting richer and the poor were getting poorer. But the definitions and statistical methods used reveal more than the numbers themselves.

First of all, most of the \$184 billion in government welfare benefits to low-income Americans simply does not get counted. Food stamps, public housing and Medicaid are among the noncash benefits that are left out.

At the other end of the income distribution, capital gains are treated in the CBO statistics in a way that would get a student flunked in elementary economics or statistics. Suppose that three investors each invest \$10,000 in different ventures. If investors A and B each has his investments increase in money value to \$15,000, and investor C has his investment wiped out completely in the year when statistics are compiled, then clearly their total investment—\$30,000—remains the same in dollar terms. With the price level's having doubled, the investor has obviously lost half the real value of his investment.

The way the CBO statistics count it, however, these lucky investors have made \$3,500 in real income.

Instead of saying that the investors' two capital "gains" of \$5,000 each were actually losses in real terms, since \$15,000 will now buy less than the \$10,000 originally invested, the CBO counts them as gains and then corrects for inflation by dividing by two. By this bizarre reckoning, the real value of these two investments has increased by a total of \$5,000. As for C's investment that was wiped out completely, economists would count that as a \$10,000 money loss, or a \$5,000 real loss, but the CBO counts it as only a \$3,000 money loss, or a \$1,500 real loss.

The reason is that the CBO data on this come from income tax statistics and the Internal Revenue Service will allow only a \$3,000 capital loss per year. Subtract the understated capital loss from the understated capital gains and you get a net \$7,000 gain in money terms, or \$3,500 in real terms. These investors may be headed for the poorhouse, but on paper they are among the rich who are getting richer.

Republican Congressman Dick Army of Texas, an economist by profession, pointed out such problems in a letter to the Congressional Budget Office before the data were released to the public. The CBO graciously acknowledged the correctness of the congressman's criticisms but excused itself on grounds that "data needed to make these adjustments are not available." But these crucial flaws in the study were not revealed to the gullible media.

An additional source of misleading statistics is that data are often compiled and presented in terms of "family income" or "household income." But one of the reasons some families earn more than other is that some families contain more people, bringing home more paychecks. When a larger num-

ber of people earn a larger amount of money, that may be a statistical disparity without being a social "inequity" requiring the government to play Robin Hood.

A more fundamental problem with glib discussions of "the rich" and "the poor" is that income bracket statistics refer to an ever-changing mix of individuals. A longitudinal study at the University of Michigan found that nearly half the families who were in the bottom 20% in income one year were not there seven years later. Neither did most families in the top 20% remain there throughout the period studied. Those who were persistently poor—who were in the bottom 20% in income for at least eight out of ten years—constituted less than 3% of the population of the U.S.

Although political discussions abound with talk about the rich and the poor, both groups put together are probably no more than 10% of the population. But they are the ideological tail that wags the dog, as policies are debated in terms of their presumed effects on these two small groups, rather than the other 90% of the American people.

Income distribution statistics are typically an instantaneous picture of a process constantly in flux, as individuals move from bracket to bracket over a lifetime. Many of those in the lower brackets are young adults who are the children of those in higher brackets. Ideology translates these statistics into different social classes called "the rich" and "the poor."

Fortunately for this country, people are not born into the world with a little "R" or "P" on their foreheads, marking them as rich or poor for life. Unfortunately, too many intellectuals and politicians talk as if they were.

[From Forbes, Mar. 16, 1992]

A MATTER OF TIMING

This chart shows just how much discretion people (especially the better-off) have over the timing of realizing their capital gains. The long running average for realizations has been around 2 percent or so of GNP. But when taxes on capital gains were reduced—in 1964, 1978 and 1982—realizations doubled, to around 4 percent of GNP. Note, too, that the spurt to over 8 percent of GNP in 1986 was in anticipation of the well-advertised increase in 1987 in capital gains taxes from 20 percent to 28 percent (and no preference over ordinary taxes), as part of tax reform.

[Chart not reproducible in the RECORD.]

What's been totally missed in the current debate over cutting capital gains taxes is just how sharply realizations—and hence tax revenues—have dropped since then.

Richard Arney (R-Tex.), the ranking Republican on the Joint Economic Committee, has pointed out that the Congressional Budget Office estimated that in 1990, the latest year for which tax figures are available, capital gains realizations would total \$254 billion, or over 4.5 percent of GNP. The CBO's estimate was way off. Just \$120 billion in gains were realized. The "missing" \$134 billion meant that the Treasury was short nearly \$38 billion in tax revenues it had been expecting. The CBO has yet to acknowledge its error.

The chart also makes clear just how cost-effective cutting capital against taxes is. Assume that history is repeated and that a lower rate on capital gains increases realizations by at least 2 percent of GNP, equal to around \$117 billion this year in taxes forgone. But based on past performance, such a cut would generate at least that much in extra revenue. They also grossly underesti-

mate the extra tax that would result from the increased economic activity that a cut would cause.

Mr. JOHNSTON. Mr. President, there are many good things that I can say about this bill, and it contains many positive steps toward putting our economy back on track.

It is not a panacea for all our woes, and it will not end unemployment overnight. Nor is it a comprehensive long-term solution for our crumbling infrastructure, for improving our competitive position in the world, or for reversing the long-term trend of declining productivity.

But it does provide incentives for a number of key sectors such as housing and energy development which have been sorely in need of assistance for many, many months.

It does provide needed incentives to increase savings.

It provides hope to the American people that their government will take action to improve our domestic situation, and to help them get through these hard economic times.

Most important, it is paid for.

There are many provisions in this legislation which I strongly support, and indeed which I have cosponsored such as restoration of deductibility of Individual Retirement Accounts, extension of R&D tax credits, the modified capital gains tax proposals, modification of the treatment of intangible drilling costs [IDC's] under the alternate minimum tax, and the Targeted Job Tax Credit Program. All of these are important and will provide help to our ailing economy.

But the committee did more than this. This bill provides hope to the American people, and in a number of concrete ways shows that we have heard them and are making a good faith effort to respond to their concerns. Key measures are included to help middle class Americans buy a first home, pay for college, increase savings, and obtain affordable health care.

I want to particularly commend the distinguished chairman of the committee for his leadership in including a number of small but critically important provisions to help employees of small businesses obtain affordable health insurance.

I traveled throughout Louisiana during the February recess, and if there was one common theme I heard over and over—in Chalmette, in Monroe, in Baton Rouge, and in Lafayette—it was that our health care system is broken and desperately needs to be fixed.

Too many working Louisianians cannot obtain health insurance or can only obtain it for astronomical costs. Estimates are that one-fourth of the people in my State—over one million—have no insurance. Scores more are underinsured. And many others have found themselves locked into jobs for fear that they will lose coverage for

preexisting conditions if they change policies. Others face premium increases so stiff that they must choose between putting food on the table and purchasing health insurance.

This is unacceptable.

There is no consensus in Louisiana on what the solution is right now, but as debate intensifies and options become more clear, I am confident that a consensus on approach will develop and will become even more of a priority than it is now.

This bill does not contain a comprehensive solution, but it takes a number of very important steps to provide incremental help right now. Perhaps foremost is the proposed increase in the deduction for health insurance premiums for the self-employed from 25 percent to 100 percent. As important are the provisions to help small businesses and their employees obtain adequate and affordable health care, and I applaud the committee for adopting a number of very important insurance market reforms and for the prohibition on denial of coverage for preexisting conditions, a matter which I receive mail on almost weekly.

I also commend the chairman for including the necessary financial provisions for a new student loan program, which should both enable more students to obtain the financing necessary to continue education and make sure that these loans are paid back. Many if not most students in Louisiana find it necessary to borrow money to continue their education. I believe this innovative program, which is a supplement to existing loan programs, will be a big help to many Louisiana students and their families and I am very, very pleased to see that the committee has recommended this as well as the provisions for a tax deduction/credit for those paying interest on student loans and extension of employer-provided educational assistance to the Senate.

I also want to commend the chairman for targeting tax credits on families with children which is, I believe, a significant improvement in the House-passed bill. It is my hope that the conferees may see their way clear to making this credit refundable, and I would encourage them to look very closely at such an option. Louisianians have a particularly strong interest in the refundability issue since Louisiana families are nearly twice as likely to benefit from making the credit refundable as are families in the rest of the Nation.

With a State poverty rate of 23.2 percent, nearly twice as high as the national rate of 13.1 percent, according to Census Bureau data covering the period from 1988 to 1990, a nonrefundable credit would likely bypass nearly twice as large a percentage of families in Louisiana as in the United States as a whole.

It is estimated that nearly 29 percent of Louisiana's families with children

are poor. Extrapolating from this data, it is likely that 3 in 10 Louisiana families would be excluded if the child credit is not refundable. Most of these families—nearly two out of three according to 1990 census data, have at least one worker. Many other near-poor families will benefit far more from a refundable credit. For example, under a \$300 per child nonrefundable credit, a family of four with two children and income of \$16,000 in 1992 would receive a credit of \$120—the same as their tax liability. If the credit were refundable, however, that same family would receive the full \$600 credit—\$120 in tax relief and \$480 in the form of a tax refund.

These near-poor or working poor families are those who need help the most. In general they are excluded from assistance under many Government programs, yet have difficulty in making ends meet because they earn low wages.

I hope that the issue of refundability will be addressed in conference while retaining the targeting on families with children as proposed by the Finance Committee.

In addition, I congratulate the chairman on certain provisions contained in this legislation on the important subject of energy taxes. Just 3 weeks ago the Senate approved S. 2166, the National Energy Security Act of 1992, reported by the Committee on Energy and Natural Resources which I chair. This legislation contains a broad array of initiatives, all designed to promote a Made in America energy policy and to lessen our dependence on foreign oil.

Because of the expertise and jurisdiction of the Finance Committee, S. 2166 did not include any provisions relating to the tax code. However, last summer several of my colleagues on the Energy Committee and I reviewed the subject of energy taxes and communicated our views to the Finance Committee regarding what tax provisions would complement S. 2166. I am pleased that the committee incorporated in its legislation several of these measures, such as the extension of the business energy tax credit for solar and geothermal energy and various provisions relating to transportation.

Crucial among the energy tax provisions that we recommended for consideration was relief from the alternative minimum tax [AMT]. The current AMT imposes an extreme burden on the oil and gas industry, and in particular on independent producers. This is resulting in less exploration, less drilling, and a continuing decline in the domestic oil and gas industry. AMT relief is critical to my home State of Louisiana where all those working in the energy business have been hard hit by recession—one which in my State began almost a decade ago.

Mr. President, the domestic oil and gas industry is in trouble. The active

rotary rig count in the United States has fallen from nearly 4,000 in 1981 to an estimated 860 in 1991. The rig count is projected to fall even further, to 725, in 1992. These are levels not seen since 1942.

A recent article in the Times-Picayune, which I will request be printed in the RECORD following my statement, reports that independents are expected to spend \$3.9 billion less in the United States this year, a cut of 4.2 percent. Major companies will spend 10.7 percent less in the United States this year, while shifting their spending overseas.

Employment in the oil and gas sector is also expected to decline. One economist at Louisiana State University predicts the current population of 52,200 Louisiana oilfield workers will fall by about 2,500 this year alone.

Mr. President, the alternative minimum tax relief provided for in this legislation represents a large step in the right direction. It will help to restore the health of the domestic oil and gas industry. It will help preserve U.S. jobs. And it will help to lessen our evergrowing dependence on imported oil.

Mr. President, I ask unanimous consent that the Times-Picayune article to which I referred be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD as follows:

[From the Times-Picayune, Jan. 26, 1992]

DRILLING OUTLOOK DIMS

(By Mary Judice)

If the events of 1986 panicked the oil and gas industry, then get ready for a rough 1992.

Unlike the '86 bust, though, analysts say companies won't be caught flatfooted this time around. They will move quickly when warning signs are posted.

The first signs will likely be deeper spending cuts and another round of layoffs in the United States.

How many jobs will go? That's a tough question. Loren Scott, a Louisiana State University economist, expects the current population of 52,200 Louisiana oil field workers to fall by about 2,500 this year.

But many industry watchers don't expect natural gas prices at 12-year lows and oil prices below \$20 to spur the industry to slash tens of thousand of jobs as it did when oil prices plunged to \$10 a barrel in the summer of 1986. Still, that a reduction in U.S. spending of almost 11 percent is bound to mean fewer wells drilled—and fewer jobs.

The U.S. rig count, which has fallen to levels not seen since 1942, is expected to plummet another 10 percent to 15 percent this year. And as the industry slows, oil field workers in south Louisiana are beginning to fear for their jobs.

Last week, Louisiana's rig count fell to 78, a level not seen in weekly reports dating back to 1980.

And in the past two weeks, the parade of layoffs has picked up. Chevron will cut 2,500 jobs nationwide, and Freeport-McMoRan has laid off 55 workers in New Orleans. In fact, there are 2,200 fewer Louisiana oil field workers today than there were last fall.

Oil companies painted the dismal outlook for the United States this year in answers to

questions posed by Salomon Brothers for its 10th annual spending survey.

A total of 157 companies expect to spend 10.7 percent—or \$1.9 billion—less on U.S. oil and gas drilling and production this year, for a total \$15.8 billion.

Major companies will spend less in the United States, but are boosting their spending on wells outside the country by 9.1 percent, to \$11.8 billion. They say the finds overseas are bigger and cost less to retrieve.

Independent companies, those with smaller and that usually concentrate drilling in certain geographic regions, are expected to spend \$3.9 billion less in the United States this year. That's a cut of about 4.2 percent.

"This time around, it's not panic, it's just thorough depression that it will never get better and there are a lot of other better places to do business," said Matthew Simmons, a Houston investment banker to the oil service industry. "This time around, it's a march out."

In recent years, major oil companies have focused their oil search in West Africa, Venezuela, Colombia, the North Sea and the China Sea.

Salomon said the shift to foreign exploration, which was pronounced last year, is expected to gain momentum. Today, there are 179 rigs available for work in the Gulf of Mexico, compared with 206 a year ago. Even with fewer rigs available, a record low of 85—or 47.5 percent—are under contract.

Already the U.S. count for land and offshore rigs has fallen to 686, a number that bumps up against the industry's worst yardsticks.

In its annual forecast "Bad News, Good News," the New Orleans investment firm Howard, Weil, Labouisse, Friedrichs, Inc. estimates that the U.S. rig count this year will average 725, down 15 percent from the 860 average of 1991. The report estimates that oil prices will average \$19 a barrel for West Texas intermediate, the U.S. benchmark, down \$2.50 from the 1991 average. Natural gas prices will be slightly higher, at \$1.40 per thousand cubic feet, it predicts.

At those prices, 57 percent of the companies surveyed said, it is cheaper to buy oil and gas reserves than to drill for them.

Simmons said company budgets give no indication of a turnaround in commodity prices. This year, companies will wind down U.S. activity and put their properties on the market. "If I were a buyer I would be perplexed as to when to open my wallet," the investment banker said.

Yet many of those deals are ideal for independent companies, and most can easily raise the money to buy. Simmons said Apache Corp. found banks ready and willing to lend when it bought Amoco's Mid-Continent properties last year. Apache officials said their deal was oversubscribed.

Simmons said major oil companies face the problem of too many layers of overhead. That is where he expects the layoffs to come this year, not with the service companies, which already have had their layoffs.

Scott disagrees. He expects the layoffs to come in all areas of drilling, including the companies that drill and pay for the wells and those that supply the mud, drill pipe and testing services during drilling.

What remains stable, the economist said, is the universe of production workers. In the late 1960s, when oil was selling for \$3.50 a barrel, there were 47,000 workers in the energy industry in Louisiana. Many were production staff, the engineers and technicians who monitor the flow of oil and gas from wells and those who rework wells as they age to prop up the flow.

But the layoffs will come statewide, Scott predicted. Lafayette, Houma, Thibodaux and New Orleans are likely to be hit hardest.

The level of activity could be even lower than Salomon has predicted, said Arvind Sanger analyst at Johnson, Rice & Co. Since the survey was taken in November and December, oil prices have fallen \$4 a barrel, and natural gas prices are down 40 cents per mcf. More than half the companies told Salomon Brothers they will decrease spending if oil prices average \$17 a barrel. If oil prices average \$25 a barrel, they will spend more. Last year, companies focused on oil drilling over natural gas, and that trend is expected to continue this year.

Suzanne Baer, manager of investor relations at the Louisiana Land and Exploration Co., said the company has made no formal change in its 1992 capital and exploration budget. But if low oil and gas prices hold, the company will be forced to cut spending, Baer said.

But the survey also found that companies underspent their budgets last year by almost \$1.3 billion. Overall, companies spent \$16.8 billion instead of the \$18.1 billion budgeted at the beginning of the year, a 7 percent gap.

And analysts think the high price scenario is unlikely this year for oil or gas.

Robert Spears, a Tulsa, Okla., oil consultant, does not expect the Saudis to reduce production significantly in the spring, when oil demand slackens. Therefore, prices will weaken unless OPEC reins in production. Natural gas prices will rise when the economy rebounds and when winter temperatures cause more gas to be burned.

"We've got a few more rough years ahead of us if our salvation is higher prices," Spears said.

The PRESIDING OFFICER (Mr. GRAMHAM). Who seeks recognition?

The Senator from Delaware?

Mr. ROTH, Mr. President, I make the point of order, a quorum is not present.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN, 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. MOYNIHAN, Mr. President, I rise in support of the important, large, and consequential measure before us. I voted for this measure in the Finance Committee, and I will vote for it here on the floor, and I hope to see it directly on the President's desk and to become law.

Before I speak to the general provisions of the bill, and some details, I would like to call the attention of the Senate to the provision having to do with the tax-exempt status of bonds issued by private universities, colleges, and other educational institutions. If there were one measure in a very considerable bill to which I would call attention—one that has as much import for the future of our institutions and our Nation as any I can think—it is one affecting bond financing for private colleges and universities.

In 1986, for reasons that were complex and perhaps not to be avoided at

that time, we took away from our great private institutions of higher learning their status as public persons at law when it came to the question of issuing tax-exempt bonds for purposes of constructing laboratories, other research facilities, and buildings on campuses and in university complexes.

It may seem a small thing to some. It is an enormous thing to these institutions.

We placed a \$150-million cap on the amount of tax-exempt bonds that these institutions may issue. That cap has been reached or will be reached shortly by most of the major research institutions in the country, great institutions such as Washington University in the State of Missouri, New York University in the State of New York. One can go right down a very long list of schools. Twenty-four of such institutions that are now hampered in their access to capital.

The purpose was fiscal, nothing more. But the consequence was huge. It meant that in the age of big science, as it is called, the research facilities of the private universities were necessarily going to be sharply limited, such that over a generation we would see a critical change in American society. We are unique in the world in the following way: Higher education in the United States is a private as well as a public activity. This is so ordinary to our way of thinking, so clearly the case, that we do not think about it as being unusual. In fact, it is unique, and, in fact it gives to the culture, if you will admit that term, of science, humanities, social sciences, a dimension of distance from government, independence of the State which is not to be found in any other society. Take away their rights as public persons to issue debt, to finance their laboratories, and in time you will take those laboratories away. And in time you will see the gradual conquest, as Joseph Schumpeter described the matter years ago, of the private sector by the public sector.

You would see an aspect of something so characteristic of the United States, the individual independent, private institutions of higher education, some of them dating back to the 18th century, all to the 19th century, that are not financed by taxes, are not financed by Governors and Presidents and legislators, but by alumni, by monies accumulated over centuries in some cases, wither away. What has kept them vigorous is the recognition in our culture—at least until the contrary evidence in the 1986 Tax Act—that these private institutions serve great public purposes, and for that reason should be treated as public entities for purposes of the issuance of tax-exempt debt.

Most faculties in these institutions do not even know that provision which treated them as public persons until

1986. They did not need to, because it was always there. It was understood only by a very small number of university and college presidents and perhaps their governing boards. Most of these institutions have now come to a group of Senators on the Finance Committee—I see my dear friend, the distinguished senior Senator from Missouri [Mr. DANFORTH] is on the floor; he was one of the group—to say "can we not restore the status quo ante, if you will, antebellum, if you like, and give these institutions the opportunity to continue to glow in an age of big science, when laboratory could be enormously important, and in which scientists can do their work?"

I put the term simply to be neutral in the matter, as a New Yorker, to compare the condition of Stanford University to the University of California at Berkeley. Leave the present Tax Code in place, and a generation from now, Stanford University will have a great undergraduate institution, an extraordinary drama program, one of the best law schools in the world. But all the big science will be done at Berkeley. And without anyone intending it, a process that sometimes seems inexorable in modern society, again which Schumpeter foresaw so many years ago when he said the triumph of the Marxist, socialist view, prophecy will not come through the workings of changing of the class structure or even the economic structure, but will rather come through the inexorable triumph—"conquest" was his term—of the public sector over the private sector."

Another measure in this legislation of transcendent importance to preserving a vigorous private, independent sector in higher education is the restoration of pre-1986 treatment of gifts of appreciated property. Both the House and the Senate are of this view. So, I am happy to say, is the administration. A case of quiet persuasion, quiet setting forth of facts, has persuaded us all. And whatever else survives this process, I so very much hope this does, as also the provision on bonds. Both were the concern of this small group of Senators on the Finance Committee, and of members of the Ways and Means Committee.

The full deductibility of gifts of appreciated property is also an obscure, not easily explained provision, but one which we adopted 2 years ago for gifts to museums, and which had great consequence. Our own, here in Washington, the National Gallery, the Nation's own National Gallery, had great gifts come forward in time for its 50th anniversary, as have institutions—museums of all kinds, museums of racing cars, museums of other forms, other kinds of artifacts, and the great general museum of the Nation, that most all of our great cities have, and which we would wish to prosper; again, most of them being private institutions.

The particular provision in this bill extends full deductibility to gifts of stock, which is the source of the greatest contributions of alumni to the endowments of our private colleges and universities.

So whatever else we do, and we do much, we have certainly advanced this purpose in education, a purpose which was interrupted in 1986, and, unfortunately, with great consequence.

So, I say, Mr. President, I voted favorably in the Finance Committee on the bill before us, and I will vote for it on the Senate floor.

Mr. DANFORTH. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I am happy to yield.

Mr. DANFORTH. Mr. President, I would simply like to note that Senator MOYNIHAN is the leader in the Senate with respect to the relationship between tax policy and our great private institutions. He has introduced legislation which would remove the bonding cap for our research universities which, as he has pointed out, has been a major handicap to doing research at our large private universities.

He also has been a major spokesman for dealing with the relationship between the alternative minimum tax and the gift of appreciated property to nonprofit organizations. And his continued voice on these two matters is very, very important, I think, to the country.

For other reasons, I am not sold on the particular bill that is before us. But my hope is that, whatever else we do in tax legislation for the balance of the year, we will be dealing with these two matters.

I really want to express my appreciation to Senator MOYNIHAN for his leadership.

Mr. MOYNIHAN. Mr. President, the Senator from Missouri typically is self-effacing in these matters, and no one has been more persistent, more persuasive, then he in this regard. And we are, as a body, I think, of this view.

I only wish to draw it to our attention, so we will know that whatever will divide us across the aisles in the next few days, this unites us and will continue to do so. What divides us, of course, is that there are really quite different perceptions of what needs to be done with a recession, retracted recession, longer than any we have had in the postwar period.

We are not alone in this. Other countries—Canada is involved with it; the United Kingdom is involved with it; Europe is involved; now Japan, as well.

We all have to think of responses. And within the range of our very straightened economic circumstances, in the budget sense, the majority on the Finance Committee has fashioned a response. It is in response to the President's seven-point plan, and incorporates, as the distinguished chairman has said, five, I believe, of those seven

points. It is more than a reasoned response, compromise, if you like. In the very narrow confines available to us, the discipline that whatever changes we make, whatever reductions, whatever reductions we make in taxes, we make up by corresponding increase in revenues.

I would observe that the capital gains provision in this bill is more targeted than the President's. I think that any discussion of the capital gains tax cut as a prescription for economic growth needs to be put in perspective.

Even using the administration's own estimates of the effect on the cost of capital, a cut in the capital gains rate to 20 percent will produce an increase in the GNP of a scant 0.2 percent in the first year—I am sorry, 0.02 percent in the first year and 0.2 percent in the second year.

These numbers make for abstractions when read. I think I can give a more concrete example of what I mean when I say that a 0.2-percent increase in the rate of capital formation, that, sir, is a medieval rate. Anything compounding at 0.2 percent takes 350 years to double. I suppose that is about the rate medieval societies did grow at. We would hope that we will not take three-and-a-half centuries to see our capital double, or anything like that. Any influence that slight is bound to be marginal.

I might say, similarly, sir, with mortgage rates at their lowest point in 20 years, it is not clear what difference a tax credit for first-time homebuyers would do as against other uses to which you might put the lost revenue. We are dealing here with what other uses you might put the revenues for. We are dealing here, again to use an economist term, with an "opportunity cost." If you do this, you cannot do that. If you do A, you cannot do B, C, D, and E. And you have to ask yourself continuously which is the optimal choice.

This bill will make the tax burden less regressive. We have raised the top rate to 36 percent, and imposed a 10-percent surtax on incomes of \$1 million or more. And we have returned that money to middle-income families with children.

The question of whether this was the best use of that money, the optimal use of that opportunity cost is one, I guess, I would not be instantly persuaded of. The fact is that 71 percent of households now pay more in payroll taxes than in income taxes. That is the root cause of the regressivity that has crept into the Federal tax burden over the last decade or so. And the share of Federal revenue coming from payroll taxes has increased in recent years by more than a fifth, while the share from individuals and corporate income taxes has dropped 9 percent.

This state of affairs might be defensible if the surplus of the Social Security trust funds were being saved in

any genuine sense instead of being used as general revenue. We are spending that surplus, as if it were revenue. And if anyone in the State of Florida is thinking about this to consider how they will vote tonight, they ought to know and know now that Social Security is being "touched" it is being looted.

It is almost 2 years ago, as chairman of the subcommittee on Social Security, I raised this issue, and it might be useful to point out the context in which the present Social Security arrangements were made. Three years ago this month, the first of March, in the first weeks of President Bush's first term, the National Economic Commission submitted its report to him and to the Congress in which he pointed to the power of the Social Security surplus. The rates that were put in place in 1977—15 years ago—have not increased, have not changed one bit.

In the middle of the 1980's, owing to a short-term crunch that came when, for the first time in our history, prices ran ahead of wages, and the reserves in the fund began to shrink, we simply moved to accelerate the already legislated tax increases and payroll tax increases a few years, and in no time we were out of that problem, and the surplus that had been expected appeared.

It is a huge surplus. By the year 2015—I believe I can give the Senate the sense of the size, magnitude of this surplus. The surplus in the trust fund from today to the year 2015 would buy the New York Stock Exchange. That is how much money. All of the equity capital in America could be bought.

We said to the President in March—March 1, I believe our report was dated, 3 years ago—save that surplus, save it for the time when the people, the generation retiring will need it. Now we get complex. And when you have to discuss economics and debate, it is hard to get complexities across. But it happens that there is only one way you can save the surplus of the Federal Government, which is to have that surplus used to buy down the privately held public debt; buy back, and every penny of public debt reduced in that manner automatically becomes a penny of savings.

To do that would double the national savings rate in one stroke. Double the national savings rate. All that we have talked about in the recent years would happen. We would have a high savings rate, and we would be able to bring it about under the banner of protecting the Social Security trust fund, something everybody in the country could understand.

The alternative was to use them, abuse them, for current expenditures that they were never intended to provide. Franklin D. Roosevelt was very specific about why there was to be a trust fund for Social Security. We know that in 1940, a professor of public

administration at Columbia. Wallace B. Sayre, was down here on leave working in Washington, and he knew Roosevelt. He was a public economist. Political economy was his subject. And he called on the President, his friend from New York, and said: Mr. President, I have been looking at the Social Security funds which are—just then 5 years old—just beginning to amount to something.

And the administrative costs of posting, as the term was, each person's contribution in ink by hand here in Washington and elsewhere was not self-evident to Professor Sayre and he said, "You could just put this right into the general fund and pay out the money when the time comes. That is what you do anyway."

Franklin D. Roosevelt said to Professor Sayre, "I am sure you are right on the economics, Wally," as he would say, "but we do not have that arrangement for the purposes of economics or administrative efficiency. I'm got the trust fund arrangement there, so every person, each and every dollar in that Social Security trust fund has somebody's name on it. I want it that way because I do not want any of those politicians on Capitol Hill getting their hands on this money."

Well, little did he know what might come to pass in 40 years' time. I was on NBC's "Today Show," it will be 2 years ago, with our beloved former colleague John Heinz, and quoted an editorial from the Rochester Democrat and Chronicle that said what was going on was thievery. And from New York, the anchor said, "Senator Heinz, would you agree that what is going on is thievery?" And Senator Heinz said, "Certainly not. It is not thievery. It is embezzlement," a distinction that he would make, and I am willing to defer to his usage.

We, unfortunately continue that practice. In 1992 the Social Security surplus will equal about \$53 billion, \$1 billion a week, and it will be used to meet over 11 percent of the Federal Government's borrowing needs. In 5 years the surplus will more than double to \$110 billion and then, in 1997, will be used to meet almost 30 percent of our borrowing needs.

In the meantime, I would like then to close with one large point, a point which has not yet been made in our debates. I do not believe it has yet been made on the Senate floor. It needs to be stated in the context of a disaster heading our way.

And that is to say, sir, that we have incurred the extraordinary budget deficits of recent years, deficits beyond anyone's reckoning in the past. We quadrupled our national debt in the 1980's but at least now the deficit as a percentage of our gross national product has stabilized. So in terms of what we owe and what our income has been as against our liabilities, there is now a certain stability.

That stability is no longer assured. To the contrary, at the hearing 2 weeks ago in the Finance Committee, our very able Director of the Office of Management and Budget, Mr. Richard Darman, was before us and he had a table in a presentation and it was also up on an easel to be seen. And it showed the debt as a percentage of gross domestic product will begin to rise in the near future. Markedly so in the event that the lower of the administration's economic growth projections should take place. And what that showed dramatically was that in about 5 years' time, if we continue on that lower path which we are on now, the debt as a percentage of gross domestic product will begin to increase, something that means instability; it means it goes out of control.

I said to Mr. Darman, "Sir, does that mean we will be out of control?"

And he said, "Yes."

I have the exact exchange which I would like to place in the RECORD at the end of my testimony.

If that happens, once that happens, then you are in trouble, you have gone over Niagara Falls. You no longer have control of the Federal deficit. Matters are no longer within your capacity to affect. You cannot stop the wild increase in your debt, and the only real alternative available to you is the disastrous one of a wild inflation.

We are about 5 years away from that. Indeed, even in the present projections every year between 1997 and 2002, even given what the administration is projecting, the deficit will grow as a percentage of gross domestic product.

(Ms. MIKULSKI assumed the chair.)

Mr. MOYNIHAN. The debt will grow. The deficit will too and if in the event of an economic path which is projected as fully possible, the debt will grow as a percentage of gross domestic product. When that happens I expect the dollar to lose its place in the world economy. I expect the American economy to decline. I expect confidence in our future to attain to the kind of chaos that we associate with financial instability and hyperinflation, anywhere else in the world in history. A sorry conclusion, Madam President, to the 1980's.

Obviously for that reason I would wish that the revenues we are raising be used in other ways. The judgment of the majority was otherwise, and I will certainly abide by that judgment, but I do not want to do so without putting my own views on record.

Madam President, I voted favorably in the Finance Committee on the bill before us, and I will vote for it on the Senate floor, though I must say in both cases with some skepticism. The President sent us a plan for economic recovery, indeed it is his responsibility to do so, but I doubt the President's seven-point plan will have the kind of impact on this economy that has been argued. Nonetheless, the distinguished chair-

man of the Finance Committee has sought to accommodate the President, and has included in this bill all seven of the President's proposals, some in modified form. And, in contrast to the President's plan, this bill includes the revenue to pay for the proposals. It does not threaten to further increase the deficit to the extent that the President's proposal would.

The capital gains provision in this bill is more targeted than the President's. But I think any discussion of the capital gains tax cut as a prescription for economic growth must be put in perspective. Even using the administration's own estimates of the effect on the cost of capital, a cut in the capital gains rate to 20 percent will produce an increase in GNP of a scant 0.02 percent in the first year, and 0.2 percent in the second.

One can also question whether a \$5,000 home buyers' tax credit is sound use of Federal revenue, when mortgage rates have just been their lowest in 20 years, and are still at historic lows.

The bill makes a start at addressing the growing regressivity that has crept into the Tax Code over the last decade. It raises the top rate to 36 percent, imposes a 10-percent surtax on incomes of \$1 million or more, and uses the revenue from both to provide a tax cut for middle-income families with children and to fund many of the economic growth incentives in the bill. This eases some of the regressivity of the last decade, but fails to get at its root cause: the Federal Government's growing reliance on a regressive payroll tax to fund current operations. Everyone's income taxes—rich, poor and middle income—were cut over the last decade. But Social Security taxes rose steadily. For the top 20 percent of taxpayers, this meant a tax cut, but for the lower 80 percent this meant a tax increase—because payroll taxes are a larger component of their total tax burden. Indeed, 71 percent of households now pay more in payroll taxes than in income taxes. In the 1980's, the share of Federal revenues coming from payroll taxes increased 21 percent, while the share from individual and corporate income taxes dropped 9 percent.

This might be defensible if these payroll taxes were being saved to fund retirement benefits, but they are not. They are being used to reduce the Government's borrowing needs to fund the deficit. Under current projections, our dependence on regressive payroll taxes to run the Government will only continue to grow. In 1992, the Social Security surplus will equal about \$53 billion, and will meet over 11 percent of the Federal Government's borrowing needs. In 5 years, the surplus will more than double—to \$110 billion—and will then be used to meet almost 30 percent of borrowing needs. At this point, in 1997, when our dependence on Social Security trust funds to run the Govern-

ment may be too great to break, something even more ominous occurs: Under the reasonable projections of both the administration and the CBO, the deficit begins to grow as a share of GDP. This means the deficit will be—in words I used at the Finance Committee hearing on the President's budget last February 12, and conceded by OMB Director Darman—"out of control."

Madam President, I ask unanimous consent that the unedited transcript of my exchange with Mr. Darman at the February 12, 1992, Finance Committee hearing on the President's budget be inserted in the RECORD at this point.

There being no objection, the transcript, was ordered to be printed in the RECORD, as follows:

[Unedited Transcript]

Senator MOYNIHAN. May I just ask you, because you said something with a touch of real reality that we all need, your topmost curve, the dotted red line, that is at a lower growth, which would be, what, about two percent? Is that what you would put that range in?

Mr. DARMAN. That is right. That is consistently one percent lower.

Senator MOYNIHAN. Yes. Which is in the range of possibility. At that point, we would find the debt as a proportion if GNP compounding—growing.

Mr. DARMAN. Growing, not compounding.

Senator MOYNIHAN. Growing.

Mr. DARMAN. Turning up. Yes.

Senator MOYNIHAN. All right. Thank you very much.

Mr. MOYNIHAN. Madam President, we are not on a path where we will "grow out of" the deficit. There is chaos on the horizon. Under present projections, in every year from 1997 through 2002—as far as the eye can see—the deficit will grow as a share of GDP. The most ominous news yet.

What is needed—both to rectify the unfair share of the tax burden now being borne by average working Americans and to restore integrity to our finances as we address the deficit—is a cut in Social Security taxes to put the system back on a pay-as-you-go basis. If we do not do it soon, we will reach the point where we are too dependent on our misuse of the trust funds to make the change.

There are other provisions in this bill on which I would like to comment.

The bill proposes to make permanent the so-called Pease provision which disallows a portion of itemized deductions for households with adjusted gross income of \$100,000 or more. This partial disallowance of otherwise valid deductions is nothing more nor less than a stealth rate increase for these taxpayers. According to the CBO, it has precisely the same effect as a 0.93 percent rate increase, yet we impose it on a working couple with a combined income of \$100,000. This despite the fact that elsewhere in the bill, we purport to raise rates only on couples with incomes exceeding \$175,000. We ought to be more honest with the American people.

Just as important, this hidden rate increase requires all affected taxpayers

to muddle through a 10-step computation to arrive at their 0.93 percent rate increase. This is ludicrous. I urge my colleagues to take a look at page 42 of the 1991 IRS instructions for form 1040, where they will find the 10-step worksheet to which I refer.

Madam President, I ask unanimous consent that there be printed in the RECORD at this point page 42 of the 1991 IRS Instructions for filling out form 1040.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TOTAL ITEMIZED DEDUCTIONS

Line 26: People with higher incomes may not be able to deduct all of their itemized deductions. If the amount on Form 1040, line 32, is more than \$100,000 (\$50,000 if married filing separately), use the worksheet on this page to figure the amount you may deduct.

Itemized deductions worksheet—line 26 (keep for your records)

1. Add the amounts on Schedule A, lines 4, 8, 12, 16, 17, 18, 24, and 25 1.....
2. Add the amounts on Schedule A, lines 4, 11, and 17, plus any gambling losses included on line 25 2.....
 Caution: Be sure your total gambling losses are clearly identified on the dotted line next to line 25.
3. Subtract line 2 from line 1. (If the result is zero, stop here; enter the amount from line 1 above on Schedule A, line 26.) ... 3.....
4. Multiply line 3 above by 80 percent (.80) 4.....
5. Enter the amount from Form 1040, line 32 5.....
6. Enter \$100,000 (\$50,000 if married filing separately) 6.....
7. Subtract line 6 from line 5. (If the result is zero or less, stop here; enter the amount from line 1 above on Schedule A, line 26.) 7.....
8. Multiply line 7 above by 3 percent (.03) 8.....
9. Compare the amounts on lines 4 and 8 above. Enter the smaller of the two amounts here 9.....
10. Total itemized deductions. Subtract line 9 from 1. Enter the result here and on Schedule A, line 26 10.....

Mr. MOYNIHAN. Taxpayers are encountering this worksheet for the first time this year as they prepare their 1991 returns. I expect we will be hearing from them.

I believe we will be back here before long to repeal the Pease provision, and I want to make my objections to making it permanent clear at this time. I would hope that the bill we bring back from conference with the House will do better on this score.

I would also like to comment on a provision in the bill affecting the taxation of securities dealers. The administration proposed, and the House passed, a provision that would require securities dealers to value their year-end inventories of securities at market value for tax purposes. This would have the effect of requiring such firms to

pay tax on any gains on securities held, even though they had not been sold. The response of the industry—with a few exceptions—has thus far behind muted. Even indifferent in some cases.

This is a new proposal. I have great concern that its potential for disruptions in liquidity and other problems in our capital markets have not been fully examined or appreciated. For these reasons, I sought a 1-year delay in the effective date of the provision, and the bill before us so provides. I would hope that this will provide time for regulators to better assess its impact, and for the securities industry to assess its response.

There are a number of good things in this bill that have, on balance, convinced me to support it. The bill makes a step at addressing the regressivity in the Federal tax burden that I have sought to highlight since proposing a cut in the Social Security payroll tax in December 1989. I think there is much more to be done before we get at the real cause of the tax squeeze on average working Americans, but this is a start.

The bill also advances the cause of simplification—with one glaring exception, namely, the 10-step stealth rate increase disguised in the provision limiting itemized deductions. The bill deserves considerable praise for the good Government effort at simplifying the earned income tax credit, which at present is so complicated that its effectiveness is fundamentally jeopardized.

I am particularly gratified with the provisions in the bill affecting education. In addition to new provisions for student loans and deductibility of student loan interest, the bill contains three measures in which I have been advancing for a very long time that I believe are essential to the continued vitality of our higher education institutions. First, the bill would extend the tax-free treatment of employer-provided educational assistance, a proven means of improving the educational levels of our work force, from which we all benefit.

Second, the bill modifies the alternative minimum tax treatment of gifts of appreciated property, so that such gifts—whether of art, securities or other property—are fully deductible by donors at their fair market value. Gifts of appreciated property are an essential source of support for our great educational and cultural institutions. They insure the continued vigor of both our public and private institutions of higher learning, and are an irreplaceable element in the effort to preserve our cultural patrimony in museums.

Third, the bill would rectify a serious mistake in the treatment of tax-exempt bonds for our Nation's independent institutions of higher education. The Tax Reform Act of 1986 reclassified the tax-exempt bonds of such institutions so that they are treated less fa-

vorably than their public counterparts, and included an outright limit on tax-exempt indebtedness for such institutions of \$150 million. The bill before us incorporates legislation that I have sponsored (S. 150) that repeals the limitation on these institutions' access to tax-exempt financing and restores their status as equivalent to their public counterparts with respect to tax-exempt financing.

Finally, the bill contains an important measure that advances sensible environmental and transportation policy in the tax code. I refer to the provision that would increase the amount of employer-provided transit benefits that can be received by an employee tax-free from the present \$21 per month to \$60 per month, and taxes for the first time the value of any employer-provided parking that exceeds \$160 per month. Current tax law, by taxing employer-provided transit benefits above a very small amount, while allowing tax-free treatment for unlimited amounts of employer-provided parking, produces a perverse incentive for single-passenger automobile commuting. The provision in the bill before us today, which I have long advocated, will help to remove this irrational incentive in the Tax Code.

On balance I believe the bill before us is worthy of support, and it will have mine, though with the reservations I have spoken to.

Madam President, I ask unanimous consent to have printed in the RECORD a list of the institutions, the private colleges and universities, that will be affected by our changes in the 501(c)(3) bond measures. The list begins with Boston College and ends with Yale, and includes every imaginable part of the country, every part of the country, widest range of institutions in between.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

COLLEGES AND UNIVERSITIES AT OR NEAR \$150 MILLION IN TAX-EXEMPT BORROWING

Boston College.
Boston University.
Carnegie Mellon University.
Columbia University.
Cornell University.
Emory University.
George Washington University.
Harvard University.
Johns Hopkins University.
Lehigh University.
Loyola University of Chicago.
Massachusetts Institute of Technology.
New York University.
Northwestern University.
Princeton University.
Stanford University.
University of Chicago.
University of Miami.
University of Pennsylvania.
University of Rochester.
University of Southern California.
Vanderbilt University.
Washington University.
Yale University.

Mr. MOYNIHAN. Madam President, I yield the floor. I see my distinguished

friend from South Carolina has risen. He has been waiting patiently.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Madame President, concerning the point of my distinguished colleague from New York, relative to deficits and frustration we feel here this afternoon, I remember well the end of the Carter administration. President Carter was defeated on a Tuesday, and Friday I was in the Oval Office as chairman of the Budget Committee, and I informed President Carter of the report that we had received in the Budget Committee from the Congressional Budget Office projecting that the deficit would be \$75 billion—at that time, an unheard of sum.

I made that visit to warn President Carter that he was going to leave office with a record high Federal deficit. We were going to have the highest deficit in the history of the United States, of \$75 billion, higher than any President had ever had before.

I can see the President now as he asked, "Wait a minute. What did I inherit from President Ford?"

I said "A deficit of \$66 billion."

He said, "What are we going to do?"

I said, "Well, if you allow those minions at the White House that were doing the spending, trying to get re-elected—if you tell them to leave us alone, we will get the votes."

That is what we did. We came back to the floor with what we call "reconciliation" which is a fancy word for "cut." I went to my liberal Democratic Senator colleagues and in a plea to them I said, "Look, we do not want to leave a report here of the highest deficit in the history of this country and Government of \$75 billion. No Democrat will ever get elected President again. We have to cut it."

I went to Senator Magnuson of Washington and Senator Culver of Iowa and Senator Church of Idaho, Senator George McGovern of South Dakota, Senator Birch Bayh of Indiana, Senator Gaylord Nelson of Wisconsin. We picked up the votes and we cut that deficit back to \$57.8 billion for that year, 1980-81.

Our problem here this afternoon, to use the words of the Senator from New York, is not that we are "going over Niagara Falls." The problem is the lack of the fear of going over Niagara Falls. Because conventional wisdom in this town is "Oh, do not worry about the deficit. The media are bored by that. They will not cover it. They do not know the facts and figures. And how do you make a compelling story? Nobody is worried about the deficit."

We were worried at one time. But the very administration that had come to Washington to put Government in the black, President Reagan said, "Look, I balance the budget the first year I get in." But after he got in, he said, "Wait

a minute. I cannot put us on a pay-as-you-go basis until 1983." President Reagan, he gave us the first \$100 billion deficit; the first \$200 billion deficit. President Bush has given us the first \$300 billion deficit; and now we are ready at this point for the first \$400 billion. If you count without the offsets borrowing from the trust funds and otherwise, we are actually looking at the first \$500 billion deficit. That brings me to this time last year when the President of the United States said, categorically, to a joint session of Congress, "We are headed in the right direction. We are reducing the deficit \$500 billion over a 5-year period."

Totally incorrect. In truth, we are headed in the wrong direction, increasing the deficit \$500 billion in 1 year, this year.

When you begin to understand this, then you begin to understand the tremendous waste. Yes, President Reagan eliminated \$30 billion in governmental programs: LEAA, revenue sharing, and so on. I can go right on down the list. But, by running up that debt, he and President Bush, up to now \$3.8 trillion—and it will be shortly at \$4 trillion and over—we have quadrupled the national debt over the 10- to 12-year period, from \$908 billion in 1980. In over a 200-year history, the cost of all wars, thirty-eight Presidents—Republican and Democrats—the total debt was \$908 billion, less than \$1 trillion in debt. Now to have quadrupled it to in excess of \$3.8 trillion in 12 years, and going up, up and away with the interest costs on the national debt increasing in that period to \$230 billion.

Where in heaven's name is Peter Grace? He gave us a calculated study—a wonderful list showing how we are going to cut out waste, fraud, and abuse. The main thing was waste. And yet it is exactly this Reagan-Bush crowd that has created the waste.

I can see distinguished President Bush shortly on national TV asking for a health program, \$100 billion.

I know my distinguished colleague from Massachusetts, Senator KENNEDY, has a \$70 billion health program. With the money that we are wasting, or spending on interest costs, I can buy them both and still have \$30 billion left over.

So the people of America ought to understand there is no free lunch.

There is an old saying. My children used to listen to a little program on the radio on Saturday morning, Big John and Sparky. "All the way through life, make this your goal, keep your eye on the donut and not the hole."

Here we have our eye on the hole of reelection. It started last fall when we realized we were in a desperate recession. And so we immediately ran to the pollsters, who never have solved any governmental problem, and said, as you well know, the rich will vote Republican; the poor will vote Democrat.

So let us appeal to middle America, and to jump start the economy what we need is more consumption. Let us mail everybody \$300. Republicans and Democrats started running, offering so much per child, so much per family, so much per taxpayer. It reminded me of the saying aboard ship during the war, "When in danger, when in doubt; run in circles, scream and shout."

Everybody was for a tax cut. In the light, take the \$300. People will go buy a Sony TV and jump start Japan. It is not going to jump start any American economy. We are beginning to sober up and realize that we continue, Mr. President, the political game of finger pointing. "Gotcha." This bill is not going to be signed into law. We are posturing as to who is for the poor and who is for the middle class and who is for the rich. It is a sordid political game.

In the last 24 hours, we announced a consortium of textile research at Clemson University with three other universities. At the ceremony, several business leaders came up very quietly, very seriously, and said "Can you Republicans and Democrats up there in Washington not get together?"

I later went down to a Chamber of Commerce in a rural town. In answering questions at that particular lunch, they asked the same question. I left to go to the Soil Conservation annual get-together at Myrtle Beach. Again, they asked, "Can you folks not get together up there in Washington and agree on anything?" I left to go to a catfish farm. The same thing. I met just a few hours ago with the homebuilders; I met with the rural telephone operators. The unease out there, people saying, can we not understand the desperate circumstances this country is in; can we not put aside the politics, if you please, and join hands and pull together on the best we can do? The recession being a deep one, you certainly are not going to raise any taxes.

And the deficit is surging in increments of \$100 billion. President Bush came to office, and he said he was going to reduce it to \$100 billion. Instead, it went to over \$200 billion. The next year, he said he was going to reduce it to \$64 billion. It went to over \$300 billion. This year, we were supposed to reduce it again, reduce it over the 5 years by \$500 billion; and now the deficit is up to \$500 billion. We cannot do too much to that deficit when it is growing in increments of \$100 billion a year.

We live in the real world. And the idea here is to try to get together on a plan that will hold the line as best we can on the deficits. Stop that hemorrhaging, if you please, on the one hand; not increase taxes, not increase the deficits, and not divide America into this middle-class, low-class, upper-class nonsense.

Sure, a poll will show, because they take the poll and cut it off at the

\$65,000 level, and they say all who favor, aye. And they all say: Yeah; we are going to get the tax cut and the people above \$65,000 are going to pay for it. It is a wonder they do not get 100 percent, to tell you the truth. There is no great lesson in that particular poll. But we all realize that is not going to do the job. Rather than a jump-start, we need really a new battery.

I can tell you from our standpoint and from our section of the country, we know a little bit about creating jobs. We have done just that, realizing that companies were not going to invest in Podunk. The first order of business over 30 years was to pay the bills. And, yes, our great State of South Carolina got a triple A credit rating from Standard and Poors and Moody's by guaranteeing that the comptroller would quarterly give an estimate to the Governor that the expenditures were within the revenues, or cut across the board.

That, in essence, was what we imposed with Gramm-Rudman-Hollings. And it was working until the 1988 election came and then they abandoned the ambitious targets, and then Gramm-Rudman-Hollings was not enforced. They said it did not work. It worked too well. That was the trouble. And with a 1990 summit that rescinded Gramm-Rudman-Hollings we have run up from \$300 billion deficits to \$500 billion deficits. So let us not talk in great reverence about spending walls around here, and how we are saving money. We are just using every gimmick in the book to hide behind.

We cannot do this by dividing each other. We have to realize that the best politics is no politics, and what we really should do, then, is see if we cannot, like a mayor of a city and a Governor—and they do this regularly—take this year's budget for next year. Any mayor of a town would come, under the circumstances, and say: Look; we do not want to fire any of the policemen; we do not want to cut any of the services. We are not really hurting that badly, if we can just hold the line. Take this year's budget for next year; freeze, as you call it; and then wait and see if times can come back better. We at least would have held the line and saved some money.

Ultimately, when you do that with this COLA instrumentality up here at the Federal level, you will be cutting the deficit in the second and third year. Living in the real world, that is not going to occur, of course, with entitlements or means tested programs. You are not going to, and you should not touch Social Security. You cannot tell how many hungry are going to report, so you cannot feed them up through July, and then say in August, and September: We have run out.

Certainly, we want to continue our veterans programs, and there is no use to get into the debates about civil serv-

ice and military retirees. We have to get something done, and try to do it by the 20th of March. I have been talking to various Members on both sides of the aisle. And there is frustration, on the one hand, but hope on the other, that whatever passes and is now submitted most respectfully by the Finance Committee, right at this minute, if it passed by 100 votes, it would still be vetoed by the President and sustained.

Of course, we know that this bill is not going to pass by 100 votes. It is probably split down the middle, almost on a partisan political basis, which means you have a veto that is not going to be overridden. And we are back to the starting gate, we are back to zero, and nothing has been accomplished; once again, the finger pointing, the stalemate, and proving just exactly what a grave misgiving there is about us as a government and as a body that we cannot govern.

I do not want to plead guilty to that particular charge, and in that light, working with our friends on both sides of the aisle, at least the distinguished Senator from Nebraska; the Senator from New York, the junior Senator, Senator D'AMATO; the senior Senator from Alabama, Senator HEFLIN; and I have a plan, not an amendment. We are not trying to confuse; we are trying to offer an alternative to turn to once the bill now on the floor has been vetoed and sustained.

We will go along with a better plan if we can get one that does not increase the deficit, does not increase taxes, does not divide the country, and if we can get a substantial majority, the President would sign it.

I ask at this particular point, Madam President, this plan be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOLLINGS, EXON, HEFLIN, D'AMATO PLAN: TO STIMULATE THE ECONOMY WITHOUT INCREASING TAXES, WITHOUT INCREASING THE DEFICIT, WITHOUT DIVIDING AMERICA, FEBRUARY 28, 1992

SAVINGS (OUTLAYS)

1. 10 percent reduction of civilian workforce (through attrition over 3 years):

[In percent]

	1993	1994	1995
Reduction	3.3	3.3	3.4
Savings	1.1	3.6	6.5

- Savings: \$1 billion.
- Cut Defense \$10 billion below 1993 cap, Savings: \$10 billion.
- Cut \$2 billion from Intelligence, Savings: \$2 billion.
- Freeze international discretionary at 1992 levels:
Outlays: 1992, 20; 1993, 21.
Savings: \$1 billion.
- Freeze domestic discretionary at 1992 levels (except all entitlements including Social Security, military, civil service COLAS, Medicare, Medicaid, SSI, food stamps, vets):

Savings: \$10 billion.
Outlays: 1992, 215; 1993, 225.
Total first year savings: \$24 billion.

INVESTMENT

Private Sector Investment:	
	Billions
1. Investment tax credit	-9.0
2. Capital gains	+3.7
3. Accelerated depreciation	-3.1
4. IRA/savings accounts	-5.6
5. Real estate	-1.0
6. R&D tax credit	-0.8
Costs	15.8

Public Sector Investment:

1. Revenue sharing (\$4 billion)	
2. Head Start/WIC	
3. Technical training centers	
4. Manufacturing centers	
5. Community health centers	
6. Advanced technology programs	
7. National Science Foundation	
Costs	\$8.2
Total first year costs	\$24
Increase in the deficit	0

Mr. HOLLINGS. Madam President, this plan embodies certain cuts and certain freezes. Why do I think it acceptable? For the simple reason that the first cut is of the bureaucracy, the work force.

This kind of sacrifice is being engaged in, joined in by every segment of the economy. There is sacrifice of the poor, the middle class, and the rich. Everybody is in this boat together. If we see the IBM's and the Xeroxes and the General Motors having to lay off and sacrifice, we can do as we did when President Reagan first came to office, by attrition, and have a 10-percent reduction of the Federal bureaucracy, cut across the board, of course exempting IRS agents and the law enforcement officials.

Next, defense. There have been all kinds of facts and figures. Mine is a 1-year plan. These 5-year plans of \$150 billion or \$100 billion, actually scare everybody, and should. Incidentally, these 5- and 6-year plans do not even last 5 and 6 months around this town. They are no better than the 5-year plans of the Soviets. So let us get on just with one plan that can get us, hopefully, past the recession, and then go to work on seeing how we can cut these deficits further next year.

Let us cut defense at the President's figure, and I think he is more nearly on target than most others who have submitted plans. In the budget, there is a \$9.9 billion or \$10 billion cut in outlays, whatever the cap may be. There is an argument of where the cap starts and stops. But whatever it is, take President Bush's particular figure of approximately a \$10 billion cut there, realizing that in desperate circumstances, you do not want to, for example, close down Fort Dix, put those soldiers out on the sidewalk and have to give them unemployment compensation. So we have real savings, then, in large measure, not just from troops, but from things such as the MX, the

Midgetman, the Stealth bomber, and on down the list. We can easily work out that particular amount, having served, as I have, on the Defense Appropriations Subcommittee for over 20 years.

Now, going then to a \$2 billion cut in intelligence. We have had an open session, and we have had former Secretary of Defense and former head of the CIA Schlesinger, we have had General Odom of the National Security Agency attest to the fact we have too many analysts.

I can tell you that this particular submission of a \$2 billion cut has been discussed for the past 2 to 3 years to try to bring this entire effort of intelligence in our Government down to size where we can handle it and can depend upon the reports given us. The sad fact was, as General Schwarzkopf said, he could not depend on the CIA's analysis. He had to get his own intelligence.

So with the cuts in bureaucracy, defense and intelligence, we can move then to the freeze of foreign aid and domestic discretionary with those necessary exemptions for the Social Security, military, Civil Service retirement, Medicare exempted, Medicaid, SSI, food stamps, veterans, go down that list. We still save some \$24 billion.

Then take that \$24 billion and allocate it, if you please, to the private sector and the public sector, but in the main to the private, almost double the amount of \$15.8 to the private sector in the form of a reduction in capital gains taxes, investment tax credits, accelerated depreciation allowance for equipment, renewed IRA's, breaks for first-time home buyers, elimination of passive loss restrictions, and so on. Then, for the public sector, everyone agrees we need to boost investments in Head Start, technical training, retraining of those who lost their jobs, community health centers, the National Science Foundation, but more than anything else, of course, revenue sharing.

If you can find \$16 billion for foreign aid in this Government, we can find \$4 billion for local aid. We have off-loaded to the local States and localities, telling them to clean up solid waste, comply with this environmental requirement, do this, do that, and then we remove the funding. They are in desperate financial circumstances.

Finally, Madam President, all of these things have strong support by both Democratic and Republican Senators and by the administration. President Bush has talked about a reduction in the civilian force. He has talked about holding the line on these domestic programs. I have adopted his defense cut, and the President should know better than any, having been director of the CIA, that savings can be made in intelligence.

So I said at one time this plan was an offer we could not refuse, because the majority has just passed this particu-

lar budget. When we say a freeze, this is a budget we adopted just in November, 4 months ago, the President just signed it into law 3 months ago.

With that in mind, let us do exactly as we voted before and show some sobriety, some awareness for the dilemma that we face, the restrictions that are upon us, the most that can be done in a bipartisan fashion. Our friend John F. Kennedy, I can remember him at the time he was introduced on the steps of our capitol in Columbia, SC. He said, "My campaign is not a set of promises of what I intend to give the American people, my campaign is a set of challenges of what I intend to ask"—he had that Boston accent—"ask of the American people."

The American people are out there sacrificing and they are wondering when the people's representatives in Congress are going to show any sensibility or awareness or sacrifice themselves.

So I want to thank those who have been willing to support this. They do not want to get in a political sticky wicket, certainly I do not, with the leadership on both sides of the aisle. But the Senator from Nebraska and the Senator from New York, the Senator from Alabama, being good help, we extend the hand of suggestion to all the other Senators so that when this committee bill passes, is vetoed and we are back to the starting point, this is a stopgap measure that we all can agree on perhaps and, hopefully, can pass by March 20. I yield the floor.

Mr. EXON. Madam President, I rise to support the Hollings-Exon budget freeze proposal. Over the last decade, Senator HOLLINGS and I have presented fiscal plans based on the budget freeze concept. The idea behind such a budget is that where possible we spend this year the same amount we spent last year. A freeze budget holds the line on spending—no cuts; no increases. It does what American families would do when their budgets go astray. First, they cut their increases in spending. I submit that if any of our earlier plans had been adopted the Nation would not face its current debt-laden recession.

The plan we introduce today recognizes that there is a deep, real, and painful recession across the Nation. It makes certain adjustments in the first year of the budget plan and offers the option of an economic growth package without increasing the deficit.

While I do not endorse every single provision of this plan, it is an important starting point for crafting a meaningful growth oriented budget for fiscal year 1993 without abandoning the needs for long-term deficit reduction.

President Bush campaigned in 1988 on a budget platform which spoke of a flexible freeze. With each and every budget that the President submitted, the Nation got far more flex than freeze. The current fiscal course is one

of record-breaking budget deficits and a nearly incomprehensibly large Federal debt. It is long past time to deliver a budget which can accurately be described as a flexible freeze.

In the final year of President Bush's first and probably only term, the single largest Federal spending program will be gross interest on the debt. That is shameful.

This year we face both a huge deficit and a slow economy. Job 1 is getting this economy moving again. The Hollings-Exon budget would accommodate a tax incentive package similar to the one approved by the Senate Finance Committee or one with a number of the elements recommended by President Bush. It will also accommodate add backs to select key domestic programs. Once the economy is jump-started, more aggressive deficit reduction strategies can kick in.

While I have some concerns about the level of defense spending in this proposal, I congratulate Senator HOLLINGS for linking defense spending reductions with a technology package which can form the cornerstone of an economic conversion effort. Reductions in defense spending without a strategy to convert from a war economy to a commercial economy will prolong the recession and do permanent damage to our Nation's industrial and technology base.

To date, the President has offered no long-term strategy for winding down defense spending or rebuilding our commercial sector. It is as if the President were hoping for a new enemy to emerge to cancel any hope of a lasting peace dividend. The challenge the Nation faces in the post cold war era is to reinvest the peace dividend in a manner that creates a better life for all Americans.

Certainly this budget option is not perfect. It is, however, realistic and in sharp contrast to the President's budget, this plan is honest. President Bush promised something for everybody in his State of the Union message but delivered to the Congress a budget filled with blue smoke and mirrors. Tax cuts in the President's budget were paid for with accounting gimmicks and revenues were boosted with optimistic economic forecasts.

The American people deserve better. They deserve leaders who are willing to ask for sacrifice and willing to tell the truth about the serious economic problems facing our Nation. With this budget we do both.

I am pleased to join with my friend and colleague from South Carolina, in introducing this alternative fiscal blueprint. I ask my colleagues to give it full and fair consideration. We would welcome your comments, suggestions, and support.

Thank you, Madam President.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Madam President, I have been on the floor for the last hour and have listened with considerable interest to the comments of the Senator from New York [Mr. MOYNIHAN] and also Senator HOLLINGS, my chairman of the Commerce Committee.

I think it is fair to say that those two speeches did reflect a sense which is shared by a number of Members of the Senate and shared also by an overwhelming majority of the American people, to the effect that the tax legislation now before us does not quite do what it has been represented to do. It is called an economic growth package, but I think most Members of the Senate recognize it really is not much of a growth package at all. This is a view that is very widely shared, certainly by the people of my State of Missouri.

It has been said by a lot of commentators that the American people this year, more than in most years in the past, are perhaps more receptive to the unvarnished truth from politicians than may have been true in the past. I have found this in my State.

I have talked with my constituents on a number of occasions about tax legislation. I have asked my constituents how they feel about the so-called middle-class tax cut, whether they feel the middle-class tax cut in its various manifestations really helps the country, whether it really improves the economy, whether it really leads to economic growth. I have never had a single person suggest to me that the middle-class tax cut does any good for the economy, that it helps us out of the recession or that it helps us grow.

I have even been on a radio talk show that has one of the largest listening audiences in the country, KMOX radio in St. Louis, and I said on that program if there is anyone out there who believes that the so-called middle-class tax cut helps the economy, please call in and let me know. Nobody called in.

I do not know of anybody who believes that the middle-class tax cut is going to help the economy, and yet it is by far the largest part of the legislation now before us. It accounts for over half of the revenue loss in this legislation. It is more than six times larger than the next largest item in the bill, which is the individual retirement account provision.

The American people recognize that the real problem with the economy has nothing to do with the middle-class tax cut. The real problem with our economy has to do with huge deficits in the Federal budget and has to do with tax policies which discourage savings, investment, and growth and encourage consumption. That was the program we embarked on in the 1986 tax legislation, and that is the program which is furthered by the legislation now before us.

The United States has, and has had for the last two or three decades, the

lowest savings rate of any industrialized country. The United States has the lowest investment rate of any industrialized country.

Therefore it follows as night to day that we have one of the lowest, the second lowest, economic growth rate of any industrialized country.

The economists have said the same thing that our colleagues in the Senate have said, and that my constituents have said about this legislation. I would like to read into the RECORD a few quotes.

Robert Solow, Nobel Prize economist, said on the MacNeil/Lehrer program last night:

We have, over the past decade or so, not looked after the seed corn. We have run the economy on a sort of consumption first basis. And the rest of the advanced industrial world, the people who are catching up with us, consume less of what they produce and they invest more. We lag in that respect, and so we don't improve our industrial base, we don't get new technology into the plant, we don't build as much new plant as other countries. What we do is we consume more. * * * The fundamental need over the next decade is to invest more and consume less.

Henry Aaron of the Brookings Institution said:

A tax cut would be lethal or at least deleterious to long-term economic objectives.

Marty Feldstein, former Chairman of the Council of Economic Advisers, said that:

Middle-class tax cuts * * * clearly are not the way to increase productivity and growth in the economy. * * * On balance, they are bad for the economy.

Barry Bosworth of the Brookings Institution said before the Ways and Means Committee:

The current emphasis on lower taxes is sending the wrong message to voters about the measures that must be taken to improve the economy in the long run. If the United States hopes to compete in the global economy in the future it will need to increase its investment in physical capital, research and development, and education and job training. All of these measures will require less consumption in the immediate future, not more.

So, Madam President, that is the message from the economists. That is what we have heard from people who have testified before the Finance Committee, before the Ways and Means Committee, and that is what we are hearing from our constituents as well.

What we are going to do is this: we will pass this bill, we will pass this bill with about half of it being in the form of the so-called middle-class tax cut. The bill will be vetoed by the President. It will be an election year issue, particularly in the Presidential campaign. The President's veto will be sustained.

Eventually we will get on with a stripped-down bill which will do some good for the economy. We will extend the expiring provisions of the Tax Code. We will deal with a luxury tax problem. We will deal with the passive loss rule problem. We will possibly deal

with the complexities of the alternative minimum tax. We will probably pass the health component of this legislation. There will be almost unanimous support for those provisions, and that will be it for this year.

I think though we should do more, although I do not hold out much hope for it in 1992. I think that if we really set our minds to it, we would put in place some real growth provisions in the Tax Code.

We should do so by reinstating a permanent investment tax credit and by making the research and development tax credit permanent, perhaps at a higher level than it has been in the past. In addition, the investment tax credit and research and development tax credit should be creditable against the alternative minimum tax. The AMT is now paid by about half of the businesses being taxed today. These important incentive provisions would not be available to these businesses without being creditable against the AMT. Perhaps we should restore the capital gains differential as well. In addition, we must improve the so-called human capital or educational provisions that are now in the law.

Those are the things that I believe we should do if we really want a growth tax bill.

The immediate question is how do we pay for all of that? My answer to that is that we should begin thinking about a consumption tax. We should begin thinking about less emphasis on an income tax, and a greater emphasis on some form of consumption tax.

When that issue is raised, there are any number of different views on what is the perfect kind of consumption tax. There is immediate squabbling about the precise form it should take.

Some people say I am against a value-added tax, I am for a business transfer tax, I am for this form of tax or that form of tax, but I think that the main issue is not what is the perfect version of a consumption tax. The main issue is whether we can move from the present tax system to something different, whether we can move from a tax system which penalizes savings and investment and encourages consumption to a form of taxation which encourages economic growth.

Of the industrialized countries in the world, every single one of them has some form of consumption tax, either a value-added tax, or some kind of national sales tax. The United States is the only country that relies primarily on the income tax. And the result of our high cost of capital and the fact that we have a tax system favoring consumption as opposed to savings and investments is that we have the second-lowest growth rate of the industrialized world.

The good news, Madam President, is that when I discuss the form of taxation with my colleagues, Democrats

as well as Republicans, when I discuss it with officials in the administration, with economists, with leaders in the business community, there is enormous support for this kind of an approach, and enormous recognition that the tax policies that we are pursuing today, much less the spending policies, are very, very damaging for our economy.

So my hope is that eventually we will get beyond the political posturing that is not new in this election year but certainly entails most of what we have heard from both political parties in connection with tax legislation this year; and that we will move to a broader approach that really will help our economy grow.

Mr. BRADLEY addressed the Chair. The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Madam President, I yield 30 seconds, or 1 minute to the Senator from New York.

Mr. D'AMATO. Madam President, I thank my colleague from New Jersey.

LET'S GET TO WORK—FOR THE AMERICAN PEOPLE

Madam President, I rise today to urge this body to get to the work of the people. The partisan posturing and the partisan bickering will get this country and its people nowhere. There will be no long-term solution to our country's economic problems until Congress gets its fiscal house in order. We must work together starting right now if we are to get the U.S. economy moving forward and to get government off the backs of the hard-working middle class.

Madam President, the supposed tax fairness bill being brought before this body today is a political charade. Though it includes a few positive viable economic recovery provisions, the vast majority of this legislation is far, far worse than even the mess of the 1990 tax increase bill. In 1990, the Democrat-controlled Congress sold the American people a bill of goods in the form of a deficit reduction package. That so-called deficit reduction law, which I adamantly opposed, increased spending by \$380 billion over 5 years and increased taxes by \$158 billion over the same period. Today, the package offered by the Senate Finance Committee gives the American people nothing better. It is heavy on "tax" and light on "fairness."

My colleague, Senator HOLLINGS, has put forth a viable and realistic proposal to accomplish goals that are good for all Americans. I support his efforts to freeze and cut spending, to cut bureaucracy, to provide economic stimulus to invest in private business and industry as well as make public investment in areas such as Head Start, WIC, and Community Health.

Senator HOLLINGS' proposal stands for the things I have long advocated. I have strongly supported economic stimulus proposals to create jobs and

get this country's economy moving again. I support every effort to cut wasteful Government spending and reduce the suffocating Federal budget deficit. I have also stood firmly in support of a balanced budget amendment to the Constitution, and for giving the President line-item veto power.

Madam President, we must show the American people that we stand for something—we stand for them.

Mr. BRADLEY addressed the Chair. The PRESIDING OFFICER. The Senator from New Jersey continues to hold the floor.

Mr. BRADLEY. Madam President, the bill before us is the tax bill of 1992. Let me begin by saying that this might be the only tax bill for 1992.

Let me also begin by saying that I think the distinguished chairman of the Finance Committee, Senator BENTSEN, has worked long and hard to put together a bill that tries to touch many different bases. I think that he has been extremely open and considerate. And he has taken great effort to listen to many Senators in coming up with this proposal. I compliment him on that inclusiveness.

Madam President, we are in the midst of a three-pronged economic crisis as far as I see it. First, we are in the middle of the recessionary cycle. We have rising unemployment. We have the economy slowing down. And we have in place now the traditional monetary response to this kind of recessionary cycle; that is, that the monetary base is being expanded dramatically. It is inevitable that that expansion of the monetary base will make some economic numbers look better in 8 months, a year; no one knows, but ultimately it will make the economic numbers look better. Whether it will restore confidence or not is another question.

The second economic crisis we are in is a structural adjustment to international competition and to the end of the cold war. The fact of the matter is that many companies—some companies have come to symbolize the American corporate family: IBM, AT&T, among others—are responding to both the end of communism in the Soviet Union, the end of the cold war, and international competition, by laying people off in sizable numbers. These are layoffs that are not your normal cyclical layoff where somebody goes to get unemployment and in 6 months the line comes back on and they are back at work. These are permanent job losses. And that is why the crisis is called structural adjustment, which means workers who were working in those industries for many years now will have to find work elsewhere.

The fundamental challenge of this structural adjustment is to be able to take care of the people who are adversely affected by it. I think that implies a number of things. It implies,

first of all, a national health insurance program, so if you lose your job, you do not lose coverage for your family. It implies some security for pension benefits, so that you are not thrown out on the street and don't have any pension. It also implies putting some real substance behind the claim of lifetime education.

The third crisis we are in is the fiscal crisis that has been so eloquently described today by Senator MOYNIHAN and by Senator HOLLINGS—raging deficits. In 1979 the deficit hit \$40 billion. The deficit this year is at \$400 billion. In a decade, the United States went from the largest creditor nation to the world's largest debtor nation. And all of that almost \$2 trillion in additional debt is being put on the backs of our children; interest payments are now being made to foreign bondholders before taxpayer dollars are spent to feed hungry children in this country; and all of our children are being burdened with the prospect of less capital available for their education, for the purchase of homes, and for making America grow again.

So the deficit is the No. 1 problem confronting the country, and it comes after a decade of neglect. It comes in the midst of a recessionary cycle, and a need for structural adjustment that flows from the end of the cold war and intense international competition.

Madam President, it was Woodrow Wilson that said, "Good government is the best politics."

I think that in the anti-incumbent, angry election year, which both parties are now facing, we should keep those words in mind, that "good government is the best politics."

For the past 11 years, most of our country's economic policy has been dictated by smart politics. This smart politics has paid off in electoral terms. Republicans have maintained control of the White House, and Democrats have maintained control of Congress. Everybody has played it smart and put off the tough decisions until after the next election. But there has always been another election and more decisions to put off and more elections to win.

Madam President, here we are tonight. Eleven years ago, we passed a tax bill, the Economic Recovery Tax Act, the largest giveaway in American history, and we have spent the following decade trying to clean up that colossal mistake. We cut income taxes in 1981 reducing the top rate from 70 to 50 percent, and we spent the next 10 years raising every other kind of tax imaginable. We gave businesses and rich people nice, expensive loopholes and spent the next 10 years trying to close them or pay for them with yet other taxes. We passed a tax bill that was supposed to reduce the deficit by generating economic growth, and subsequently we have passed five major

deficit reduction tax bills, as the deficit continued to grow.

Madam President, just look at this last decade. As I said, \$40 billion was the deficit in 1979. Today it is \$400 billion. If no steps are taken to increase the deficits—in other words, if we use all of the peace dividend for deficit reduction, if we do not enact any domestic priorities without offsets, and if we give no tax cuts without corresponding tax increases, then the deficit in 2001 will still be somewhere on the order of \$300 billion—3 percent of GNP. On the other hand, if we do spend part of the peace dividend, then it is going to be much higher.

Since those deficit figures do not include the Social Security reserves, the deficit for the overall operations of Government is actually about \$150 billion a year higher. That amounts to almost 5 percent of our GNP in 2001.

So unless aggressive steps are taken, our long-term economic problem is going to still be with us and with us for a long time to come.

Let us look at the last decade's tax actions. ERTA in 1981, in terms of how that act affected the budget today, increased the budget deficit by \$358 billion. Because it was so clearly a drain on the Federal Treasury we spent the last decade passing other bills raising taxes to try to catch up. Let us go through the history of those other bills.

TEFRA in 1982. Remember, that was when we were going to withhold on interest and dividends. We were going to repeal safe harbor leasing. Those were the great call words of the early 1980's. That raised \$61 billion. Of course, there was the 1982 highway bill, raising the gasoline tax from 4 to 9 cents. I was told, parenthetically, if we did that, we would all lose our elections. I got three letters when we raised the gasoline tax from 4 cents to 9 cents. It cut the deficit by \$5 billion.

Then, of course, there was the Social Security bill of 1983, the bill that speeded up the higher rates on Social Security recipients, so that today, 71 percent of Americans pay more in Social Security taxes than they pay in income taxes. That raised \$91 billion.

And then, of course, we had the Railroad Retirement Act. That raised \$1 billion. The Deficit Reduction Act of 1984 raised \$34 billion. The key element of that—and this was a tremendous sacrifice, I know, for all of us to make—was we lengthened the depreciable life of buildings from 15 years to 18 years. What a sacrifice.

Never mind that buildings last for 40 years. In 1981, we shoveled money into the pockets of real estate developers by allowing depreciation of real estate at 15 years, no matter if it had a life of 40 years or 50 years.

In addition to that, in 1981, a little-known provision of the bill allowed S&L operators to take their losses in

1981 and deduct them against the previous 10 years of earnings, thereby postponing the day of reckoning for the S&L crisis, all in 1981.

But in 1984, we came back and raised \$34 billion. And, of course, we have the acronyms COBRA, and OBRA. COBRA, in 1985, raised \$3 billion; OBRA, in 1986, raised \$0.1 billion. Then we have a deficit reduction measure in 1987 that reduced the deficit by raising \$3 billion in taxes and OBRA in 1987, \$15 billion raised in taxes, then the 1988 tax deficit reduction, \$3 billion, and the 1989 OBRA, \$6 billion, and in 1990, the budget bill raised \$18 billion.

So, Madam President, if you simply take the original sin of this period of fiscal excess, the 1981 tax bill, and you put how much money it lost in fiscal year 1991, in other words, how much the deficit increased on one side, and you put all of the increases in taxes on the other side, you will still see that we have \$120 billion yet to go before we offset that dramatic increase in the deficit that came in 1981. Of course, it is \$270 billion, if you do not count Social Security reserves. A lot of numbers, but the point to be made is that the origin of this deficit was the 1981 tax bill, and subsequently we have done everything we could to try to make up for that mistake. But we have been unable to catch up.

(Mr. WIRTH assumed the chair.)

Mr. BRADLEY. Now, the second thing that happened in this period, in addition to gigantic increases in deficits, was, of course, a dramatic change in the distribution of tax burdens.

If we take a look at the effective tax rate, and that is the rate I always like to look at, the effective tax rate—in other words, what people actually pay; not what the rate says in the law, but what people actually pay—and we take two families, an average family making \$20,000 a year, and an average family making \$1 million a year, in 1977, the average family making \$20,000 a year paid an effective tax rate of 15.4 percent. In 1992, that average family making \$20,000 pays an effective tax rate of 15.6 percent. In other words, more. The million-dollar family, how did they do? In 1977, they paid an effective tax rate of 35.5 percent. One should note that the tax rate in the law said 70 percent. They paid an effective tax rate, though, of 35.5 percent. After the tax bill of 1981, and the effect of pouring money into the pockets of the wealthiest Americans, you found that in 1985 that effective tax rate on the family that made \$1 million dropped to 24.9 percent. After the Tax Reform Act of 1986, it increased to 26.9 percent. Why? Because the shelters and the loopholes that the millionaire had used to avoid paying tax were eliminated, so he paid a little bit more.

And now, after the 1990 tax bill, that million-dollar family pays about 29.3 percent. So that in this decade, you

saw that the \$20,000 family actually is paying about \$140 more, and you found the million-dollar family paying about \$62,000 less.

So much for whether this was a fair decade in tax policy. The last decade has been profligate in the creation of giant deficits, the original case being the 1981 tax bill. The decade has been embarrassingly insensitive to hard-working families in this country, as they end up paying more and people making \$1 million a year end up paying \$62,000, on the average, less.

So, Mr. President, with that background, here we are. We are considering the 1992 tax bill. It is billed as a short-term recession-relief package that does not cut taxes. It is revenue neutral. A short-term recession relief package that does not cut taxes. And it is billed as a long-term growth and investment package that does not cut the deficit.

So here we are. The deficit is at record levels, smothering long-term growth. Middle-income families are squeezed, working longer hours, making less money, while the rich get richer. The economy is stuck in a recession, jobs are disappearing, people have lost confidence in their Government, businesses are not investing, people are not spending, banks are not lending, productivity is down, unemployment is up, poverty is up. And the people want us to do something. Most of all, they want some answers and some straight talk. They want a little help now.

Sure, they want some help now. But they also want us to look beyond—I believe—beyond the next election, the next century, and make some investments today that will lead to economic growth 10 years from now. I think they want that, too. And they probably want that more.

What does that mean? Well, I think we should invest in growth. Given what I said about the structural adjustment that we are in, that means health and education. There is a provision in this bill authored by Senator BENTSEN that finally says to people who are self-employed: Look, you are going to get some help in giving yourself some health insurance.

There are a whole series of educational initiatives, ranging from one that Senator BREAUX offered, that tries to deal with training high school kids who do not go to college. Then there is a self-reliance loan proposal, which I authored, which provides up to \$30,000 to any American up to the age of 50 who wants to go to college and agrees to pay a percent of future income into a trust fund.

Now, these health and education investments are economic growth initiatives. I mean, they are even economic growth initiatives in theory. If you look at the theory of economic growth, that means labor and capital. And maybe some people say what you can-

not figure out with labor and capital input you make up with technology. There is a whole new school that says, no, it is labor and capital—but it is also ideas, patents; it is also the quality of education.

So if we want productivity to leap ahead in this society, we are going to have to get more people going to college. And you have to facilitate that entry. We are going to have to improve the performance of people who are on the bottom three or four rungs.

So I think we should invest in economic growth. I think economic growth is health and education. I also frankly believe, as a matter of policy, given this last decade, that millionaires should pay more. A millionaire's family that got that \$67,000 tax cut ought to pay more. I believe America's families deserve to have some relief from the tax burden that they have labored under, a tax burden once again caused in large part by the 1981 tax bill that did not index the standard deduction or the exemption until 1984, thereby pushing more and more poor people into paying taxes.

So that is why I introduced the \$350 refundable tax credit. Families need more resources, all families do.

Those are the three things that I believe in: Investment in economic growth—health and education; taking care of America's families, giving them some more money in their pockets—all American families; and make sure that the people who make \$1 million a year are paying considerably more because they benefited the most from the last decade.

That brings us to the bill that is on the floor at the moment. After this whole decade of tax profligacy, we have before us a bill, today, that provides a tax credit for children, \$300, in income levels from roughly \$15,000 to \$50,000, phasing it out from \$50,000 to \$70,000 in income. I regret it does not take care of 25 percent of the poorest kids, who you will only be able to take care of with a refundable credit. I regret we have not made it available for all children.

The bill raises taxes on the wealthy. I strongly support the 10 percent millionaire surtax; the 36-percent rate on incomes over \$150,000 would also increase taxes on the wealthy. It raises about \$43 billion. But then we proceed in the bill to give \$20 billion to \$25 billion back to the same people—people with a lot of money—through loophole creation.

And then the issue that this is deficit neutral. Over 5 years it is deficit neutral. Yet there are some ominous elements: extenders that are set to expire in 18 months. Of course the history of extenders is they do not expire, they continue and continue and continue.

Then there is the back-loaded IRA, which basically says do not take the budget hit now, take the budget hit

later. So I have a little question as to whether this bill is fully neutral in the out-years.

But, Mr. President, that is what we now have before us. It is a bill that comes, I believe, out of the frustrations, inequities and profligate tax policy rooted in the tax bill of 1981. As I said in my earlier remarks, we have been trying to make up for the gigantic increase in the deficit caused by the 1981 tax bill ever since, and we are still \$120 billion, \$130 billion and if you do not count Social Security trust funds, \$270 billion behind.

We are still trying to make up for the inequity of the 1981 tax bill in terms of effective tax rates. And I see this bill as a response, in part, to that decade. I see it also as a response to a genuine desire to deal with some of the substantive problems with regard to economic growth: education, health care, making sure families have some more money.

But let me echo, finally, the words of some of the other speakers who were here today. This is not the answer to our problems. The answer to the problem is going to be found when 51 people stand on the Senate floor and vote to increase revenues, taxes, and to cut spending in a serious manner.

We have had economists come before the Finance Committee. Some of them say what we need is a tax cut now and a tax increase later. Of course when you hear the debate you only hear about the tax cut now, not the tax increase later than they have advocated, 3 percent of GNP, which is \$90 billion more in 1 year.

So the main point to make is that we are in a period of structural adjustment—international competition, the end of the cold war—and seriously dealing with that means taking care of people's health care, pensions, and making lifetime education a reality. That has to have a foundation of serious deficit reduction.

This bill is before us now. We will be debating it for the next couple of days. There will inevitably be amendments that will be offered and we will see how the Senate works its will.

I will be back here tomorrow at 10 a.m. to deal with the first amendment that will be offered. I expect to participate in the debate through the next several days.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I just arrived from a visit downtown on some family matters. I noticed Senator SLADE GORTON sitting here. I have sought the floor. I wonder am I inconveniencing him if I make some remarks about this bill at this time?

Mr. GORTON. Not at all.

Mr. DOMENICI. Mr. President, I, too, will hopefully join with others to speak again, at least one more time before

this bill is defeated. I think it will be. If it is not defeated on the floor, it surely will not become law. But I think we ought to talk about the bill tonight. I will try to do that. And then, as to what brought it about. Tomorrow I will talk about what happened in the decade of the eighties, and I will talk about tax inequity and what caused it—from my standpoint, I will reserve that topic for another date.

Frankly, I hear all kinds of suggestions as to what caused it. But it is most interesting that most of those who are finding blame in the eighties, voted for the major tax reform package of all time that is being modified tonight in a major way. It seems to me there are some on the other side of the aisle who want to modify it even more by raising the brackets higher and higher.

We all ought to remember we had extremely high brackets when the reform was enacted, and it was concluded then that the rich were not paying their fair share. Everyone knows that is what prompted that bill, because all the loopholes that came in behind the high marginal tax rates permitted those with high earnings to pay less and less taxes. The theory was to have fewer marginal brackets and get rid of most of the deductions, exemptions, and loopholes. And that is what happened, if there were any inequities around.

It will be a pleasure to talk about tax history, and where the inequities are in terms of income distribution in the United States. And for those who continue to talk about the Tax Code creating inequity, it is interesting to note that most people who have studied America in the last 10, 15 years, even 20 years conclude that education levels are more responsible for income disparities than the tax code. The more educated are earning more and more. The less educated are earning less and less. And that is where all of these disparities are. But that is a topic for another day.

I have worked on economic growth and job-producing packages. I know economic growth-producing packages, and the Finance Committee bill is no economic growth package. No doubt about it. I hope, not having heard the debate this afternoon, that no one really contends that it is.

The bill increases taxes by \$65 billion over the next 5 years. For those who say we are only taxing the rich in the proposed tax increases. I say wrong. I did not have response to that until I searched and inquired of the tax people, just who are these Americans who are going to pay this new higher rate? Believe it or not, and this number will stand, 65 percent of the so-called rich who are going to get taxed an additional amount will come out of the pockets of taxpayers with small business income.

These are the small business persons who historically have provided the ma-

majority of new jobs in our economy. It is impossible to use profits to expand a business and create new jobs if the tax collector wants your working capital to satisfy the new 36 percent rate—an effective rate, Mr. President, which exceeds 40 percent when other tax provisions are taken into account.

Instead of providing jobs, this bill provides special interest tax relief to a number of special interests and it produces bailouts for others.

If a provision does not spur economic growth, create jobs, or lower the cost of capital, it should be rejected by the Senate.

Instead of doing what the President asked in begging us to pass his economic growth and jobs producing bill which would, indeed, have increased productivity, the Finance Committee bill does the following, and I challenge anyone who produced the bill to defy it: It raises the deficit; and let us have that argument for some say it does not raise the deficit. I believe it does. And I believe we can prove conclusively that it does. It will cause a sequester to occur, so it creates a sequester. It increases taxes. It increases spending. It creates two new entitlement programs and, by the way, in the process does very little to stimulate the economy. It seems that alone ought to be enough for us to say we do not need it.

This bill will raise the deficit by at least \$2 billion, and continues to add to the deficit each year through 1995. This bill is going to trigger a \$4 billion sequester. So all of those who are for it probably better hope it does not become law because the OMB Director will have to cut Medicare by \$3 billion. Has anybody offered a bill on the floor of the Senate to cut Medicare \$3 billion and see it pass? Frankly, Senators will stumble over themselves to come to the floor to see who can be heard first if you attempt to cut Medicare in any way. The consequences of this bill will cut it across the board \$3 billion.

Other programs like social services block grants would get cut. Incidentally, student loan programs on which we just went through a very serious debate will be in this across-the-board sequester. And, yes, farm programs will take a hit, too.

In a normal year, Mr. President, the Finance Committee package would be subject to at least five Budget Act points of order, but this is not a normal year and this is not a normal bill. So, all the maneuvers that have been implemented to avoid such a result have been done, including introducing two bills instead of one, will still not change the result. I do not think very many Senators know that.

Why all of this manipulation of the process to avoid the budget problem? For what? It seems to me that I ought to honestly share with the Senate what I see as some of the reasons the bill is on the floor because I do not believe

there were the votes in committee for this bill without the following list of special interest provisions that I found in this bill. Now, I know tax bills have special interests, and I know tax writing committees must write special interest provisions. This is by no means one of the better of such. It is probably among the least egregious.

But there is a provision in it that will reclassify foreign minivans and sport utility vehicles as trucks. So one provision turns cars into trucks and raises the prices for consumers in the process because there will be a 25-percent duty imposed on Rovers, Isuzu Troopers, and other vehicles we import.

I do not know if it is right or not, but I suggest it is one of those without which the bill would not be here. It sounds to me like more of these were in it than provisions for economic growth. And that is why it is here.

Let me give a couple of more. There is a provision that will allow Federal Express Airlines to give their nonunion pilots pensions as generous as those given to unionized pilots. I do not know if that is good or bad either. I pass no judgment on it. It is interesting that to get this bill on the floor we have to include provisions like this.

Yet another provision provides universities in America with an exemption from the volume caps imposed on their ability to issue tax-exempt bonds. I assume there was someone genuinely interested in that. I do not think it belongs in this bill.

The securities industry would benefit from a 1-year delay of the new tax rules for security leaders. I am sure most Senators did not know that was in here.

Certain fishing fleets would be exempt from FICA and from FUTA taxes. And it is interesting; it basically says that the less than 10 exemptions would be stretched to exempt more than 10 employees if they are fishermen and if they are on the crew of fishing boats, and there are also usually less than 10 fishermen on the crew. This provision also allows fishermen to receive tax-free income, and it states how.

Interestingly enough, and I will tell you why it is really interesting, this change is retroactive to 1984. It is interesting because we will skip over to the taxpayer bill of rights. Boy, right front and center in the taxpayer bill of rights, it says no more retroactive laws, and it says, IRS, no more retroactive rules and regulations. I just identified one contradiction included in the bill and that provision is retroactive back to 1984. I assume we did not mean it in the taxpayer bill of rights, I say to my friend from Washington.

I guess what we are saying is we mean it, unless there is somebody that likes it to be retroactive, then we will let them have it. I assume that. But we will not let the IRS do that kind of thing.

There are changes in here for the rural postal carriers on the way they compute mileage. Maybe that is worthwhile also. I do not know what it has to do with economic growth.

Rural electric co-ops would benefit because Congress would overrule the IRS treatment of the safe harbor leasing activity surrounding some of the large nuclear powerplants. That is in here. Again, I do not pass judgment on their merits. I just am wondering why the bill is here.

Is it here because there were enough Senators to vote for the tax measures, or is it here because there were enough special interests to get the votes needed to bring it here? I surmise about half and half, but if it is half and half, there certainly are not enough around to have reported it out purely for its economic growth potential. Nonetheless we have taken it to the floor with great accolades attendant to the description of what we are doing to help the American people in this time of recession.

I do not want to leave any of these special interests out for fear that somebody will say DOMENICI picked and chose. So I will even say that there is a housing cooperative given special attention in New York City.

There is a bailout of a group of local coal companies. That deserves a little more attention. And I want everyone to know there is an oil and gas industry treatment that is even more favorable than the President had, yet it does not do as much for the independents as some would have thought.

The others I will not go into. I will put them in the RECORD, anyone who cares to see them and go over them, they might want to do that.

There being no objection, the material was ordered printed in the RECORD, as follows:

One provision turns cars into trucks and raises prices for consumers in the process. It would reclassify foreign minivans and sport utility vehicles as trucks and increase the duty to 25 percent for Range Rovers and Isuzu Troopers. This is a provision that was lobbied for by the big three auto makers and is blatant protectionism. We may have to pay our trading partners compensation for this one.

A second special interest provision includes a provision to allow airlines like Federal Express to give their non-union pilots pensions as generous as those given to unionized pilots of other airlines. This might be a good provision but it doesn't belong in an economic growth package.

Yet another provision provides universities with an exemption from volume caps imposed on their ability to issue tax exempt bonds.

The securities industry would benefit from a one year delay of the new tax rules for securities dealers.

Certain fishing fleets would be exempted from FICA and FUTA taxes. It basically says that the less than ten exemption would be stretched to exempt more than ten employees if they are fishermen and they are on the crew of a fishing boat and there are usually

less than ten fishermen on the crew. The provision also allows the fishermen to receive tax free income of a de minimis amount as well as a share of the catch. This change is retroactive to 1984 and would bailout some Massachusetts fishermen locked in litigation with the IRS over this issue.

The bill also changes the way rural postal carriers compute mileage. Again, it might be a worthwhile change, but it isn't going to foster economic growth. It doesn't belong in this package.

Rural electric cooperatives would benefit if Congress would overrule the IRS on the treatment of some safe harbor leasing activities surrounding some large nuclear power plants. The Finance Committee bill makes that change.

This bill also makes permanent the bailout of the railroad retirement fund. Taxpayers will be expected to subsidize these retirees' benefits. I am not against railroad retirees, but this provision does not belong in an economic growth package.

A worthwhile, yet extraneous provision would allow \$1.5 billion tax credits for restaurants that pay Social Security taxes on tips in excess of those necessary to bring employee wages up to the minimum wage. It would be paid for by eliminating deductions for club memberships. While waitresses and others are hard workers and have a hard time making ends meet, an economic growth bill isn't the place to fight this long standing battle.

The bill repeals the only anti-tax shelter provision dealing with housing cooperatives. The bill allows a more liberal treatment of nonmembership profits to offset losses from member goods and services. This benefits housing cooperatives located primarily in New York City. They would be exempted from the only rule in the Internal Revenue Code that prevents tenant-shareholders from sheltering their investment and rental income in order to supply their personal living expenses which should not otherwise be deductible.

Another provision is an unvarnished bailout—A group of coal companies over-promised health care benefits in the 1970s. Now that they can't live up to their promises, they have asked Congress to tax their competitors (or former competitors since many of the original promising coal companies have gone out of business) so that they can keep promises they had no business making in the first place.

This provision is so outrageous it includes a list of states which only includes 49. Montana is omitted because the legislation exempts Montana to keep Senator Baucus on board.

Lignite is exempt which in a back-door way exempts all Texas coal.

Perhaps each Senator should offer an amendment to change the name of his/her respective states to "Montana" for the purposes of this provision so the miners won't have to suffer the adverse impact of this tax.

Why should western coal pay 15 cents an hour tax to bail out eastern coal companies? Why should eastern competitors pay 99 cents per hour tax to keep promises their competitors made? And most importantly, why should the Congress use the tax code to get in the middle of this private contract matter between certain coal companies and their unions at the expense of other coal miners' jobs? This is a robbing Peter to pay Paul situation if there ever was one.

Many of the coal companies that are going to be taxed under this proposal are marginal operators right now. If this tax is imposed on them it will cost jobs.

As Senator Boren said in the mark-up, the provision is "a terrible, terrible precedent" by taxing companies that had nothing to do with the United Mine Workers contract and the fund's problems.

The oil and gas industry is treated more favorably than proposed by the President. The bill increases the net income limitation for calculating the IDC preference to 70 percent, up from the present 65 percent. The Special energy deduction is modified and changes are made to the adjusted current earnings adjustment (ACE) for IDCs. It also provides an AMT preference for intangible drilling costs (IDCs) but makes no changes in the AMT treatment of depletion. This appears to help the large corporate independents more than the small independents.

The small sole proprietor independents are also going to end up paying the higher individual 36 percent rate and the higher AMT.

The real estate provisions aren't what the President asked for. The capital gains provisions are too complex. In addition, the recapture rules would increase the potential tax on depressed real estate properties. Another example, the \$5,000 first time homebuyer credit would only be used for existing homes. Eighty percent of first time homebuyers would be left out because they purchase existing homes. The provision doesn't meet the needs of the people we are trying to help who buy existing homes.

On top of all of this, the bill requires seven new studies, sets up three new commissions and establishes a series of new demonstration projects.

In the Taxpayers' Bill of Rights title of the bill it prohibits Treasury from issuing retroactive regulations. In other sections of the bill, the rate increase for the new 36 percent bracket and the new 10 percent surcharge are retroactive. In addition, the bill would overrule the IRS twice in pending litigation by changing the law retroactively.

Frankly, if we enact this bill, we will truly be missing an opportunity to do the right thing for the country. Maybe the economists were right in predicting Congress could only make things worse.

Mr. GORTON. Mr. President, will the Senator from New Mexico yield for a question, or perhaps even a series of questions?

Mr. DOMENICI. I will be delighted to.

Mr. GORTON. Mr. President, I have listened to the remarks of my friend from New Mexico with great interest and great respect and he is perhaps the single outstanding expert in the Senate on fiscal policy.

My first question to him is really a very simple one. Has the Senator from New Mexico attempted to lift the bill with which we are dealing? Can he do it with one hand?

Mr. DOMENICI. I have not, I say to my friend, but I have a bad right shoulder so I will not even try. I will try with my left, and I can get it up, yes.

Mr. GORTON. Will the Senator agree with this Senator that it is 1,421 pages long?

Mr. DOMENICI. That is what it says.

Mr. GORTON. Would the Senator from New Mexico agree that one certain group of beneficiaries from the passage of this bill will be tax lawyers and tax accountants?

Mr. DOMENICI. Once again, they will be great beneficiaries and even they, as a group, are starting to tell us do not do this, even though we are beneficiaries, because we change so many things so often they cannot keep track.

Mr. GORTON. I thank the Senator from New Mexico. I want to join him in expressing that plot; that many of my constituents in the State of Washington, and I believe his constituents in the State of New Mexico, have pleaded with us to leave the Tax Code alone for a considerable period of time so that they can begin to understand what is in the code revisions we have accomplished in 1986 and 1990 and perhaps even since then.

Does the Senator from New Mexico have any different experience from that?

Mr. DOMENICI. Let me say most of us voted for the Tax Simplification and Reform Act of 1986. Most of us gave speeches on how great the reform was because it got rid of a lot of loopholes and created far cleaner tax brackets and far less of them in terms of marginal rates. But, frankly, within 2 years the biggest hue and cry of complaint was that it is more complex, more difficult than ever—in fact, many said it would be years before the IRS and the courts ruled out the explanations needed to make it all sensible, and I agree.

Mr. GORTON. Does the Senator from New Mexico agree with the Senator from Washington that given the existence of a recession, given the fact that Congress should be attempting to work this country out of the recession, that the primary goal of any tax bill, if indeed Congress should pass any at all, should be toward job creation and preservation, toward the kind of economic stimulus that comes from reducing debt and increasing investment; that while the short term is important, the long-term economic health of this country requires that kind of encouragement for investment?

Mr. DOMENICI. Absolutely. I mentioned to the Senate early on in my remarks the kind of the *sine qua non* for any bill, that it be the provision without which we should not even have a bill.

I said then—and I repeat—it should provide jobs, the bill should provide economic growth, lower the cost of capital, and if it does not do those things, it ought to be rejected.

Frankly, I might say to my friend, I am absolutely amazed with the debate in our country about jobs. Frankly, we have led the American people—because of discussions of the last 10 months or so—to the belief that a President, or a Senate, or a Senate majority of Democrats—coupled with their House counterparts—if they just wanted to create jobs, could. Some are out there anxiously awaiting some action by us or by our President to create jobs.

I might say for certain we have got by with one bad habit no longer in our repertoire. If the Senator was here when I came, the first two recessions of my Senate experience, we immediately passed public works jobs bills—build bridges, build streets, give cities money for courthouses. We have now gone back and looked at four recessions and our response.

I might say to my friend, we have found that on average the money we appropriate for jobs bills takes 18 months from enactment before contractors go to work and hire the Senator's people and mine. Let me repeat, 1 year and 6 months, after the recession is over.

So what we have to try to do is do something to stimulate growth by the private sector so that the companies hiring people in manufacturing, in services, will begin to hire people and be able to retain them because they are competitive. That is why the question is terribly relevant.

Mr. GORTON. Will the Senator from New Mexico agree with this Senator that the actual impact of this 1,421 pages, were it to become law, would be precisely to the contrary?

Mr. DOMENICI. No doubt.

Mr. GORTON. That it would slow down economic recovery, that it would cost jobs in the private sector rather than creating them?

Mr. DOMENICI. There is no doubt in my mind. First of all, if one likes the President's capital gains tax—and there are many who do—I think it is a pretty good economic tool. This capital gains tax provision in the bill is not as good as his. It is far less and will do less. It is trying to be targeted in terms of who can use it, and every time we try that in that American economy, we find out that we have done as much harm as good by saying only this group can use capital gains preference, this group can and this group cannot. We end up being wrong as many times as we are right.

Every one of the provisions are somewhat less than the President's. For instance, the \$5,000 tax credit for first-time home buyers, one of the most popular provisions that the President has in his package, most Americans say, "Why not? Do it." Even that is narrowed down dramatically because the first-time home buyer must be buying a newly constructed home. We have learned that is too serious a limitation to cause economic growth and stimulate the market. You have to let them buy existing homes so long as they do not own one, and it is "first time" as defined in the statute.

So everywhere you turn, the contention is made that this bill is like the President's. The assertion is dead wrong or somewhat wrong. And then on top of that, I say to my friend, the enormous new tax imposed on Americans and then we say, "Oh, we will tax

that group but we will give it back to another group." Even economists will say that will not work to create any jobs.

Mr. GORTON. That final remark, I say to the Senator from New Mexico, triggers another question on my part.

While, as he knows, I have the highest respect for the Senator from New Mexico as an expert on economics, tax, and budget policy, is it not true that his views on this bill are shared by the vast majority of economists in the country who almost, without exception, believe we would be far better off doing nothing at all than to pass a bill like this, or for that matter like the one the House of Representatives has sent over to us?

Mr. DOMENICI. Let me put it this way: I have not busied myself—and maybe I should—of asking a vast array of American economists with reputations that are distinguished in this field whether this bill as such, this one (H.R. 4210) as substituted by our Finance Committee, will create jobs and have some enduring qualities in terms of growth, prosperity, and productivity?

I can say unequivocally that I would relish the chance to ask them because I am absolutely certain their answer would be "If that is what you want it to do, do not pass it."

Now, let me close with one other item that the Senator will be amazed in this bill. I was not even aware that there was a problem in some of the coal mines of America and coal companies with reference to a pension plan that was created a number of years ago. Let me read the exact language so I will not misquote. Perhaps I should do it this way and read what I had written.

Another provision is an unvarnished bailout of a group of coal companies who over-promised health care benefits in the 1970's.

Now that they cannot live up to those promises—the fund does not have enough money in it—imagine in this bill, an economic recovery jobs creation bill, Congress proposes to tax other companies or former competitors since many of the original coal companies have gone out of business so that they can keep the promises that private companies had no business making in the first place. If they had not made the promise which now they cannot keep, they would not have to go to companies that were not part of the deal and tax them.

But interestingly enough, if you want to avoid the new tax—then change the name of your State to Montana, because wherever you look, the one State that is in none of the mixes and matches, either in the low tax or the higher tax category is Montana.

Rather interesting, the bailout is interesting, and the last provisions are somewhat interesting in terms of how measures get to the floor of the Senate.

Mr. GORTON. If the Senator will be gracious enough to yield for one more question, I wonder if he would agree with a summary of this Senator, that even the sponsors of this bill know perfectly well that it will never become law; are probably relieved that it will not become law; that it is designed for public consumption in order to create class image by promising tax benefits to one group of people at the expense of another group of people; but that one of its principal goals, as the Senator from New Mexico has pointed out, is to treat certain classes of companies and individuals, many of whom are quite wealthy, with all of the special privileges which the Senator from New Mexico has outlined already; that this bill, in short, is a charade.

Mr. DOMENICI. Let me say to the Senator that I do not want to borrow even by affirmative answer his subjective conclusions. But let me suggest that—even about what other Senators might think. But frankly, I do not believe there are very many Senators that I have read about who are touting this bill as a bill which will become law and help the taxpayers.

I think there may be some bragging about what is in it; but I do not hear very many of them say, "And it is going to work." I do not think that is only because they know the President will veto it. I think they really know that there are an awful lot of Senators who are not for it, far more than necessary to support a President's veto. I think there are some on the other side of the aisle who, before we are finished, may not be for it. And if they are for it, I think there are some who do it because they know it is not going to become law. That part I would agree with.

My last comment has to do with the taxpayer bill of rights, and a few trinkets on this bill. First, the taxpayer bill of rights is a splendid idea. This should be a maturation of a previous taxpayer bill of rights that is in effect, and we should be adding to it so that it will work better. I just submit that it is rather hypocritical, when in fact we say we do not want retroactive regulations, and then in the very bill, we provide three or four glaring retroactive pieces of tax legislation. I frankly believe we ought not be doing that.

Then if you need a little more, a little bit more of the hypocrisy, let me just mention that other sections of the bill, rate increases for the new 36-percent bracket and the new 10-percent surcharge, there is a big-ticket item. And it is retroactive.

In conclusion, as most bills that we pass around here, even ones that are emergency, job-producing bills, we cannot get away from creating some new entity or institution that we must follow on later.

You might be interested in knowing that this bill requires seven new stud-

ies, sets up three new commissions, and establishes a rather lengthy series of demonstration projects.

Frankly, the bill that the Senator asked me to hold up to see how much it weighed is a rather voluminous thing. I do not want anyone to think that I have covered them all. I have done my best to pick out what I put in the brackets and in the topics that I had talked about here. But there are probably many that I missed that have little or nothing to do with economic growth. The American people apparently, at least a month ago, when the President gave his State of the Union address, were hoping against hope that we might pass a clean bill with very lucid and forthright tax provisions that might help us build capital and create jobs.

There are other issues that will be brought up: The issue of fairness, which I have not spent much time on tonight. There will be some who will finally face up and fess up and say the big part of this is not an economic jobs capital formation bill, but will rather say it is fair and we are busy about trying to create fairness.

I have heard it on the stump; I have heard it by some running for higher office; I have heard it here.

I think maybe that ought to be alleged forthrightly, and maybe there ought to be a very forthright discussion of what is fair and what is not fair; why are there such disparities, and are they all because of the Tax Code? Did they really all come under Ronald Reagan's stewardship, which some like to imply, or just how did it all happen? Are we going to fix anything up with this, and will we ever be satisfied until we get brackets up to 60, 70, and 80 percent? I think they were 70 or 75, when I arrived in the Senate, as marginal rates.

I just told the Senator, nonetheless, the rich were not paying a lot of taxes. I think we all knew that because to sustain the notoriety, the positive notoriety of high brackets, Congress put the tax on big, and to sustain the reality, we took away the onus by building in exceptions, because we knew no American would work, slave, invest, risk, and face literally a 75 percent tax bracket.

So we would just put that on as a popular speech, because we wanted to address the fairness issue. And then with each passing year, we would build into this tapestry the exemptions and the other deductions they could subtract from taxable income before they paid taxes. And effective rates were far lower than they are today.

Having said that, I thank the Senator for his kindness tonight in yielding to me. I yield the floor at this point.

Mr. AKAKA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, America stands at a crossroads. Since the end of World War II, the people of the United States have committed precious resources to bring peace, security, and democracy to people around the world. The end of the cold war now frees us to address the problems this sacrifice has caused at home. Unfortunately, the administration has done little to refocus its attention on the urgent domestic needs brought about by the longest recession since the Great Depression. The litany of economic woes, negative economic indicators, and absence of consumer confidence have all been well-documented.

The plight of middle-class families demands action to spur growth, create jobs, and restore fairness to our Tax Code. It is not enough to belatedly acknowledge that people are hurting across the country, and merely tell them how much we care. We must act, and act now, if we are to restore prosperity, security, and competitiveness to our economy for this and future generations of Americans.

Over the past decade, middle-income families have experienced higher Federal income taxes while their personal income declined. In contrast, the richest 1 percent have enjoyed a tax cut of nearly 20 percent, while their after-tax income nearly doubled.

Americans are fed-up with tax policies that have allowed the richest 1 percent to enjoy 75 percent of our Nation's income growth. They are tired of reading about million dollar CEO bonuses when they are struggling to buy a home and send their children to college, America, we hear you. It is time to put an end to voodoo economics and bring back middle-class fairness. That is what this bill would do.

Mr. President, the evidence clearly indicates the legacy of the Reagan-Bush era—the rewards resulting from the increased productivity of the American worker were gathered by a very few wealthy individuals. Well, the decade-long party is long since over, the bill is overdue. We must wake up, face the truth and act to promote economic growth and opportunity for all Americans.

Mr. President, I support passage of H.R. 4210, the Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992, as reported by the Senate Finance Committee. I thank the distinguished chairman of the committee, Senator BENTSEN, for his leadership in bringing forth a bill that restores tax equity while promoting economic recovery and growth.

President Kennedy once said, "to govern is to choose." His words have never had more meaning than in the choice between the economic recovery proposals offered by President Bush and the Senate Finance Committee.

Unlike the Bush proposal, this bill is a positive step forward toward the res-

toration of tax fairness for middle-class Americans. The key provisions of H.R. 4210: A \$300 tax credit for families, restoration of full deductibility for individual retirement accounts, and a \$5,000 credit for first time home purchases, will provide much needed relief to working Americans who deserve a break. Financing of this tax relief is fair and reasonable. An increase in the tax rate for the top one percent and the imposition of a millionaire's surcharge will barely put a dent in the windfall accrued by these individuals in the 1980's. The key issue is a return to tax equity, not a redistribution of wealth.

Regrettably, President Bush has already threatened to veto this legislation. Well, Mr. President, this veto threat has more to do with politics and poll numbers than it does with substance. H.R. 4210 addresses all seven points proposed by the President in his recovery plan. The difference between the Finance Committee bill and the Bush bill is that ours is based on honest accounting principles, not budget gimmicks. Our bill provides a shot in the arm to the economy and at the same time restores tax fairness to middle-class Americans without increasing the deficit. The notion that Mr. Bush will reject this package solely to mollify the richest one percent of the populace, at the expense of the working middle class, is truly disappointing. This bill does not soak the rich, it only seeks to make our country's wealthiest citizens pay their fair share.

The investment incentives contained in the bill spur new job creation, promote small business expansion, and stimulate economic growth. They are targeted to accelerate economic recovery and promote long-term growth and competitiveness. The Bumpers venture capital investment rate cut contained in the bill will encourage new long-term investment in small growth-oriented business on the cutting edge of innovation.

The restoration of full eligibility for all Americans to take advantage of a deductible \$2,000 individual retirement account [IRA] will help American families handle difficult financial decisions and plan for the domestic needs which not only impact their lives today, but have important ramifications for future generations. Young couples, their parents or their grandparents could make penalty-free withdrawals to pay for a first home. Students, their parents or grandparents could pay for a college education. Individuals could also make withdrawals to help cover devastating medical costs.

As an advocate of expanding the affordable housing pool, I support the inclusion of an 18-month extension of the low-income housing tax credit and mortgage revenue bond program which promotes affordable housing. Unfortunately, the credit is not working in Hawaii as effectively as it could. In part

this is because the credit does not provide enough incentive due to Hawaii's high development costs. The problem with the credit is that a single project in a high cost development area often cannot get enough tax credits to make it economically feasible.

I am pleased that the eligible basis in high-cost areas like Hawaii would be pegged at 130 percent of the otherwise allowable maximum amount. This would complement S. 954, introduced by myself and Senator INOUE to include the cost of land in the eligible basis for projects located in difficult development areas. Our legislation would not increase the total amount of credits available to a State but would increase the credits available to a particular project by including the cost of the land.

Everyone involved with providing affordable housing in Hawaii knows that the mere availability of low-income housing tax credits is not enough. Including the adjusted basis of the land upon which a building stands would make the low-income housing tax credit a much more attractive and beneficial incentive to the construction of affordable housing in Hawaii and 38 other States and territories which the Department of Housing and Urban Development has designated as difficult development areas.

There are many other notable provisions of H.R. 4210 I wholeheartedly support. And there are others I could do without. The point is that hard work and compromise have yielded a fair, reasonable economic recovery, growth, and tax fairness package. I would again like to commend Senator BENTSEN and Senator MITCHELL for their leadership in bringing this legislation before the Senate. I will vote for H.R. 4210, and I urge my colleagues to do the same.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WIRTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

Mr. WIRTH. Mr. President, I ask unanimous consent to address the Senate for 7 minutes as if in morning business for the purposes of introducing a piece of legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WIRTH. Thank you very much.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. I thank the Chair.

(The remarks of Mr. WIRTH pertaining to the introduction of S. 2334 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are on H.R. 4210.

Mr. DOLE. Was leaders' time reserved this morning?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. I ask to use my leader time and it not interfere with any comments on the bill.

The PRESIDING OFFICER. The Republican leader is recognized on his time.

OPERATION PROVIDE HOPE

Mr. DOLE. Mr. President, Ambassador Rich Armitage, most recently our chief negotiator for the Philippine bases, has been appointed by President Bush to lead Operation Provide Hope, our emergency humanitarian aid project for the Commonwealth of Independent States [CIS].

Ambassador Armitage has just returned from Moscow and St. Petersburg, where he was overseeing the distribution of excess U.S. military food and medicines. He and his teams were able to witness first-hand many of the problems now facing the former Soviet Republics. He had outlined those problems in a letter he sent me following his return to the United States. Mr. President, without objection I ask unanimous consent to have the contents of this letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
Washington, DC, February 21, 1992.

Hon. ROBERT J. DOLE,
U.S. Senate.

DEAR SENATOR DOLE: I have just returned from Frankfurt, Brussels, Moscow and St. Petersburg where I was directing Operation Provide Hope, the emergency airlift of U.S. military excess food, medicines and medical consumables to over 20 cities across the former Soviet Union. I've detected great interest in Congress concerning both this operation and the broader issue of 12 independent states transitioning from communism to new economic and political arrangements. It is my hope that this interim report will address your concerns and, in some measure, assuage your curiosity.

Operation Provide Hope is now in its 12th day. Of the 64 relief missions scheduled, 50 were successfully completed by close of business February 20. The U.S. Air Force has touched down in airfields from Kishinev, Moldova near the Romanian frontier, to Chita, Russia, due north of Mongolia astride the Trans-Siberian Railway. Our final flight, a medical relief mission, is scheduled to go to the Russian city of Yekaterinburg (in the Urals) on February 26. The discovery of additional excess medical stocks has allowed us to increase our planned sorties from 54 to 64. In order to transport food remaining at Rhein Main Airbase after the completion of our 64th mission, we are arranging for the

Russian Federation to provide two Antonov aircraft. If successful, this would be a fine example of U.S.-Russian partnership. Such an operation would also emphasize the fact that ultimately it is the people of the former Soviet Union—not donors from abroad—who must make the lion's share of the effort over the coming years.

When Secretary Baker unveiled this operation he had three goals in mind: to deliver emergency supplies to places where the needs were greatest; to raise the level of international awareness and action with respect to the humanitarian problem at hand; and to provide the peoples and political leaders of these newly independent states the sense that they are not alone as they make a transition of absolutely unparalleled, unprecedented magnitude. Although my report to you is admittedly interim in nature, I want to convey the following:

Our assistance has gone directly to hospitals, orphanages, boarding schools, universities, eldercare centers, maternity facilities and public kitchens across the length and breadth of the former Soviet Union. By working closely with local officials, representatives of private voluntary organizations, heads of institutions and, above all, by mobilizing local media, we have ensured that aid has gone where we intended it to go. Although I believe that some "leakage" is inevitable, thus far no diversions have been reported. Our Air Force crews and ground reception/monitoring teams have encountered a near-universal outpouring of gratitude and cooperation from officials and aid recipients alike. Indeed, Senator John Kerry mentioned to me in Moscow his experience of being thanked profusely by a Russian citizen for the assistance rendered.

This operation provoked immediate and very timely relief shipments by Japan, Germany, the United Kingdom, Turkey, Belgium, Italy, Portugal, Spain, France, Norway and Canada. The Government of Japan has just informed me that it wishes to work jointly with us to provide sustained humanitarian assistance to the new states of central Asia, as well as conducting independent relief operations in the Russian Far East. There is every reason to believe that the "multiplier effect" hoped for by Secretary Baker will prove out.

The extent to which the operation has, in fact, "provided hope" is difficult to gauge. Local press coverage has been generally positive, notwithstanding the proclivity of some commentators in the West to label the effort "too little, too late." This theme has been repeated extensively in the Moscow-St. Petersburg area; to what ultimate effect I do not know. My own view of this is that we, all of us, need to focus on the future. Finger pointing between and among allies is not a worthwhile endeavor. Indeed, in the central Asian states and elsewhere outside of Russia the relief flights have been greeted with undisguised, unambiguous gratitude. The spectacle of U.S. aircraft unloading relief supplies in places like Ashkhabad, Dushanbe and Bishkek, places which in the past depended utterly on decisions made in Moscow, may affect greatly the present and future political orientations of these largely Muslim republics. In places like Tashkent, where the countries of the European Community have scant "sphere of influence" interest, negative press has not been a factor.

Whatever your own personal view concerning the efficacy of Operation Provide Hope, I am certain that you will share with me a sense of pride in the brave Americans who have put themselves in difficult situations

for the sake of what they regard as a historic undertaking. Our Air Force crews have executed difficult landing and off-loading procedures in very remote places and marginal facilities. American teams led by military officers of the On-Site Inspection Agency, augmented by volunteers from the Agency for International Development and the Office of Foreign Disaster Assistance, have deployed to places where Americans have rarely been seen. Indeed, our team chief in Ashkhabad, an African-American, found himself in a unique position to affect positively the Turkmen view of American race relations.

As Operation Provide Hope draws to a close, I intend to shift gears to more economical methods of delivering assistance. We have asked NATO to develop a logistical plan for the sea-land delivery of all remaining excess U.S. military food, medicines and medical consumables located in Western Europe to selected places throughout the former Soviet Union. Although I will support and direct high-impact, high-value airlift operations in the future (concentrating on emergency medical deliveries), airlift as an ongoing, across-the-board proposition is simply too expensive and too limited in terms of actual capacity. In this connection, I will be happy to share with you all Operation Provide Hope cost and cargo data once all of the returns are in, probably in the mid-March timeframe.

I think you should also know the USDA will be moving, over the next few months, nearly 110,000 metric tons of basic commodities such as flour, rice, butter, infant formula and powdered milk to some 27 key locations in seven of the new states. The estimated value of these sorely needed commodities is almost \$104 million, and USDA either has signed or will sign contracts with ten private voluntary organizations for the reception and distribution of these goods in the former Soviet Union.

I would conclude by saying that all of our teams have reported two basic findings. First, there is a strong interest in and need for technical assistance. Our teams report that actual physical hunger, although it exists, is outstripped by hunger for knowledge. It is widely known in the former Soviet Union that communism was thoroughly rotten and inhumane; but there is a huge knowledge gap in terms of how to proceed now. Second, our teams report a general collapse in medical delivery systems. I am convinced that the medical field must be a major focus of our continuing emergency relief efforts.

I hope you find this interim report useful. As always I am indebted to you for interest, support and guidance.

Sincerely,

RICHARD L. ARMITAGE,
On-Site Coordinator for Humanitarian
Assistance to the Commonwealth of States.

Mr. DOLE. Mr. President, I would particularly like to highlight an observation at the end of the letter—that there has been a general collapse of medical systems in the CIS. Teams under Ambassador Armitage visited 24 urban areas throughout the CIS; in every location, there were serious shortages of vaccines, antibodies and other consumable medical supplies. Previously, these pharmaceutical supplies came mostly from Eastern Europe. That trade has virtually ceased, due to the disappearance of barter goods and hard currency in the CIS.

In follow-up to Ambassador Armitage's mission, the State Department now has disaster relief response teams traveling throughout Russia and the Central Asian republics to establish a detailed assessment of what is needed and where. Additional studies from NATO teams, the World Health Organization and UNICEF are also expected to be finished soon.

In response to this medical emergency, the State Department is working with NATO to obtain and ship additional excess medical supplies from stocks in Western Europe. The State Department is also working with many private organizations throughout the United States to help in shipping privately donated medical supplies.

Mr. President, we have been fortunate to witness the beginning of democracy in the former Soviet Union. This transition has not been easy, and major problems continue to plague the new democratic governments. The outpouring of support from America, Europe, Japan, and other countries has been impressive. However, as Ambassador Armitage's letter makes clear, there is still a long way to go.

Once the State Department and other organizations have compiled their reports on exactly what supplies are needed to avert a medical disaster in the CIS, I believe these proposals must be acted upon as quickly and efficiently as possible. I will certainly do all I can to ensure that the Congress takes whatever action is necessary to support the administration's urgent humanitarian efforts.

I commend Ambassador Armitage for his efforts—efforts, by the way, that he has undertaken as a volunteer, without pay. I look forward to working with him and with others in the administration on this important effort.

MENACHEM BEGIN

Mr. DOLE. Mr. President, over the weekend, former Israeli Prime Minister Menachem Begin died, at the age of 78.

He led a remarkable life, and leaves a remarkable legacy.

He was a staunch nationalist. In rhetoric and tactics, he was often seen as a hard-liner.

But he was also a man of considerable vision—willing to think the unthinkable; willing to take risks, when the stakes were the highest; willing to give peace a chance, when there was a chance for peace.

Begin's years of leadership were both tumultuous and historic. He tried—with too little success—to liberate Israel's economy from the shackles of socialism and statism. He led his nation into a tragic misadventure in southern Lebanon, which has dramatically changed the face of that nation. He squelched Saddam Hussein's drive for the quick acquisition of nuclear weapons—an act which reverberates to this day in the region.

But most of all, Begin is remembered as the courageous leader who made peace with Egypt—and thereby opened the door to real peace throughout the region.

We honor Menachem Begin's memory. We commend his enormous contributions to his country and the cause of peace. But most of all, we pray that his courage and creativity will be an example and an inspiration to today's leaders in Israel and throughout the region.

MORNING BUSINESS

Mr. BYRD addressed the Chair.
The PRESIDING OFFICER. The Senator from West Virginia.

THE THREADBARE SUPERCOP

Mr. BYRD. Mr. President, the New York Times on March 8, 1992, ran excerpts from a draft of the Defense Planning Guidance document now being prepared in the Pentagon. It was reportedly leaked by an official of the Department of Defense in the interest of developing a more public debate over the philosophy underlying and driving the development of this Guidance.

The Defense Planning Guidance is an internal document designed to provide direction to the services, our military leaders, and civilian policymakers within the Department of Defense in their preparation of the details of the defense budget and the specific forces to be maintained and fielded. This exercise is particularly important this year because it is the best single indicator revealing the philosophy driving the architecture, roles and missions of our military forces for the post cold war world.

While the document is still in its final drafting stage, substantial excerpts have been published in the New York Times. Given that this Guidance document is prepared by the Under Secretary of Defense for Policy, the thrust of it is sufficiently disturbing to evoke some preliminary comment at this time. As a general reaction, I would have to say that the philosophy that apparently is driving our long-term military planning is myopic, shallow, and disappointing. In the long run it will be counterproductive to the very goal of world leadership that it cherishes.

The basic thrust of the document seems to be this: We love being the sole remaining military superpower in the world and want so much to remain that way that we are willing to put at risk the basic health of our economy and well being of our people to do so. The world has changed radically over the last few years, and the Pentagon is having an adjustment problem. While such a parochial attitude by our DOD leaders might be expected, the rhetoric from the White House and the adminis-

tration's budget request clearly endorses this philosophy wholesale.

At the conclusion of my remarks I shall include a copy of the excerpts from the document as reported in the Times in the RECORD, as well as the New York Times piece on this matter, so my colleagues can arrive at their own interpretation of the material. In essence, my summary of the administration's philosophy is this: we must keep our defense budget and force structure up to about current levels for the foreseeable future because we must remain the world's only superpower and pre-empt anyone else from even attempting to compete with us. The philosophy of the reported document rejects the concept of collective security which underpins the formation of the United Nations. It bluntly states that we "must seek to prevent the emergence of European-only security arrangements which would undermine NATO." My guess is that Europeans will find their permanent role as a military subaltern or colony of the United States unacceptable. On the other hand, the smartest of our European friends will be quick to recognize this as an opportunity for them to continue to prevail against us in trade and competitiveness matters, while we fritter away our resources on weapons that we do not need.

The Defense Planning Guidance philosophy is the clearest expression yet of a new vision of a Pax Americana, a new concept of world policeman, Uncle Sam the enforcer of a new world order. It lays out a justification for fielding forces for American intervention anywhere in the world at any time for whatever good purpose we might come up with. The document dismisses coalitions, such as the one that was formed 18 months ago to provide coherence, consensus and, let us remember, nearly total financial support, to our Kuwait operation, as transitory and unreliable.

Consider these excerpts:

Our first objective is to prevent the re-emergence of a new rival, either on the territory of the former Soviet Union or elsewhere * * * we must maintain the mechanisms for deterring potential competitors from even aspiring to a larger regional or global role.

We will retain the pre-eminent responsibility for addressing selectively those wrongs which threaten not only our interests, but those of our allies or friends, or which could seriously unsettle international relations.

While the United States supports the goal of European integration, we must seek to prevent the emergence of European-only security arrangements which would undermine NATO. * * *

Regarding Asia:

* * * to buttress the vital political and economic relationships we have along the Pacific rim, we must maintain our status as a military power of the first magnitude in the area. This will enable the U.S. to continue to contribute to regional security and stability by acting as a balancing force and prevent the emergence of a vacuum or a regional hegemon. * * *

In the Middle East and Southwest Asia, our overall objective is to remain the predominant outside power in the region * * * it remains fundamentally important to prevent a hegemon or alignment of powers from dominating the region.

The essence of the philosophy is that we must remain an international military power with overwhelming strength and presence, and this will keep the peace and protect our vital interests and those of our allies. It will keep the unruly edges of the world, in the form of terrorism, proliferation and narcotics, from getting out of hand. No one can take issue with the need for a hard-hitting international effort to get a handle on these crucial problems, and to develop adequate international cooperative strategies and programs to attack them. But the emphasis must be on cooperative and international. We cannot and should not be planning and acting unilaterally. The reported Guidance promotes unilateralism, giving no consideration to collectivism, burden-sharing and coalition-building. The whole thrust of the concept is dreamland. It is fantasy. It is a dangerous diversion from reality. It misreads the very nature of power in the world today. It characterizes national security and world security in military terms only, with no recognition of the importance of economic strength as the fundamental indicator of world influence.

Has the maintenance of the U.S. as the so-called "military power of first magnitude" in the Pacific done anything to help us penetrate Japanese markets? It was reported by the New York Times on March 1, 1992, that the long-standing dispute between Japan and Russia over the status of the Kurile islands, a major irritant for Japanese security, is being negotiated by the Germans, in particular German Foreign Minister Genscher. What qualifies the Germans to play this important international political and security intermediary role? German military power? Of course not—it is German economic clout that qualifies her to play this role. Is U.S. naval power decisive in this situation? If there is some vacuum that the Germans are filling, it is the vacuum being created by the weakened position of U.S. economic leadership that is decisive here.

Mr. President, the new world order cannot be put in some kind of a strait-jacket by U.S. military power. U.S. military power is becoming increasingly irrelevant in the affairs of the world. It is on the economic playing field that the prizes are being awarded and influence is being peddled. Worldwide military competition has been replaced by intense economic competition, and that is the defining contest of the international landscape. The concept underlying the myopic and single-focused view of American militarism will lead the United States to less influence, not more. We cannot afford to

continue to impoverish our economy through exaggerated and bloated military budgets. The Defense philosophy exposes a cynical disregard for the economic welfare of our people and the quality of life for future generations. It mortgages the fundamental strength and productivity of our nation on the altar of a will-o'-the-wisp quest for influence through the barrel of a gun.

American empire is what the Pentagon wants. But empire cannot be achieved from a foundation of economic slide, from bankruptcies, unemployment and stagnation. To maintain America as the unrivaled military superpower, our Pentagon strategists would gladly risk the consequences of America's becoming an economic superpauper. In the long run, they risk aping the defunct Soviet model and they gamble on repeating its consequences here at home.

The debate over our defense budget is sharpening. It is clear that fundamental priorities are being established, it is clear that opportunities of central importance to the future of our economy and our people are at stake and might be forgone. The Pentagon, through the unintended publication of its underlying philosophy through these leaks, has revealed its idea of the road ahead. I disagree with it. I have a different set of priorities. Defense spending should provide sufficient security for our nation, and a hedge against uncertainty and surprise. Having provided for our essential security, we must allow fresh and substantial resources to flow and renew our productivity. We cannot manage the security of the world. Our nation has paid dearly to counter and turn back the Soviet adversary. We need not go on a witchhunt for new adversaries, and create implausible threat scenarios just to justify the continuation of an overlarge, arrogant security state which drains our economy of its vitality. We must turn to the rebuilding of our economy, and get the cold war needle out of our arm. Let us declare victory and move on.

I believe the Secretary of Defense ought to make the Defense Planning Guidance document, along with the various illustrative threat scenarios that have been reportedly cooked up to support it, public. Right now we are dealing with a leak. The Secretary ought to fully articulate the philosophy driving it. I encourage my colleagues to study this philosophy and see if it fits with their concept of America's role in the world, and if they agree with the important trade-offs in priorities that are at stake. After such a debate and analysis, I am confident that we can establish a healthy and clear-sighted system of priorities, which will be reflected in our budget decisions, and in our Appropriations bills, that befit our people and our Nation. And I am convinced that the phi-

losophy which will emerge and the priorities which will be set will not be those embodied in the Defense Planning Guidance which has been leaked.

I believe we can do much better than this. I believe that we can play a responsible role in the world, and still turn our attention and refocus our priorities toward rebuilding an anemic economy, upgrading our education system, and enhancing the basic infrastructure which underpins the quality of American life. We need to reach an understanding of the minimum commitment we need to ensure our national security, be faithful to our allies and friends in our common endeavors, and to hedge against the risks and uncertainties of an unsteady and sometimes dangerous world. By the same token, we need to do the maximum we can to get the country back on its feet, to bring about a renewed pride in goods made in the USA and release once again the wheel of our inventiveness.

Mr. President, I ask unanimous consent to have printed at the conclusion of my remarks in the RECORD, the New York Times article to which I have alluded, together with excerpts from the Pentagon's plan.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 8, 1992]
U.S. STRATEGY PLAN CALLS FOR INSURING NO RIVALRY DEVELOP

(By Patrick E. Tyler)

WASHINGTON, March 7.—In a broad new policy statement that is in its final drafting stage, the Defense Department asserts that America's political and military mission in the post-cold-war era will be to insure that no rival superpower is allowed to emerge in Western Europe, Asia or the territory of the former Soviet Union.

A 46-page document that has been circulating at the highest levels of the Pentagon for weeks, and which Defense Secretary Dick Cheney expects to release later this month, states that part of the American mission will be "convincing potential competitors that they need not aspire to a greater role or pursue a more aggressive posture to protect their legitimate interests."

The classified document makes the case for a world dominated by one superpower whose position can be perpetuated by constructive behavior and sufficient military might to deter any nation or group of nations from challenging American primacy.

REJECTING COLLECTIVE APPROACH

To perpetuate this role, the United States "must sufficiently account for the interests of the advanced industrial nations to discourage them from challenging our leadership or seeking to overturn the established political and economic order," the document states.

With its focus on this concept of benevolent domination by one power, the Pentagon document articulates the clearest rejection to date of collective internationalism, the strategy that emerged from World War II when the five victorious powers sought to form a United Nations that could mediate disputes and police outbreaks of violence.

Though the document is internal to the Pentagon and is not provided to Congress, its

policy statements are developed in conjunction with the National Security Council and in consultation with the President or his senior national security advisers. Its drafting has been supervised by Paul D. Wolfowitz, the Pentagon's Under Secretary for Policy. Mr. Wolfowitz often represents the Pentagon on the Deputies Committee, which formulates policy in an interagency process dominated by the State and Defense Departments.

The document was provided to The New York Times by an official who believes this post-cold-war strategy debate should be carried out in the public domain. It seems likely to provoke further debate in Congress and among America's allies about Washington's willingness to tolerate greater aspirations for regional leadership from a united Europe or from a more assertive Japan.

Together with its attachments on force levels required to insure America's predominant role, the policy draft is a detailed justification for the Bush Administration's "base force" proposal to support a 1.6-million-member military over the next five years, at a cost of about \$1.2 trillion. Many Democrats in Congress have criticized the proposal as unnecessarily expensive.

Implicitly, the document foresees building a world security arrangement that pre-empts Germany and Japan from pursuing a course of substantial rearmament, especially nuclear armament, in the future.

In its opening paragraph, the policy document heralds the "less visible" victory at the end of the cold war, which it defines as "the integration of Germany and Japan into a U.S.-led system of collective security and the creation of a democratic 'zone of peace.'"

The continuation of this strategic goal explains the strong emphasis elsewhere in the document and in other Pentagon planning on using military force, if necessary, to prevent the proliferation of nuclear weapons and other weapons of mass destruction in such countries as North Korea, Iraq, some of the successor republics to the Soviet Union and in Europe.

Nuclear proliferation, if unchecked by superpower action, could tempt Germany, Japan and other industrial powers to acquire weapons to deter attack from regional foes. This could start them down the road to global competition with the United States and, in a crisis over national interests, military rivalry.

The policy draft appears to be adjusting the role of the American nuclear arsenal in the new era, saying, "Our nuclear forces also provide an important deterrent hedge against the possibility of a revitalized or unforeseen global threat, while at the same time helping to deter third party use of weapons of mass destruction through the threat of retaliation."

U.N. ACTION IGNORED

The document is conspicuously devoid of references to collective action through the United Nations, which provided the mandate for the allied assault on Iraqi forces in Kuwait and which may soon be asked to provide a new mandate to force President Saddam Hussein to comply with his cease-fire obligations.

The draft notes that coalitions "hold considerable promise for promoting collective action" as in the Persian Gulf war, but that "we should expect future coalitions to be ad hoc assemblies, often not lasting beyond the crisis being confronted, and in many cases carrying only general agreement over the objectives to be accomplished."

What is most important, it says, is "the sense that the world order is ultimately backed by the U.S." and "the United States should be postured to act independently when collective action cannot be orchestrated" or in a crisis that demands quick response.

Bush Administration officials have been saying publicly for some time that they were willing to work within the framework of the United Nations, but that they reserve the option to act unilaterally or through selective coalitions, if necessary, to protect vital American interests.

But this publicly stated strategy did not rule out an eventual leveling of American power as world security stabilizes and as other nations place greater emphasis on collective international action through the United Nations.

In contrast, the new draft sketches a world in which there is one dominant military power whose leaders "must maintain the mechanisms for deterring potential competitors from even aspiring to a larger regional or global role."

SENT TO ADMINISTRATORS

The document is known in Pentagon parlance as the Defense Planning Guidance, an internal Administration policy statement that is distributed to the military leaders and civilian Defense Department heads to instruct them on how to prepare their forces, budgets and strategy for the remainder of the decade. The policy guidance is typically prepared every two years, and the current draft will yield the first such document produced after the end of the cold war.

Senior Defense Department officials have said the document will be issued by Defense Secretary Cheney this month. According to a Feb. 18 memorandum from Mr. Wolfowitz's deputy, Dale A. Vesser, the policy guidance will be issued with a set of "illustrative" scenarios for possible future foreign conflicts that might draw United States military forces into combat.

These scenarios, issued separately to the military services on Feb. 4, were detailed in a New York Times article last month. They postulated regional wars against Iraq and North Korea, as well as a Russian assault on Lithuania and smaller military contingencies that United States forces might confront in the future.

These hypothetical conflicts, coupled with the policy guidance document, are meant to give military leaders specific information about the kinds of military threats they should be prepared to meet as they train and equip their forces. It is also intended to give them a coherent strategy framework in which to evaluate various force and training options.

In assessing future threats, the document places great emphasis on how "the actual use of weapons of mass destruction, even in conflicts that otherwise do not directly engage U.S. interests, could spur further proliferation which in turn would threaten world order."

"The U.S. may be faced with the question of whether to take military steps to prevent the development or use of weapons of mass destruction," it states, noting that those steps could include pre-empting an impending attack with nuclear, chemical, or biological weapons "or punishing the attackers or threatening punishment of aggressors through a variety of means," including attacks on the plants that manufacture such weapons.

Noting that the 1968 Nuclear Non-Proliferation Treaty is up for renewal in 1995,

the document says, "should it fail, there could ensue a potentially radical destabilizing process" that would produce unspecified "critical challenges which the U.S. and concerned partners must be prepared to address."

BEWARE OF CUBA, NORTH KOREA

The draft guidance warns that "both Cuba and North Korea seem to be entering periods of intense crisis—primarily economic, but also political—which may lead the governments involved to take actions that would otherwise seem irrational." It adds, "the same potential exists in China."

For the first time since the Defense Planning Guidance process was initiated to shape national security policy, the new draft states that the fragmentation of the former Soviet military establishment has eliminated the capacity for any successor power to wage global conventional war.

But the document qualifies its assessment, saying, "we do not dismiss the risks to stability in Europe from a nationalist backlash in Russia or effort to re-incorporate into Russia the newly independent republics of Ukraine, Belarus and possibly others."

It says that though U.S. nuclear targeting plans have changed "to account for welcome developments in states of the former Soviet Union," American strategic nuclear weapons will continue to target vital aspects of the former Soviet military establishment. The rationale for the continuation of this targeting policy is that the United States "must continue to hold at risk those assets and capabilities that current—and future—Russian leaders or other nuclear adversaries value most" because Russia will remain "the only power in the world with the capability of destroying the United States."

Until such time as the Russian nuclear arsenal has been rendered harmless, "we continue to face the possibility of robust strategic nuclear forces in the hands of those who might revert to closed, authoritarian, and hostile regimes," the document says. It calls for the "early introduction" of a global anti-missile system.

PLAN FOR EUROPE

In Europe, the Pentagon paper asserts that "a substantial American presence in Europe and continued cohesion within the Western alliance remain vital," but to avoid a competitive relationship from developing, "we must seek to prevent the emergence of European-only security arrangements which would undermine NATO."

The draft states that with the elimination of United States short-range nuclear weapons in Europe and similar weapons at sea, the United States should not contemplate any withdrawal of its nuclear-strike aircraft based in Europe and, in the event of a resurgent threat from Russia, "we should plan to defend against such a threat" farther forward on the territories of Eastern Europe "should there be an Alliance decision to do so."

This statement offers an explicit commitment to defend the former Warsaw Pact nations from Russia. It suggests that the United States could also consider extending to Eastern and Central European nations security commitments similar to those extended to Saudi Arabia, Kuwait and other Arab states along the Persian Gulf. And to help stabilize the economies and democratic development in Eastern Europe, the draft calls on the European Community to offer memberships to Eastern European countries as soon as possible.

In East Asia, the report says, the United States can draw down its forces further, but

"we must maintain our status as a military power of the first magnitude in the area."

"This will enable the United States to continue to contribute to regional security and stability by acting as a balancing force and prevent the emergence of a vacuum or a regional hegemon." In addition, the draft warns that any precipitous withdrawal of United States military forces could provoke an unwanted response from Japan, and the document states, "we must also remain sensitive to the potentially destabilizing effects that enhanced roles on the part of our allies, particularly Japan but also possibly Korea, might produce."

In the event that peace negotiations between the two Koreas succeed, the draft recommends that the United States "should seek to maintain an alliance relationship with a unified democratic Korea."

Mr. BYRD. Mr. President, I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. 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. MITCHELL. Mr. President, will the Senator yield for a moment?

Mr. SPECTER. I will be glad to yield to the distinguished majority leader.

Mr. MITCHELL. I understand the distinguished Senator from Pennsylvania wishes to address the pending legislation.

Mr. SPECTER. That is correct.

Mr. MITCHELL. Might I ask if the Senator would defer for just a moment until we can do the closing business of the Senate, which I understand will take just a few minutes and then what I would propose to do would be to have the Senator recognized to speak for such time as he wishes and then the Senate would conclude its business following the completion of the Senator's remarks.

Mr. SPECTER. If the majority leader will yield, I will be delighted to follow that course.

Mr. MITCHELL. I thank my colleague.

The PRESIDING OFFICER. The majority leader is recognized.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Items Nos. 529, 530, 531, 532, 533, 534, and all nominations placed on the Secretary's desk in the Foreign Service.

I further ask unanimous consent that the Senate proceed to immediate consideration and that the nominees be confirmed, en bloc; that any state-

ments appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed, en bloc, are as follows:

U.S. INTERNATIONAL DEVELOPMENT
COOPERATION AGENCY

Scott M. Spangler, of Arizona, to be Associate Administrator of the Agency for International Development (Operations).

PEACE CORPS NATIONAL ADVISORY COUNCIL

Eugene C. Johnson, of Maryland, to be a member of the Peace Corps National Advisory Council for a term expiring October 6, 1992.

Tahlman Krumm, Jr., of Ohio, to be a member of the Peace Corps National Advisory Council for a term expiring October 6, 1993.

EXECUTIVE OFFICE OF THE PRESIDENT

Salvador Lew, of Florida, to be a member of the Advisory Board for Cuba Broadcasting for a term of 2 years. (New position.)

AFRICAN DEVELOPMENT FOUNDATION

Herman Jay Cohen, an Assistant Secretary of State, to be a member of the Board of Directors of the African Development Foundation for a term expiring September 22, 1997. (Reappointment.)

FOREIGN SERVICE

The following-named career member of the Senior Foreign Service, class of Career Minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period:

Herman J. Cohen.

NOMINATIONS PLACED ON THE SECRETARY'S
DESK IN THE FOREIGN SERVICE

Foreign Service nominations beginning Sally M. Grooms-Cowal, and ending Leonardo M. Williams, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 22, 1992.

Foreign Service nominations beginning Sandra Ann Crumpton, and ending Terrence J. Shea, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of January 22, 1992.

Foreign Service nominations beginning George J. Pope, and ending Christopher E. Goldthwait, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of February 5, 1992.

Foreign Service nominations beginning Roger Allen Meece, and ending David Meredith Evans, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of February 18, 1992.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

REPORT ON THE 1991 WHITE
HOUSE CONFERENCE ON LIBRARIES
AND INFORMATION SERVICES—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 115

Under the authority of the order of the Senate of January 3, 1991, the Sec-

retary of the Senate, on March 6, 1992, during the recess of the Senate, received the following message from the President of the United States, together with accompanying papers and reports; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I am pleased to transmit to you the Summary Report of the 1991 White House Conference on Library and Information Services and my recommendations on its contents as mandated by the Congress in Public Law 100-382, section 4.

The world has changed dramatically since the last White House Conference on Library and Information Services. The thirst for freedom has swept aside the acceptance of tyranny. New and amazing technologies have made ideas accessible to everyone. Books, faxes, computer disks, and television and news broadcasts have ended the reign of ignorance and helped create a whole new world of enterprise, competition and, with it, intellectual growth.

Library and information services are vital because they help ensure a free citizenry and a democratic society. It was appropriate that the 1991 Conference addressed three major themes of great concern to our own society: literacy, productivity, and democracy. These three issues are now more important than ever as we work to raise our Nation's educational level, to make the American work force preeminent in the world, and to serve as an example to the rest of the world regarding the benefits of a democratic society. We live in exciting times with our world changing daily. Not only are we on the verge of revolutions in educational practice and workplace improvements, but technology is helping to change the very way in which we learn and work. Library and information services are at the center of this change with new sophisticated technologies that not only improve the quality of information but actually make it more accessible to the people who need it. It was the realization that library and information services are in a period of rapid change that prompted the establishment of the 1991 White House Conference on Library and Information Services.

Participants at the White House Conference considered the themes of literacy, productivity, and democracy, and how library and information services can contribute significantly to the achievement of those goals. The 984 delegates to the Conference included librarians, information specialists, and community leaders. They represented all the States and territories and the Federal library community. Prior to the Conference, there had been innumerable pre-Conference forums involving more than 100,000 Americans. These meetings produced 2,500 initial proposals regarding library and information services. The Conference delegates de-

liberated on 95 consolidated proposals before making their final recommendations. I wish to commend the National Commission on Libraries and Information Science for its key role in making the Conference a success. The recommendations, thoughtfully considered by the delegates to the Conference, are intended to help frame national library and information service policies for the 1990s.

THE IMPORTANCE OF LIBRARY AND
INFORMATION SERVICES

Library and information services have always played a significant role in our society. From colonial times forward, our libraries have acquired, preserved, and disseminated information to Americans. Today libraries and information services are expanding their roles and, with the advent of new technology, changing the ways in which we use and share information. As we move toward the new century, we should acknowledge the contributions that libraries have made and will continue to make in the years ahead.

A particular strength of our libraries and information services is that they are locally controlled. Whether in the public or private sector, these services are best maintained at the local level where they can be most responsive to citizens and where they can adapt to new local needs. Likewise, the States have a long tradition of fostering the development and expansion of library services to all citizens. In combination, both local and State governments are the primary supporters of our Nation's libraries and information services. The Federal role in library and information services has been one of encouraging and leveraging State and local support to expand the availability of library services to all Americans.

LITERACY

The quest for the future begins with literacy. Literacy is a goal that we must make every effort to achieve. It has been estimated that 23 million adult Americans are functionally illiterate, lacking skills beyond the fourth-grade level, with another 35 million semiliterate, lacking skills beyond the eighth-grade level. The effects of illiteracy in this Nation are staggering as people find themselves shut out of opportunities and as our governments struggle to find ways to assist these disadvantaged individuals.

My Administration is committed to improving education for all Americans. With broad bipartisan support, we are moving rapidly to implement strategies to achieve our six National Education Goals. These Goals, developed cooperatively with the Nation's Governors, address critical education issues ranging from ensuring our children start school ready to learn and attaining a 90 percent high school graduation rate, to being first in the world in math and science, demonstrating competency in core subject areas, and

ensuring safe, disciplined, and drug-free schools. Goal five states that by the year 2000, "Every adult in America will be literate and will possess the skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship." As we pursue education reform across America, one of our emphases must be on a literate America. To that end, I have consistently worked for an increase in Federal efforts for literacy programs. Our national education strategy, AMERICA 2000, is designed to help achieve all of the goals, and libraries, serving as community centers, can therefore play a major role in helping communities and schools across the country reach the goals.

The Conference recommendations include several statements that also address the literacy issue. I would urge the Members of Congress to review these suggestions carefully and to consider them in any future deliberations regarding literacy and library and information services.

PRODUCTIVITY

Today's workplace demands a new definition of the term productivity. Rather than a traditional perspective that measures the production of items, we must recognize that we now live in an Information Age. In today's Information Age, many of our workers are knowledge workers who create and use information in totally new environments and in totally new ways. What we must do is to ensure that these workers achieve maximum productivity in their efforts.

The White House Conference recommendations regarding productivity are varied and far-reaching. Of perhaps greatest significance is the support shown for a national network for information sharing. The recent passage of the High-Performance Computing Act of 1991 responds directly to this recommendation and is a major step in the direction of increased productivity for American workers. Other recommendations address copyright statutes and business information centers, both of which would have a positive impact upon the efforts of American business and employees.

My Administration is committed to the full employment and increased productivity of the American work force. We can, and we must, become the most skilled work force in the world if we are to remain preeminent in today's global economy. Throughout the Federal Government, efforts are being made to bring to Americans the kinds of resources that they need to improve their on-the-job effectiveness. For example, within the Department of Education, an information resource for teachers, parents, and communities is being developed. To be known as SMARTLine, this data base will contain the best of education research and practice. This resource will be avail-

able locally—through schools and community libraries—to educators and parents who want to improve classroom instruction methods and to raise the education levels of our children.

DEMOCRACY

An informed populace is a great guarantee that our democratic way of life will continue and flourish. Recent events have shown us that people in other countries are struggling to emulate what we have known for the past two centuries. The free flow of information in countries all over the world and especially in Eastern Europe has played a strategic role in releasing people from the bondage of ignorance.

Library and information services provide an infrastructure by which we can obtain information and can contribute to our democratic way of life. In our country, there are more than 30,000 public, academic, and special libraries, and there are an estimated 74,000 school libraries and media centers. These library and information centers are the links between our citizens and the information that they need. These libraries provide the kind of ongoing education that each man, woman, and child will need in order to remain a fully productive and fully participating citizen.

The 1991 White House Conference on Library and Information Services has generated many worthwhile recommendations. Clearly these ideas illustrate not only the changing role of libraries, but also the revolutionary changes affecting our own society. As our culture changes, so must the institutions that serve it. The Conference Report makes it clear that library and information services are changing rapidly in response to an increasingly complex and global society. As we strive for a more literate citizenry, increased productivity, and stronger democracy, we must make certain that our libraries and information services will be there to assist us as we lead the revolution for education reform. As I stated in my speech at the White House Conference, "Libraries and information services stand at the center of this revolution."

GEORGE BUSH.

THE WHITE HOUSE, March 6, 1992.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, 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.)

REPORT ON CERTAIN BUDGET RE-SCISSIONS—MESSAGE FROM THE PRESIDENT—PM 116

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, was referred jointly to the Committee on Commerce, Science, and Transportation, the Committee on Armed Services, the Committee on Labor and Human Resources, the Committee on Banking, Housing, and Urban Affairs, the Select Committee on Indian Affairs, the Committee on the Budget, and the Committee on Appropriations:

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report 30 rescission proposals, totaling \$2.1 billion in budgetary resources.

The proposed rescissions affect the Departments of Commerce, Defense, Health and Human Services, Housing and Urban Development, the Interior, and Transportation. The details of these rescission proposals are contained in the attached report.

GEORGE BUSH.

THE WHITE HOUSE, March 10, 1992.

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of January 3, 1991, the Secretary of the Senate on March 9, 1992, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

S. 996. An act to authorize and direct the Secretary of the Interior to terminate a reservation of use and occupancy at the Buffalo National River, and for other purposes; and

S. 2184. An act to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and for other purposes.

The enrolled bills were signed on March 10, 1992, by the President Pro Tempore [Mr. BYRD].

MESSAGES FROM THE HOUSE

At 11:25 a.m., a message from the House of Representatives, delivered by Mrs. Geotz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2321. An act to establish the Dayton Aviation Heritage National Historical Park in the State of Ohio, and for other purposes.

At 3:22 p.m., a message from the House of Representatives, delivered by

Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3337) to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the White House, and for other purposes; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. TORRES, Mr. HUBBARD, Mr. BARNARD, Mr. WYLIE, and Mr. MCCANDLESS as managers of the conference on the part of the House.

The message also announced that the House has agreed to the following concurrent resolution in which it requests the concurrence of the Senate:

H. Con. Res. 287. A concurrent resolution setting forth the congressional budget for the United States Government for the fiscal years 1993, 1994, 1995, 1996, and 1997.

The message further announced that the minority leader has appointed the Honorable Marlene E. Marschell of Minneapolis, MN, from private life, as a member of the National Nutrition Monitoring Advisory Council on the part of the House.

MEASURES REFERRED

The following bill was read the first and second times, and referred as indicated:

H.R. 2321. An act to establish the Dayton Aviation Heritage National Historical Park in the State of Ohio, and for other purposes; to the Committee on Energy and Natural Resources.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 287. A concurrent resolution setting forth the congressional budget for the United States Government for the fiscal years 1993, 1994, 1995, 1996, and 1997; to the Committee on the Budget.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, March 10, 1992, he had presented to the President of the United States the following enrolled bills

S. 996. An act to authorize and direct the Secretary of the Interior to terminate a reservation of use and occupancy at the Buffalo National River, and for other purposes; and

S. 2184. An act to establish the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2744. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report on a violation of regulations with respect to the over-obligation of an approved appropriation; to the Committee on Appropriations.

EC-2745. A communication from the Director of the Office of Thrift Supervision, transmitting, pursuant to law, a report on the salary schedules of the Office of Thrift Supervision; to the Committee on Banking, Housing, and Urban Affairs.

EC-2746. A communication from the Acting Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, a report on a recommendations with respect to a study on the potential use of engine condition monitoring systems aircraft; to the Committee on Commerce, Science, and Transportation.

EC-2747. A communication from the Assistant Secretary of State (Legislative Affairs) and the Assistant Secretary of Commerce (Legislative and Intergovernmental Affairs), transmitting jointly, a draft of proposed legislation to promote international dolphin protection; to the Committee on Commerce, Science, and Transportation.

EC-2748. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to provide for cost-savings in the housing loan program for veterans, and for other purposes; to the Committee on Veterans' Affairs.

EC-2749. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2750. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2751. A communication from the Secretary of Energy, transmitting, pursuant to law, the "1992 Report to the Congress on Energy Targets"; to the Committee on Energy and Natural Resources.

EC-2752. A communication from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to amend the Social Security Act to establish a new comprehensive child welfare services program under title IV-E, to make other amendments to the programs under titles IV-B and IV-E, and for other purposes; to the Committee on Finance.

EC-2753. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to February 27, 1992; to the Committee on Foreign Relations.

EC-2754. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report of the Department on competition advocacy for fiscal year 1991; to the Committee on Governmental Affairs.

EC-2755. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, a report on the system of management controls and financial systems in effect at the Board during fiscal year 1991; to the Committee on Governmental Affairs.

EC-2756. A communication from the Chairman of the Barry M. Goldwater Scholarship and Excellence in Education Foundation, transmitting, pursuant to law, a report on the system of management controls and fi-

ancial systems in effect at the Foundation during fiscal year 1991; to the Committee on Governmental Affairs.

EC-2757. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report of the Commission under the Government in the Sunshine Act for calendar year 1991; to the Committee on Governmental Affairs.

EC-2758. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, a report on the system of management controls and financial systems in effect at the Department during fiscal year 1991; to the Committee on Governmental Affairs.

EC-2759. A communication from the Administrator of the Office of Federal Procurement Policy and Chairman of the Cost Accounting Standards Board, transmitting, pursuant to law, the annual report of the Board for calendar year 1991; to the Committee on Governmental Affairs.

EC-2760. A communication from the Assistant Attorney General (Legislative Affairs), transmitting a draft of proposed legislation to amend the Civil Liberties Act of 1988, and for other purposes; to the Committee on Governmental Affairs.

EC-2761. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 9-165 adopted by the Council on February 4, 1992; to the Committee on Governmental Affairs.

EC-2762. A communication from the Chairman of the Occupational Safety and Health Review Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-2763. A communication from the Director of the Federal Domestic Volunteer Agency, transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-2764. A communication from the Secretary of the United States Naval Academy Sea Cadet Corps, transmitting, pursuant to law, the annual audit report of the Corps for calendar year 1991; to the Committee on the Judiciary.

EC-2765. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-2766. A communication from the Director of the United States Information Agency, transmitting, pursuant to law, the annual report of the Agency under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-2767. A communication from the Chairman and Board Members of the Railroad Retirement Board, transmitting a draft of proposed legislation to amend the Railroad Retirement Act and the Railroad Unemployment Insurance Act to enhance the authority of the government to recover debts resulting from overpayments of benefits under those Acts; to the Committee on Labor and Human Resources.

EC-2768. A communication from the Chairman and Board Members of the Railroad Retirement Board, transmitting a draft of proposed legislation to amend the Railroad Unemployment Insurance Act to remove an obsolete section of that Act, and for other purposes; to the Committee on Labor and Human Resources.

EC-2769. A communication from the Chairman and Board Members of the Railroad Retirement Board, transmitting a draft of proposed legislation to amend the Railroad Retirement Act to ease administration of that Act, and for other purposes; to the Committee on Labor and Human Resources.

EC-2770. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to target entitlement for vocational rehabilitation benefits under chapter 31 to veterans with service-connected disabilities rated 30 percent or more; to adjust the basic military pay reduction for chapter 30 Montgomery GI Bill participants in proportion to the increased amount of assistance provided under such chapter; and for other purposes; to the Committee on Veterans' Affairs.

EC-2771. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend titles 26 and 38, United States Code, to make permanent certain income-verification and pension provisions of the Omnibus Budget Reconciliation Act of 1990; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES RECEIVED DURING RECESS

Under the authority of the order of the Senate of March 5, 1992, the following reports of committees were submitted on March 6, 1992:

By Mr. BENTSEN, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 4210: A bill to amend the Internal Revenue Code of 1986 to provide incentives for increased economic growth and to provide tax relief for families.

By Mr. BENTSEN, from the Committee on Finance, without amendment:

S. 2325: An original bill to amend the Internal Revenue Code of 1986 to make miscellaneous changes in the tax laws, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SYMMS (for himself, Mr. BURNS, Mr. CRAIG, Mr. HATCH, Mr. HELMS, Mr. WALLOP, Mr. SIMPSON, Mr. STEVENS, Mr. PACKWOOD, Mr. MURKOWSKI, Mr. LOTT, and Mr. GARN):

S. 2326. A bill to limit the acquisition by certain Federal agencies of land located in a State in which 25 percent or more of the land in that State is owned by the United States, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HATFIELD (for himself and Mr. SANFORD):

S. 2327. A bill to suspend certain compliance and accountability measures under the National School Lunch Act; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BROWN:

S. 2328. A bill to provide that for taxable years beginning before 1980 the Federal income tax deductibility of flight training expenses shall be determined without regard to

whether such expenses were reimbursed through certain veterans educational assistance allowances; to the Committee on Finance.

By Mr. MITCHELL (for Mr. HARKIN):

S. 2329. A bill to amend the Internal Revenue Code of 1986 to define the term reasonable allowance for salaries or other compensation with respect to certain highly compensated employees of publicly traded corporation, and for other purposes; to the Committee on Finance.

S. 2330. A bill to provide that the compensation paid to certain corporate officers be treated as a proper subject for action by security holders, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HELMS:

S. 2331. A bill to extend the temporary suspension of duty on 1-(4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxethyl-1h-imidazole; to the Committee on Finance.

S. 2332. A bill to extend the temporary suspension of duty on 2,6 dichlorobenzonitrile; to the Committee on Finance.

S. 2333. To suspend temporarily the duty on N-(4-chlorophenyl-amino)carbonyl-2,6-difluorobenzamide; to the Committee on Finance.

By Mr. WIRTH (for himself, Mr. DIXON, Mr. CONRAD, Mr. RIEGLE, and Mr. LIEBERMAN):

S. 2334. A bill to extend the statute of limitations applicable to civil actions brought by the Federal conservator or receiver of a failed depository institution; to the Committee on Banking, Housing, and Urban 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. MITCHELL (for himself and Mr. DOLE):

S. Res. 267. A resolution to authorize testimony by an employee of the Senate in *United States v. Alan Roy Mountain*; considered and agreed to.

By Mr. MCCONNELL (for himself, Mr. MCCAIN, Mr. BOND, Mr. SANFORD, Mr. ROBB, Mr. MOYNIHAN, Mr. DURENBERGER, Mr. PACKWOOD, Mr. MURKOWSKI, Mr. SYMMS, Mr. KOHL, Ms. MIKULSKI, Mr. DECONCINI, Mr. SARBANES, Mr. MITCHELL, and Mr. SPETER):

S. Res. 268. A resolution expressing to the people of the State of Israel the sympathy of the United States Senate regarding the death of former Prime Minister Menachem Begin; considered and agreed to.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 269. A bill to authorize testimony by an employee of the Senate in *Standard Federal Savings Bank v. Roger B. Taber, et al.*; considered and agreed to.

By Mr. PELL (for himself, Mr. KENNEDY, and Mr. LIEBERMAN):

S. Con. Res. 99. A concurrent resolution expressing the sense of the Congress concerning travel to Taiwan; to the Committee on Foreign Relations.

By Mr. LOTT (for himself, Mr. COCHRAN, Mr. CRAIG, Mr. SYMMS, Mr. BURNS, and Mr. HELMS):

S. Con. Res. 100. A concurrent resolution relative to the Convention on International Trade in Endangered Species (CITES); to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SYMMS:

S. 2326. A bill to limit the acquisition by certain Federal agencies of land located in a State in which 25 percent or more of the land in that State is owned by the United States, and for other purposes; to the Committee on Energy and Natural Resource.

NO NET LOSS OF PRIVATE LANDS ACT

Mr. SYMMS. Mr. President, I rise this morning to introduce legislation with several of my colleagues who will be joining me in the press gallery at 11 o'clock for a press conference introducing the No Net Loss of Private Lands bill. We will be introducing that today.

Mr. President, our ancestors fought a war against the mother country, Great Britain, to secure the rights of free people in a new republic. Thomas Paine, one of the idea men of the Founding Fathers, a writer, a Revolutionary War hero, captured the purpose of the war when he said:

I consider the war of America against Britain as the country's war, the public's war, or the war of people in their own behalf, for the security of their national rights and the protection of their own property.

In other words, one of the most significant reasons Americans fought in the Revolutionary War was so coercive government could not claim ownership or control of their land, their private property. People were allowed to own private property.

Private ownership, Mr. President, is as important today as it was at the birth of the country. Government control and regulation of private property is still worth fighting against. This is especially true when the Federal Government is continually expanding its estate.

It is amazing to this Senator, Mr. President, that in the world we live in—where now, Boris Yeltsin, the leader of the Russian Republic, says he wants to people there to own at least 60 percent of the land that has heretofore been owned 100 percent by the Government—that we still have large areas in the United States that continue to have Government ownership and are expanding the Government ownership in those areas, States like my own, 63 percent owned by the Federal Government; States such as Alaska, 98 percent owned; Nevada, 88 percent owned; and many of the Western States, at around the 50-percent level.

I just want to say again, Mr. President, that private ownership of land is as important to Americans today as it was at the birth of the country. It is still worth the effort to fight to expand people's ability to own property.

In the State of Idaho, over 63 percent of the land is federally owned. In all States west of the Mississippi, that number averages over 49 percent. And this year, the administration's budget proposes a 60 percent increase in fund-

ing for Bureau of Land Management land acquisitions. That is \$266 million worth of land that will be purchased and, in most cases, taken off the tax rolls. This will decrease or even eliminate critical tax revenue for local and State governments.

Proposed Federal land acquisition, particularly acquisition in States where the Federal Government already owns a significant amount of the land area, raises important questions. How much is actually needed to meet national needs? Where do we draw the line? To echo the questions of my two friends and colleagues from Wyoming, Mr. WALLOP and Mr. SIMPSON, in their February 4 comments before the House Subcommittee on National Parks and Public Lands, "How much is enough?" and "How much is too much?"

Today, 11 of my colleagues are joining me in introducing the No Net Loss of Private Lands Act which addresses these questions. With the finite amount of land available, especially in the Western States, "No net loss" says no more. If the Federal Government wants to acquire new lands in States where the Federal Government already owns more than 25 percent of the acreage, then other Federal land must be released for sale within the same State.

This bill ensures the right to own property, an important factor that has helped make this country what it is today. It also secures a vital source of revenue for State and local governments.

Recent years have allowed us to witness the absolute decline of those countries which rejected the right to private ownership of property. We know about that, Mr. President. But let me just say one thing more about the secure vital source of revenue for States and local governments. We are talking about schools. Today I know there are some school principals visiting my office from my State and one of their big concerns is more funding for education.

If the Federal Government is going to continue to grab land in the Western States, then there have to be either arrangements made to pay for that land or else to release some other land to the private sector so it can be restored to the tax rolls so the children of this country have the opportunity to be educated.

We talk about natural resources. Our greatest natural resource is our children. If we are to develop our most valuable natural resource, our children, pray tell, how are we going to do it if we continue to deny the use of the land of this country to develop the wealth that we need to be able to do the things we all want to see done in this society? Where is the common sense to this? How are we going to do this?

Our bill simply says that the right to own property is an important factor that has made this country what it is today. It also secures a vital source of

revenue. It also recognizes the fact that our biggest adversary since 1945, really for the last 70 years on this planet, has been the former Soviet Union. The fundamental difference between the Soviet Union and the United States of America has been the right to own private property. That has been the fundamental difference in the successes of those two societies.

The value system that they have—that they did not have, I should say, because of not recognizing fundamental human rights, the right to own property—left their system devoid of all values and devoid of any chance for survival and for success. Because they went right against the very laws of nature, the laws of mankind: That acquisitive nature that people have to want to acquire property for their own health and happiness that we recognized here at the time of the Founding Fathers with the Declaration of Independence and the Constitution.

Recent years have allowed us to witness the absolute decline of those countries which rejected the right of private ownership. Nothing speaks louder than the histories of those nations which have tried to eliminate it. Across Eastern Europe and the former Soviet Union, all across these countries that were formerly command-and-control and government-owned, authoritarian, coercively owned-by-the-government economies, the people of Eastern Europe and the former Soviet Union have demanded the right, more than any other right that they are demanding, to own property.

I ask unanimous consent the complete text of the No Net Loss of Private Lands Act be printed following my remarks. I invite my colleagues who have not yet cosponsored this initiative to join the other 11 or 12 of us in sponsoring this legislation. This is a fundamental, important issue facing this country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2326

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 "No Net Loss of Private Lands Act".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) AGENCY.—The term "agency" means the National Park Service, the United States Fish and Wildlife Service, the Bureau of Land Management, and the Forest Service.

(2) ACQUIRE AND ACQUISITION.—The terms "acquire" and "acquisition" include acquisition by donation, purchase with donated or appropriated funds, exchange, devise, and condemnation.

SEC. 3. LIMITATION ON ACQUISITION OF LAND.

(a) IN GENERAL.—Subject to section 4, an agency may acquire an interest in 100 or more acres of land within a State described in subsection (c) only if, before the acquisition, the agency or another agency disposes

of the surface and subsurface estate to land in the United States, or in a territory of the United States, by way of transfer to a non-Federal party and in accordance with subsection (b).

(b) DISPOSITION OF ESTATE.—

(1) EQUALITY OF LAND VALUES.—In order to meet the requirement of subsection (a), the head of the agency that seeks to acquire the interest shall certify that the value of the surface and subsurface estate of the land disposed of by an agency is approximately equal to the value of the interest in land that is to be acquired.

(2) LOCATION OF DISPOSED ESTATE.—

(A) SAME COUNTY.—Subject to subparagraph (B), the head of the agency shall dispose of the surface and subsurface estate to land located in the same county as the land to be acquired.

(B) SAME STATE.—If the head of the agency finds that it is not feasible to meet the requirement of subparagraph (A), the head of the agency shall, if feasible, dispose of the surface and subsurface estate to land located in the same State as the land to be acquired.

(c) AFFECTED STATES.—Acquisition of land within a State is subject to this Act if—

(1) the State is one of the States of the United States; and

(2) 25 percent or more of the land within the State is owned by the United States.

SEC. 4. APPLICABILITY.

(a) EXCLUDED LANDS.—

(1) IN GENERAL.—The lands and properties described in paragraph (2) shall not be subject to the requirement of section 3(a) and shall not be considered owned by the United States for the purpose of section 3(c)(2).

(2) LANDS AND PROPERTIES.—The lands and properties referred to in paragraph (1) are—

(A) land held in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation;

(B) real property acquired pursuant to a foreclosure under title 18, United States Code;

(C) real property acquired by the United States in its capacity as a receiver, conservator, or liquidating agent, and that is held by the United States in that capacity pending disposal of the property;

(D) real property that is subject to seizure, levy, or lien under the internal Revenue Code of 1986; and

(E) real property that is securing a debt owed to the United States.

(b) WAIVER.—The head of an agency may waive the requirements of this Act with respect to the acquisition of land by the agency during any period in which there is in effect a declaration of war or when the President has declared a national emergency.

NO NET LOSS OF PRIVATE LANDS ACT—

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

"No Net Loss of Private Lands Act".

SECTION 2. DEFINITIONS.

The term "Agency" means the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the Forest Service.

The terms "acquire" and "acquisition" include acquisition by donation, purchase with donated or appropriated funds, exchange, devise, and condemnation.

SECTION 3. LIMITATION ON ACQUISITION OF LAND

(a). Affected agencies may acquire an interest in 100 or more acres of land within a state only if, before the acquisition, the agency or another agency disposes of the

surface and subsurface estate to land in the U.S. or a territory by transferring that land to non-federal ownership.

(b). Affected agencies must make every effort to dispose of land located in the same county as the land to be acquired. If that is not feasible, every effort must be made to dispose of land located in the same state as the land to be acquired.

(c). Affected states are those in which 25 percent or more of the land area is owned by the federal government.

SECTION 4. APPLICABILITY

(a). Certain lands will not be subject to the above requirements nor included in the calculation used to determine the acreage owned by the federal government. The excluded land is:

Land held in trust for the benefit of an Indian tribe;

Real property acquired pursuant to a foreclosure under title 18, USC;

Real property acquired by the United States in its capacity as a receiver, conservator, or liquidating agent, and that is held by the U.S. pending disposal;

Real property that is subject to seizure, levy or lien under the Internal Revenue Code of 1986; and

Real property that is securing a debt owed to the U.S.

(b). A waiver of these requirements is granted if a declaration of war is in effect or when the President has declared a national emergency.

Mr. WALLOP. Mr. President, the No-Net-Loss of Private Lands Act is a grassroots response from States experiencing economic impacts from the rules and regulations accompanying the Federal ownership of lands.

Federal and State Governments now own almost 40 percent of America—over 50 percent of the West and almost 60 percent of my State of Wyoming. The No-Net-Loss of Private Lands Act only applies to States where the Government owns 25 percent or more of the total acreage. The act directs land management agencies to dispose of land of equal value when it acquires additional property in the effected States.

By prescribing terms for increased Federal ownership of land, we can create environments consistent with our principles of limited government and private property rights.

It is not that the Government should not own land, rather it is "How much is enough?" and "What is commonsense management?" of existing land resources. There are parcels of Federal lands located throughout private and State holdings ranging in size from less than one acre to thousands of acres. Smaller parcels create management and access nightmares for the Federal Government and public alike. Due to scattered placement, the lands fulfill no expectations, create burdens for taxpayers and private property holders and provide only marginal contributions to recreation and the economy.

And, there are those who on occasion visit the West, try to imagine how things look 200 years ago—and return it to that view. Their objective is to

make private lands public and public lands inaccessible. The goal is achieved in the name of endangered species, and buffer zones, and below-cost timber sales, and wetlands, and clean water. The real issue is more about control than about the environment and an increase in Federal ownership puts control of local communities in the hands of those not dependent upon the land for a living. This act helps to keep local and Federal controls in balance.

Mr. President, the President's 1993 budget requests over \$306 million for additional Federal land acquisitions. It is simply unacceptable that our Government on one hand says the budget must be balanced, the deficit lowered, vital programs and benefits cut, and yet on the other hand appropriates huge sums of money for more land acquisitions when the Federal land bank is already bulging. To halt this practice, land managers need only to define the goal and allow private—Federal partnerships to develop solutions utilizing existing land holdings. There is no answer that is more dynamic, more efficient, more responsible than a solution crafted by this procedure.

There is a final matter that must not be lost on us—the painful irony evident with increased Federal ownership and accompanying regulations on public lands should strike all Americans! Particularly those of us who live in the West. We Americans who were so moved by the sight of the Soviet flag being lowered from atop the Kremlin on Christmas Day would do well to reflect on why communism failed. For the 293 million who lived under the pervasive mandates from Moscow, the inability to own land or property, and to use it in a profitable manner, was the root of communism's failure. The lack of this fundamental right—the right to buy and sell property and to use our private land profitably—is the inherent flaw of a command economy, a flaw so great that workers were not motivated, a country with vast resources could not even feed its people, and a country where the 3 percent of land that was privately owned produced 25 percent of the food.

In his sweeping changes, Boris Yeltsin stated that privatization is an integral part of Russian economic reform and proposes that 60 percent of the land be put into private ownership. Sixty percent private ownership would be welcomed by many of our western public lands States.

The irony is this: American investors and Government bureaucrats alike look at private holdings and private property rights in the former Soviet Republics as a key indicator of creditworthiness and progress toward a free market. Yet we constantly chip away as those standards by which we judge others.

Mr. President, I urge the favorable consideration of this bill.

AMERICA THE BEAUTIFUL—FUNDING SUMMARY

(Budget authority in millions of dollars)

	1991 actual	1992 est	1993 est
State Park and Outdoor Recreation Grants (DOI)	33	23	60
Acquiring National Parks, Forests, Refuges, and other Public Lands (DOI and USDA)	309	294	
Enhanced Resource Protection/Recreation:			
DOI	1,071	1,120	1,238
USDA		77	109
Reforestation (USDA)	82	66	139
Total America the Beautiful	1,495	1,500	1,852

Note.—Photocopied from the budget of the U.S. Government FY '93.

By Mr. HATFIELD (for himself and Mr. SANFORD):

S. 2327. A bill to suspend certain compliance and accountability measures under the National School Lunch Act; to the Committee on Agriculture, Nutrition, and Forestry.

CERTAIN COMPLIANCE AND ACCOUNTABILITY MEASURES UNDER THE NATIONAL SCHOOL LUNCH ACT

• Mr. HATFIELD. Mr. President, I rise today to introduce legislation to suspend for 1 year pending regulations affecting the already bureaucratically overburdened National School Lunch Program. Last week I had the privilege of meeting with Oregon representatives of the American School Food Service Association who conveyed to me the pressing need to ease the regulatory redundancies which plague our current school lunch system. They describe time-consuming activities required to document and verify income and meal counts as the greatest hindrance they face in attempting to administer the program effectively and deliver meals to our Nation's schoolchildren. They were particularly concerned that this burden may increase in the future with the implementation of the Department of Agriculture's coordinated review effort. I am convinced, Mr. President, that the time has come for this program to be reevaluated and restructured to meet the needs of our children, rather than the bureaucratic concerns of the Federal Government. I urge my colleagues to support efforts to change this situation.

As many in this body will recall, the Child Nutrition and WIC Reauthorization Act of 1989—Public Law 101-147—instructed the Department of Agriculture to establish a unified system for accountability in the School Lunch Program. The Department received over 4,000 comments suggesting changes to the proposed regulations before the rules for coordinated review became final. The rules, which have been published in final form and are to become effective in July, are deemed by many on the front lines across the Nation to be unrealistic and harshly bureaucratic. I agree, Mr. President and have come to the floor today to urge additional time so that a fair and appropriate system of accountability for the School Lunch Program can be achieved.

The legislation I propose today does not add any further regulations to the program, nor does it take any away. It simply delays implementing the final coordinated review regulations for the Lunch Program for 1 year. This delay should allow the Secretary of Agriculture sufficient time to analyze the current system in order to ensure that any existing regulations serve the program's mission, not hinder it. Additionally, the Secretary will have the opportunity to carefully consider whether proposed actions affecting the program will benefit the program, not burden it.

The effects of overregulation in this program are already beginning to show. It is my understanding that since 1989, 121 schools have abandoned the program because shrinking funds do not justify the effort required to comply with the Federal regulations. Consequently 4,600 students no longer receive lunches. While Congress may not be able to expand its budget in the near future, we can certainly assist in efforts that will ensure that Federal money is being well spent—that funding goes to red apples, not red tape.

In my own State of Oregon, over 500,000 students are enrolled in the School Lunch Program. I would hate to see that number diminished by even one, but that is indeed the case in States like Colorado, Indiana, Maine, Arizona, and Wisconsin. I ask unanimous consent that a list of schools across the country which have dropped the School Lunch Program be included in the RECORD following my remarks.

While there may not be such a thing as a free lunch, neither is there such a thing as a free ride. If we are going to enter the next century as a strong country, our children must be healthy, nurtured individuals who are ready to learn. The National School Lunch Program has proven itself to be a vital player in the lives of our young citizens. Now we must meet our obligation to allow it to function as freely as possible.

Mr. President, I am pleased that this legislation has the full support of the American School Food Service Association, a group of over 65,000 public employees who administer the School Lunch Program at the State and local level. I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2327

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

SECTION 1. COMPLIANCE AND ACCOUNTABILITY UNDER NATIONAL SCHOOL LUNCH ACT.

(a) **SYSTEM SUSPENSION.**—The final rule issued on Wednesday, July 17, 1991, (relating to 7 CFR 210, 215, 220, 235, and 245; 56 Fed Reg 32920 et seq.) to carry out section 22 of the

National School Lunch Act (42 U.S.C. 1769(c)) shall not be effective before July 1, 1993, and any subsequent rule issued by the Secretary of Agriculture to carry out such section shall not be effective before such date.

(b) **GENERAL COMPLIANCE.**—Subsection (a) shall not be construed to suspend—

(A) requirements for local food service authorities under any other provision of the National School Lunch Act; and

(B) further planning and development activities for the implementation of a unified compliance system under section 22 of the National School Lunch Act.

ATTACHMENT A.—SCHOOLS THAT HAVE DROPPED THE NATIONAL SCHOOL LUNCH PROGRAM¹ 1989–90

Name of schools and town	Enrollment	Students ²
Colorado:		
Cheyenne Mountain High School	587	41
Brighton High School	1,131	182
Thornton High School	1,135	75
Manitou High School	355	60
Fairview High School	1,369	54
Connecticut:		
3 schools, New Hartford	544	14
4 schools, Wilton	1,874	14
2 schools, Windsor	1,877	42
5 schools, East Lyme	2,418	79
1 high school, Region 1	475	12
Litchfield High School, Litchfield	275	8
Georgia: Berean Elementary School, Atlanta	350	65
Indiana: Mishawaka High School, Mishawaka	1,522	150
Louisiana:		
Cabrini High School	416	31
De La Salle High School	773	16
Maine:		
St. Mary's, Bangor	109	17
St. John's, Brunswick	225	16
Falmouth High School, Falmouth	274	2
Marshwood High School, Eliot	591	36
Brunswick High School, Brunswick	927	76
Traip Academy, Kittery	336	32
M.S.A.D. 15 High School, Gray	527	44
Gorham High School, Gorham	516	39
Missouri:		
Sacred Heart School, Florissant	500	5
St. Peter's School, St. Louis	335	3
Assumption School, St. Louis	450	6
Nevada:		
Douglas High School, Minden	1,138	273
Baker School	30
Whittell High, Zephyr Cove	250	50
New Jersey:		
Levingston High School, Essex Co	1,283	3
Heritage Middle School, Essex Co	502	10
Mt. Pleasant Middle School, Essex Co	344	5
Burnet Hill, Essex Co	243	0
Collins Elementary, Essex Co	244	5
Harrison Elementary, Essex Co	360	5
Hillside Elementary, Essex Co	314	8
Mt. Pleasant Elementary, Essex Co	331	1
Riker Hill Elementary, Essex Co	265	5
New Mexico: Los Alamos High School, Los Alamos		
	1,077	10
Texas:		
Richardson ISD, Dallas	7,268	150
Hurst-Euless-Bedford ISD, Fort Worth	3,751	60
Pflugerville ISD, Austin	1,451	64
Victoria ISD, Victoria	155	15
Round Rock ISD, Austin	1,875	75
Vermont: Vershire Elementary, Vershire	57	25
Wisconsin:		
New Hope Christian, Crandon	23	23
Skeets Millard Valley, Boscobel	27	22
Bethlehem Lutheran, Milwaukee	98	57
Hillel Academy, Milwaukee	167	65
Luth. H.S. Greater Sheboygan, Sheboygan	130	3
Wyoming: Jackson Hole High School, Jackson Hole		
	459	16

¹ Not a complete list. None of the listed schools closed or merged with other schools.

² Estimated number of students qualifying for free and reduced-price meals.

ATTACHMENT B.—SCHOOLS THAT HAVE DROPPED THE NATIONAL SCHOOL LUNCH PROGRAM¹ 1990–91

Name of schools, and town	Enrollment	Students ²
Alaska:		
Homer High School, Homer	382	42
Soldotna High School, Soldotna	484	50
Skyview High School, Kenai	399	64
Kenai High School, Kenai	394	46
Arizona:		
Cactus High School, Peoria	1,690	65
Centennial High School, Peoria	327	22
Ironwood High School, Peoria	1,700	65
Peoria High School, Peoria	1,583	261
Colorado: Cherry Creek High School, Englewood	2,926	80
Louisiana: Trafal Academy, Baton Rouge	125	10

ATTACHMENT B.—SCHOOLS THAT HAVE DROPPED THE NATIONAL SCHOOL LUNCH PROGRAM¹ 1990–91—Continued

Name of schools, and town	Enrollment	Students ²
Maine:		
Lisbon High School, Lisbon	443	54
Presque Isle High, Presque Isle	759	92
Encore, Houlton	6	3
Massachusetts:		
Mt. Carmel Elementary, Methuen	230	7
St. Bernard's Elementary, Fitchburg	224	9
Minnesota:		
Edina High School, Edina	1,168	33
Valley View Junior High, Edina	701	11
Southview Junior High, Edina	602	12
New Jersey:		
Northern Highlands Reg. HS, Allendale	715	—
Bordentown Regular High School, Bordentown	431	41
J. Mitchell/Spruce Run, Annandale	411	10
Patrick McGahean, Annandale	400	9
Round Valley, Annandale	451	3
Central, East Hanover	301	10
Frank J. Smith, East Hanover	265	3
East Hanover Middle School, East Hanover	370	8
Deane Porter, Rumson	306	5
Forrestdale, Rumson	375	11
Wenonah, Woodbury	200	6
Ramsey High School, Ramsey	743	4
Scotch Plains/Fanwood, Scotch Plains	1,115	16
New York:		
Port Jefferson CSD, Port Jefferson	1,420	55
Bay Point/Blue Point CSD, Bayport	2,050	166
SUNY Campus West, Buffalo	750	350
St. Anthony Padua, Endicott	101	5
Wynantskill UFSD, Wynantskill	437	35
Yeshiva Samuel Hirsch, Brooklyn	481	57
Bnos Israel, Brooklyn	469	61
Ohio:		
Notre Dame, Toledo	736	12
Adrian Elementary, South Euclid	278	23
Ridgebury, Lyndhurst	195	9
Rowland, South Euclid	337	30
Southlyn, South Euclid	248	19
Sun View, Lyndhurst	180	5
Utah:		
Park City High School, Park City	536	13
Dixie High School, St. George	903	83
Hurricane High School, Hurricane	450	88
Pine View School, Pine View	1,128	94
Virginia:		
Lafayette High School, Williamsburg	1,597	134
Albermarle High School, Albermarle Cty.	1,590	38
Culpepper High School, Culpeper Cty.	975	61
Washington:		
Puyallup Valley Christian, Tacoma	234	16
People's Christian, Tacoma	367	40
Wisconsin:		
Lamb of God Christian, Madison	100	7
Saint Paul Lutheran, Luxemburg	60	4
Saint Edwards, Appleton	60	1
Blessed Sacrament, LaCrosse	234	—
Saint John Lutheran, Wausau	65	4
Saint John Grade School, Little Chute	456	14
Arcadia Catholic Upper, Arcadia	381	55

¹ Not a complete list. Information was unavailable from California, Illinois, Oregon and Pennsylvania. None of the listed schools closed or merged with other schools.

² Estimated number of students qualifying for free and reduced price meals.

By Mr. BROWN:

S. 2328. A bill to provide that for taxable years beginning before 1980, the Federal income tax deductibility of flight training expenses shall be determined without regard to whether such expenses were reimbursed through certain veterans educational assistance allowances; to the Committee on Finance.

TAX TREATMENT OF FLIGHT TRAINING EXPENSES

• Mr. BROWN. Mr. President, I rise today to introduce a bill which will restore some fairness to our current tax system. Approximately 200 veteran pilots throughout this country are currently unable to obtain refunds from the Internal Revenue Service [IRS] for taxes they paid which the IRS later ruled were unnecessary. This bill would create a 1-year grace period during which veteran pilots would be able to file for tax refunds.

In 1980, the IRS issued a rule, Revenue Rule 80-173, which retroactively repealed a provision which had been enforced since 1962. The IRS issued this rule against veteran pilots who had previously been allowed to receive educational benefits from the Department of Veterans Affairs and to claim a deduction for tuition expenses. The result of the IRS reversing its own ruling retroactively was that veteran pilots were charged back taxes, interest, and penalties. It seems unfair to me to apply a revenue ruling retroactively to the detriment of taxpayers who took a deduction as instructed.

Some veteran pilots have successfully received refunds of the tax they had been required to pay through the courts. Two hundred pilots throughout this country have not been as fortunate. There is no provision under the law which would allow the IRS to cancel tax and refund the overpayment because claims for refund or credit must be filed within 3 years of the due date of the return or 2 years from the date the tax was paid, whichever is later. This legislation would enable the remaining 200 veteran pilots a 1-year opportunity to file for a refund.

These pilots are frustrated by this inequity and it is time to provide them the opportunity to settle this matter with the Federal Government.

Similar legislation—H.R. 1168—has been introduced in the House of Representatives by Representative SUNDQUIST. The issue is fairness. I hope my colleagues will agree and cosponsor this important bill.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2328

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

SECTION 1. TREATMENT OF CERTAIN REIMBURSED FLIGHT TRAINING EXPENSES.

(A) IN GENERAL.—In the case of a taxable year beginning before January 1, 1980, the determination of whether a deduction is allowable under section 162(a) of the Internal Revenue Code of 1986 for flight training expenses shall be made without regard to whether the taxpayer was reimbursed for any portion of such expenses under section 1677(b) of title 38, United States Code (as in effect before its repeal by Public Law 97-35).

(b) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period. •

By Mr. MITCHELL (for Mr. HARKIN):

S. 2329. A bill to amend the Internal Revenue Code of 1986 to define the term reasonable allowance for salaries or other compensation with respect to certain highly compensated employees of publicly traded corporations, and for other purposes; to the Committee on Finance.

S. 2330. A bill to provide that the compensation paid to certain corporate officers be treated as a proper subject for action by security holders, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SENIOR EXECUTIVE PAY LEGISLATION

• Mr. HARKIN. Mr. President, during the 1980's, as the competitiveness of our economy declined, the pay of chief executive officers [CEO] went skyhigh. Recent statistics show that during the 1980's, the compensation of the CEO's of U.S. companies jumped 212 percent. By comparison, factory workers saw a 53-percent increase and engineers saw a 73-percent increase. For the same period, the earnings of the S&P 500 grew by 78 percent.

In Japan, compensation of major CEO's is 17 times that of the average worker, in France and Germany, 23 to 25 times; in Britain 35 times. In the United States, compensation of the CEO's of the 200 largest corporations reached \$2.8 million, 160 times the pay of the average blue collar worker. By comparison, chief executive officers in Japan earn an average of \$352,000.

The question for the Government that I am raising today is not whether American company executives should receive huge compensation, the questions are: Should the American taxpayer be subsidizing these huge salaries through the tax deductions the corporations receive for paying these salaries and should the executives receive these huge salaries under the present system which does not allow the stockholders to make a judgment in this area.

I believe that the compensation levels are excessive. I believe taxpayers should not be providing this subsidy. And, I believe stockholders should have the right to directly vote on this question. If they, the owners of the corporation, want to provide those levels of pay, without taxpayer assistance, that should be their decision.

Under existing rules, stockholders, with few exceptions do not have that right.

Today, I am introducing two bills that rectify current law.

The first says that the taxpayers will not provide a tax break to companies for executive compensation above \$500,000. The measure covers publicly traded companies. The IRS regularly examines closely held companies for excessive pay already, disallowing excessive pay as determined on a case-by-case basis, often far below the \$500,000 level.

The second bill simply provides that stockholders may propose binding gen-

eral compensation criteria or plans for company executive or specific pay proposals in the same way that stockholder can place other questions before all of the stockholders for a vote.

Under present rules, the board of directors set the pay of senior executives. And, in most cases, it is the senior executives who effectively determine who serves on the board and what the benefits of service will be.

In recent years, things have truly gotten excessive. Complex pay packages extending over the lifetime of senior executives now sometimes exceed \$10 million a year, a large share of which is paid by taxpayers most of whom make less than 1 percent of that sum.

I believe that these two measures will help end abuse in this area. They provide relief and fairness to the taxpayers and democracy for the shareholders, those who on paper own the companies.

I commend these bills to the attention of my colleagues and ask that the text of this legislation be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2329

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

SECTION 1. REASONABLE ALLOWANCE FOR SALARIES AND OTHER COMPENSATION DEFINED.

(a) GENERAL RULE.—Section 162 of the International Revenue Code of 1986 is amended by redesignating subsection (m) as subsection (n) and inserting after subsection (l) the following new subsection:

“(m) SPECIAL RULES FOR CERTAIN HIGHLY COMPENSATED EMPLOYEES OF PUBLICLY TRADED CORPORATIONS.—

“(1) IN GENERAL.—In the case of any individual who is an employee of a publicly traded corporation, the term “reasonable allowance for salaries or other compensation for personal services actually rendered” as used in section 162(a)(1) for any given year shall include only the first \$500,000 of the combined amount of any compensation, whether in the form of cash or otherwise, paid to such employee including the value of any property which is transferred to such employee, regardless of whether such transferred property is subject to any restrictions or to a substantial risk of forfeiture, but shall not include:

“(A) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof,

“(B) amounts referred to in section 3121(a)(19), and

“(C) any benefit referred to or on behalf of an employee if at the time such benefits is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under section 132.”

“(2) PUBLICLY TRADED CORPORATION DEFINED.—For purposes of this subsection, the term “publicly traded corporation” shall mean any corporation if—

“(A) securities of the corporation are traded on established securities market; or

“(B) securities of the corporation are readily tradable on a secondary market (or the substantial equivalent thereof).”

“(3) TREATMENT OF CERTAIN EMPLOYERS.—
 “IN GENERAL.—All employees treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (n) of section 141 shall be treated as a single employer for purposes of this subsection.”

SEC. 2. This provision shall apply to taxable years beginning after December 31, 1991.

S. 2330

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

SECTION 1. CORPORATE OFFICERS COMPENSATION.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

“(h) CORPORATE OFFICER COMPENSATION.—

“(1) SECURITY HOLDER PROPOSALS.—For purposes of this Act and the rules and regulations issued by the Commission under this Act, recommendations, binding proposals, binding and nonbinding criteria, and policies or methods to be used in determining or providing for the compensation to be paid to directors, the chief executive officer, or other senior officers of an issuer of a security registered under section 12 of this title shall be proper subjects for action by its security holders. If such recommendations, proposals, criteria, and policies or methods meet the requirements of this section and the rules and regulations of the Commission, an issuer may not omit such recommendations, proposals, criteria, and policies or methods, or any statement in support thereof otherwise required by this section, from the proxy statement.

“(2) DISCLOSURE INFORMATION.—Pursuant to the rules and regulations of the Commission, an issuer of a security registered under section 12 of this title shall include in its proxy statement clear and comprehensive information relating to the compensation paid to each director and senior officer, including—

“(A) a single dollar figure representing the total compensation (including deferred, future, or contingent compensation) paid to the director or officer by the issuer during the issuer's most recent fiscal year;

“(B) the estimated present value, represented by a dollar figure, of any forms of deferred, future, or contingent compensation provided to the director or officer by the issuer during such year; and

“(C) a graphic representation of—

“(i) the compensation referred to in subparagraph (A); and

“(ii) comparable figures for the total compensation paid to the director or officer by the issuer during each of the 2 full fiscal years of the issuer prior to the year.

“(3) PRESENT VALUE CALCULATIONS.—For the purposes of paragraph (2), the Commission shall—

“(A) specify the method for estimating the present value of stock options and other forms of deferred, future, or contingent compensation paid to the directors or senior officers of an issuer; and

“(B) require the issuer to reduce its earnings, as reflected in its earnings statements to its security holders, by the estimated present value of such compensation.”

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—The amendment made by section 1 shall take effect one year after the date of the enactment of this Act.

(b) COMMISSION ACTION.—The Commission shall promulgate final rules and regulations to carry out section 1 not later than one year after the effective date of this Act.♦

By Mr. HELMS:

S. 2331. A bill to extend the temporary suspension of duty on 1-[1-(4-chloro - 2 - (trifluoromethyl) phenyl)imino] - 2 - propoxyethyl]-1h-imidazole; to the Committee on Finance.

S. 2332. A bill to extend the temporary suspension of duty on 2,6-dichlorobenzonitrile; to the Committee on Finance.

SUSPENSION OF DUTIES ON CERTAIN CHEMICALS

Mr. HELMS. Mr. President, today I am introducing two bills to suspend temporarily the duty currently imposed on dichlobenil, and triflumizole. Similar bills have already been introduced in the House.

Mr. President, these products are used by an important company in my State, Uniroyal Chemical Co., which operates a plant in Gastonia, NC.

The Uniroyal Co. has prepared a thorough description of each of the compounds and an analysis of their importance to our agriculture industry. I ask unanimous consent that these analyses be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEMORANDUM IN SUPPORT OF A TEMPORARY DUTY SUSPENSION FOR TRIFLUMIZOLE

I. INTRODUCTION

This memorandum outlines the principal factors which support favorable consideration of H.R. 1940, a bill to suspend, through December 31, 1994, the 13.5% ad valorem duty on 1-[1-(4-chloro-2(trifluoromethyl)phenyl)imino]-2-propoxyethyl]-1h-imidazole provided for under HTS subheading 2933.29.30.00.9. This product is known by its trade name of triflumizole.

II. DESCRIPTION AND USES OF TRIFLUMIZOLE

The chemical triflumizole, known by its registered brand names in the United States, “PROCURE and TERRAGUARD”, falls under HTS subheading 2933.29.30.00.9. It is a powder which Uniroyal imports from Japan under exclusive license from Nippon Soda. Uniroyal formulates the imported technical grade material into ready to use active wettable powders. The product is used as a fungicide on ornamental plants and is being developed for use on deciduous fruits and powdery mildew on grapes.

Triflumizole was invented by the Japanese company, Nippon Soda, who holds the patent and the U.S. registration. This license is effective as of January 1, 1989 and will be valid for 5 years. To our knowledge, Uniroyal is the only importer of triflumizole. Uniroyal Chemical Company has an agreement to market the product and its compositions in the U.S.

In addition to this use to control cylindrocladium root rot disease on spathiphyllum ornamental foliage plants, triflumizole is being developed by Uniroyal to be used to control powdery mildew on grapes. Powdery mildew is one of the most devastating of the diseases to attack grapes and each year, more than \$15 million are spent in attempts to control this disease. Currently sulphur and Bayleton are the two main products used in the fight against powdery mildew but sulphur is quite irritating during the application process and in recent years, Bayleton is being reported as failing

perhaps because of resistance being developed by the disease.

Triflumizole is also intended for use for the control of scab and mildew on apples.

At present, Triflumizole is being developed by Uniroyal Chemical for registration on apples, pears, stonefruit, grapes and other crops. For these products, triflumizole is currently for experimental use only. Triflumizole is registered for its use on ornamental plants and was granted an emergency Section 18 registration by the EPA for its use for the control of cylindrocladium root rot disease on spathiphyllum ornamental foliage plants.

III. ENVIRONMENTAL CONCERNS

Triflumizole is considered environmentally safe in that it has no adverse effects on birds or bees although it can be toxic to fish at high concentrations. It degrades quickly in the soil, is rapidly metabolized by plants and animals and does not bioaccumulate in fish.

IV. MANUFACTURE AND IMPORTATION

Triflumizole is not manufactured by any firm in the United States. Uniroyal Chemical is the only importer. Uniroyal imports the Tech grade and formulates it into finished products at plants in Gastonia, North Carolina and Fresno, California.

There are other competitive products on the market that are used in the U.S. for some of the same applications. These include Captan from Chevron, Funginex imported by FMC, and Dithane imported by Rohm and Haas. While these products are competitive in application, they are not competitive in their mode of action. There is no other product like Triflumizole manufactured in the United States.

IV. COSTS/SAVINGS

Triflumizole is a high cost product with a high duty rate. It is not imported in great quantities since its use is selective although very important. Approximately 3,500 lbs. of Tech grade will be imported in 1989 for a total value of \$127,260.00. The duty will be \$17,180.00 on these imports and savings of which could be passed on to the consumers.

VI. CONCLUSION

There are no U.S. manufacturers of these products. Consequently, the enactment of a temporary duty suspension will not cause injury to United States manufacturers nor should it injure other United States business interests. The product is environmentally safe and is important for agriculture and society. A temporary duty suspension will have minimal revenue impact and could help encourage its further use in other applications by reducing its overall cost.

For the foregoing reasons, we respectfully submit that H.R. 1940 should be passed.

MEMORANDUM IN SUPPORT OF A TEMPORARY DUTY SUSPENSION FOR DICHLOBENIL

I. INTRODUCTION

In response to the May 3 request of the Subcommittee on Trade of the House Ways and Means Committee for written testimony of interested parties on miscellaneous tariff bills, this memorandum outlines the principal factors which support favorable consideration of H.R. 1941, a bill to suspend, through December 31, 1994, the Customs duties on imported 2,6-Dichlorobenzonitrile and certain imported mixtures containing this important chemical as an active ingredient.

II. DESCRIPTION AND USES OF DICHLOBENIL

Commonly known by the name Dichlobenil, the chemical 2,6-Dichlorobenzonitrile is an important ingre-

dient used in the manufacture of agricultural weed and seed control preparations. As the active ingredient in such preparations, Dichlobenil functions as a "pre-emergent" growth controller, preventing the seeds of weeds and other harmful plants from germinating and destroying valuable food and ornamental crops. Uniroyal Chemical Company of Middlebury, Connecticut imports and sells Dichlobenil under its trade name Casaron. Uniroyal imports Dichlobenil in two different forms: Casaron technical grade, which is composed approximately 97% by weight of Dichlobenil, with small quantities of inert ingredients, and Casaron 85W, which is composed of between 85-90% Dichlobenil, together with inert ingredients (primarily calcium silicate and other clays) and minute quantities of surfactants.

After importation, both grades of Casaron are formulated with other inert ingredients and small amounts of surfactants in order to manufacture granules and wettable powders to be used in seed control preparations. Popular Casaron formulations sold to end-users in the United States include Casaron 2G (2% active ingredient) and Casaron 4G (4% active ingredient). These formulations are diluted in water and sprayed on areas where seed and plant growth control is desirable.

Preparations made from imported Dichlobenil are used in many important applications. For example, Dichlobenil is clearly the most selective weed control product for ornamental plant cultures. Dichlobenil does not injure ornamental plants, but prevents the development of harmful broadleaf weeds. (By contrast, traditional pesticide chemicals would kill or injure the plantings, as well as the weeds.) In addition, Dichlobenil is widely used by cranberry growers to control weed growth harmful to their crops. It is extensively used wherever cranberry crops are raised, in the New England states, as well as in the Upper Midwest (Wisconsin especially) and the Pacific Northwest.

Dichlobenil preparations are used extensively in orchards, nurseries, and around municipal and commercial grounds and buildings. Paving contractors also make frequent use of Dichlobenil preparations to kill weeds under asphalt. Dichlobenil can also be used as an aquatic herbicide, and is particularly effective in controlling the growth of weeds such as hydrilla, which choked many waterways in the Southern United States.

Dichlobenil has been approved for a wide variety of agricultural uses in the United States. It is not quite as water soluble as many pesticides; accordingly, it does not cause groundwater problems. Once dispersed, Dichlobenil is tightly bound to the soil. It does not leach into the soil, but runs off during rain.

In short, Dichlobenil is an important chemical used in the manufacture of seed control preparations which are vital to the health of United States agricultural crops and the economic well being of United States growers.

III. ENVIRONMENTAL CONCERNS

EPA has never classified diflufenzuron as a known or likely carcinogen. This has been confirmed by Bob Taylor at EPA. He is the product manager for dichlobenil.

Since the use and application of herbicidal chemicals is comprehensively regulated, EPA and other agencies continually review the properties of these materials as exhibited in particular uses. The purpose of this review is to establish standards for applications of these materials to various crops and flora, to insure that no human or animal

toxicity will result. EPA has not found dichlobenil to be a carcinogen, but since the agency is routinely reviewing the properties of these and other pesticidal products in the context of registration renewal some environmentalist groups have interpreted this as means for concern.

Federal pesticide registrations and approvals can be divided into three categories as follows:

(1) Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)—allows EPA to register pesticides after conducting a risk/benefit analysis (i.e., will the pesticide perform its function without unreasonable risk to the environment);

(2) Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA)—authorizes FDA to establish "safe" residue levels for pesticides found on raw agricultural commodities and other applications. Raw agricultural commodities having residues in excess of prescribed levels are deemed "adulterated" and are subject to seizure and destruction; and

(3) Section 409 of FFDCA—allows FDA to prescribe "safe" residue levels for "food additive" chemicals—i.e., pesticide residues found in food.

Section 409 of the FFDCA contains the controversial "Delaney Clause", which prohibits EPA from establishing a Section 409 food additive level for any substance "if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal".

Many pesticide and other chemicals are toxic in high concentrations; otherwise, they could not perform their functions. Some pesticide chemicals, if present in sufficient concentrations show evidence of some potentially carcinogenic effects. Read literally, the "Delaney Clause" would prohibit EPA from establishing "food additive regulations" for many agricultural pesticides. Accordingly, FDA has proposed an enforcement policy which would recognize a "de minimus" exception to the "Delaney Clause", and allow EPA to establish food additive tolerance levels where (1) carcinogenic risks are negligible, or (2) carcinogenic risks are more than negligible, but EPA decides that the benefit to the food supply outweighs potential risks. In such cases, FDA will establish appropriately low "food additive" levels, to insure that the use of these pesticides in agriculture will not cause a cancer risk to humans or animals.

In implementing this policy, EPA is in the process of identifying potential cancer risk posed by pesticides which have been registered under FIFRA and approved for certain uses. Appendix C of the attached FEDERAL REGISTER notice lists the pesticidal products which EPA is routinely reviewing in the context of registration renewal. Dichlobenil is on the list for review.

EPA has divided pesticides into five kinds for purposes of assessing cancer risks: Group A (known carcinogens), Group B (probable human carcinogens), Group C (possible human carcinogens), Group D (carcinogenicity not capable of assessment), Federal Register notice lists the EPA "Food Use Pesticides With Evidence of Carcinogenicity". Note that dichlobenil does not appear on the list.

Also attached is the MSDS sheet which Uniroyal has furnished for dichlobenil. Uniroyal correctly states that this chemical has not been found to be carcinogenic.

MANUFACTURE AND IMPORTATION OF DICHLOBENIL

Under the Harmonized Tariff Schedules of the United States (HTS), (19 U.S.C. Section

1202), technical grade 2,6-Dichlorobenzonitrile is classifiable under HTS item 2926.90.10.00.6 with duty at the rate of 6.8% *ad valorem*.

Casaron 85W, a mixture containing 2,6-Dichlorobenzonitrile, is classifiable under HTS item 3803.30.10.00.0, and are dutiable at a compound rate of 1.8 cents per kilogram plus 9.7% *ad valorem*.

Dichlobenil is not manufactured by any firms in the United States. All Dichlobenil imported into the United States (and, consequently, all antisprouting preparations containing Dichlobenil sold in the United States) is manufactured in the Netherlands by Duphar, B.V. of Amsterdam, which controls all United States registrations for the product. Uniroyal has a contract with Duphar to import dichlobenil for the purpose of producing pre-emergent weed growth controllers which prevent the germination of weed seeds. This is a contract which is automatically renewed each year unless notice is given by either company one year prior to cancellation. The terms of registration are controlled by Duphar. This is not like a patent in that other manufacturers may produce the chemical, but in order for it to be used for the same registered purpose, a company must get approval from Duphar.

Dichlobenil is a narrow spectrum product and of limited demand. The incumbent costs to produce it in small quantities are uneconomical. Therefore there is little incentive for U.S. companies to manufacture dichlobenil. Uniroyal imports both Casaron Tech and Casaron 85W manufactured by Duphar. Dichlobenil formulations are produced by Uniroyal at plants in Gastonia, North Carolina and Fresno, California. In addition, some of these preparations are manufactured by toll processors in California.

A second United States firm, P.B.I. Gordon of Memphis, Tennessee, formulates Dichlobenil preparations at its Memphis, Tennessee plant. Like Uniroyal, P.B.I. Gordon obtains all of the Dichlobenil which it uses from Duphar in the Netherlands.¹

Various herbicides produced in the United States are used in some of the same applications as Dichlobenil; however, none of these have the exact properties and functions of Dichlobenil, (e.g., for use in cranberries). Dichlobenil is not a pesticide, but rather a plant growth regulator; it does not kill or injure any existing plant or animal life, but it simply prevents development of harmful seeds. Consequently, it may be fairly said the Dichlobenil does not directly compete with any domestically-produced products.

IV. COSTS/SAVINGS

Uniroyal Chemical Company estimates that the total amount of Casaron Tech to be imported in 1989 will be 165,000 lbs. The total amount of Casaron 85W will be 190,000 lbs. The total combined value of these imports will be \$4,027,545.00. The duty paid will be approximately \$333,340.00.

V. CONCLUSION

Numerous factors support the temporary suspension of duties on imported Dichlobenil—both technical grade Dichlobenil, and preparations containing 80% by weight or more Dichlobenil as an active ingredient. These may be briefly summarized as follows:

1. No United States Manufacture. As noted above, no firms in the United States currently manufacture Dichlobenil, and none

¹Dichlobenil is produced by a company in Japan. However, the Japanese product is not registered or approved for use in the United States, and consequently is not imported or used here.

presently plan to do so. Only Duphar B.V. has obtained registrations and approval for the use of this chemical in the United States. Other herbicides are not directly competitive with Dichlobenil. Consequently, the enactment of a temporary duty suspension relating to imported Dichlobenil will not cause any injury to United States manufacturers or other United States business interests.

2. **Benefit To Consumers.** At present, United States Customs duties present a significant portion of the landed cost of all imported Dichlobenil. These costs, in turn, are passed along to distributors of Dichlobenil and, ultimately, to the farmers and growers who use the product. Elimination of the duty on this product would allow United States formulators to land this vital product at lower cost, and to manufacture their preparations more efficiently and inexpensively. Duty savings would ultimately be passed on to the consumers (i.e., United States growers and farmers). In addition, elimination of the duty for this product would prevent or moderate future price increases for Dichlobenil and formulations made therefrom.

Dichlobenil is an important chemical for many agricultural producers, most notably growers of cranberries and ornamental foliage. Temporary suspension of the duty for the product would help these growers to obtain and use this essential material much more cost effectively. Ultimately, benefits of the duty suspension would be passed on to other consumers, for instance in the form of lower food prices.

3. **Environmental Considerations.** As noted above, Dichlobenil is a "pre-emergent" antisprouting agent. Unlike most pesticides, which attack plants after they have sprouted, often killing useful plants as well as weeds, Dichlobenil is a safe product which protects important crops by preventing weeds from arising in the first instance. A tariff suspension would help to encourage the further use of these antisprouting agents as part of an integrated pest-management system. EPA has found Dichlobenil to be non-carcinogenic.

4. **Slight Revenue Impact.** Granting the requested duty suspension will not significantly impact United States Customs duty revenues. Slow import growth is projected for the next few years, with total imports increasing by no more than 5,000 pounds per year. Thus, anticipated duty revenues which would be foregone by reason of the temporary duty suspension would not be significant.

In summary, therefore, it is clear that a temporary suspension of the duty on imported Dichlobenil would provide assistance to American growers, by allowing them duty free access to an important pest-control product. It will stimulate additional sales of this environmentally-safe chemical, thereby increasing United States employment in several states (e.g., at United States facilities which manufacture antisprouting preparations from the imported product). In addition, suspension of the duty would not disadvantage any United States manufacturers or labor interests.

For the foregoing reasons, we respectfully submit that H.R. 1941 should be passed.

By Mr. HELMS:

S. 2333. A bill to suspend temporarily the duty on N-[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide; to the Committee on Finance.

SUSPENSION OF DUTIES ON CERTAIN CHEMICALS

Mr. HELMS. Mr. President, in the 101st Congress, I introduced three bills

to suspend temporarily the duty imposed on diflubenzuron, dichlobenil, and triflumizole. Similar bills were introduced in the House by Congresswoman NANCY JOHNSON.

Due to confusion in the last few weeks before passage of the so-called mini-trade bill, H.R. 1594, one of those bills—the duty suspension for diflubenzuron—was not included. Today, I am reintroducing legislation to suspend temporarily the duty on diflubenzuron.

Mr. President, diflubenzuron, which goes by the trade name Dimilin, is produced only in Holland. It is imported by Uniroyal Chemical Co., which operates a plant in Gastonia, NC. Dimilin is an environmentally safe pesticide used primarily for the control of gypsy moth. It acts biologically on the moth larvae, which keeps it from hatching, rather than as a toxic killer.

When the duty suspension for Dimilin was introduced in 1989, there was some opposition expressed to the bill by Sandoz Crop Protection Co. In 1990, Sandoz withdrew its opposition. Unfortunately, the Sandoz letter arrived too late to get the duty suspension for Dimilin in the final conference report on H.R. 1594.

The Uniroyal Co. has prepared a thorough description of this compound. I ask unanimous consent that this analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEMORANDUM IN SUPPORT OF S. 1101, A TEMPORARY DUTY SUSPENSION FOR DIFLUBENZURON

I. INTRODUCTION

These comments are submitted to the Senate Finance committee on behalf of Uniroyal Chemical Company, Inc., of Middlebury, Connecticut, in support of H.R. 1619, a bill to temporarily suspend the 13.5% ad valorem United States Customs duties on imported N-[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide (90%) and the 9.7% ad valorem duty plus \$0.018/kg duty on N-[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide (25%) and inerts (75%) provided for under HTS subheadings 2929.90.10.00.3 and 3808.10.20.00.2 respectively, through December 31, 1992. Both of these products are known by their trade name, diflubenzuron.

II. DESCRIPTION AND USES OF DIFLUBENZURON

The chemical diflubenzuron, commonly known by its registered brand name "Dimilin", is being imported under two separate HTS subheadings depending on the percentage of basic chemical composition. N-[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide (90%) or Dimilin Tech, is the pure product with only a small percentage of inerts present. N-[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide (25%) is diluted with clay and other inerts (75%) to compose Uniroyal product Dimilin 25. Both products are registered trademarks of Uniroyal Chemical Co., Inc.

Dimilin was invented by Duphar B.V. of Holland, which is the sole producer and holds the U.S. registration. Duphar holds the patent for diflubenzuron as well. This patent ex-

pires in 2003—well after the requested duty suspension period. Uniroyal has an agreement with Duphar to import and sell diflubenzuron in the United States for purposes of regulating the growth of harmful insect pests.

The chemical is used as an insect growth regulator. While often classified or referred to as an insecticide, it is not. As a growth regulator, Dimilin has a unique mode of action. It inhibits the ability of the insect egg to hatch or the larvae to rupture the cuticle, thereby causing the insect to die before reaching maturity. This mode of action makes it less toxic to the environment than ordinary insecticides.

Dimilin's primary uses include forestry applications (gypsy moth control), mosquito control, and control of pests which attack cotton, soybeans and Christmas trees. The U.S. Department of Agriculture has approved Dimilin as one of three products considered "very safe" for use in the treatment of the boll weevil in cotton. As part of a good integrated pest management program, Dimilin can replace the toxic and nasty products previously used. Dimilin is not toxic to birds, bees or fish. Dr. John Moore, Assistant Administrator of the EPA, is quoted in the book *Silent Spring Revisited* as follows:

"Perhaps most encouraging is the recent practice of developing a pest management plan in which chemical pesticides are only a part of a multifaceted scheme. The emergent success story of boll weevil control in cotton production throughout the Carolinas is most illustrative. Through the use of the chemical dimilin(sic), which has selective larvicidal and chitin-inhibiting properties, early season spraying with conventional chemical insecticides is not needed. Natural predators of other cotton pests that used to be destroyed by these sprayings are once again successful in keeping these pest species in natural balance."

Thirty percent of Dimilin imports are used by State gypsy moth eradication programs. Dimilin accounts for sixty-five percent of the product in use by the States. It is clearly the chemical of choice.

Another important use of Dimilin is for mosquito control. The World Health Organization approved the use of Dimilin last year for mosquito control and it is being used successfully in the U.S. and many other countries because of its selective mode of operation, its low mammalian toxicity, its non-persistence in soils and hydrosols, its lack of mobility in the environment and its low biological accumulation and magnification.

III. ENVIRONMENTAL CONCERNS

The Environmental Protection Agency [EPA] has never classified diflubenzuron as a known or likely carcinogen. This has been confirmed by the office of Mr. Phil Hutton of EPA who is the EPA product manager for diflubenzuron.

The EPA has tested diflubenzuron on rats and mice for a lifetime at 10,000 parts per million (which is equal to 1% of their diet) and EPA found no incidents of increased tumors and no weight loss. One non-EPA study said that there could be slight carcinogenic characteristics. EPA determined that these tests were not conducted under proper conditions and therefore were inadequate as a definitive study. EPA basically discounted this study. EPA has advised Uniroyal that the EPA has no concerns that diflubenzuron is carcinogenic.

EPA has divided pesticides into five kinds for purposes of assessing cancer risks: Group A (known carcinogens), Group B (probable human carcinogens), Group C (possible

human carcinogens), Group D (carcinogenicity not capable of assessment), and Group E (non-carcinogenic). Diflubenzuron is listed in Category E, which means that all testing has produced negative results concerning carcinogens.

Since the use and application of pesticidal chemicals is comprehensively regulated, EPA and other agencies continually review the properties of these materials as exhibited in particular uses. The purpose of this review is to establish standards for applications of these materials to various crops and flora to insure that no human or animal toxicity will result. While EPA has not found diflubenzuron to be a carcinogen, the agency nevertheless routinely reviews the properties of these and other pesticidal products in the context of registration renewal. As part of such a routine review, the EPA included Diflubenzuron on its most recent list for review published in Appendix C of a Federal Register notice, October 19, 1988. Appendix B of this same Federal Register notice lists the EPA "Food Use Pesticides With Evidence of Carcinogenicity". Diflubenzuron is not on this list.

IV. MANUFACTURE AND IMPORTATION

Diflubenzuron is not manufactured by any firm in the United States. Uniroyal Chemical is the company importing Dimilin for use in regulating growth of insect pests. Uniroyal imports both the Tech grade and finished product. Dimilin Tech grade is formulated into finished products at plants in Gastonia, NC and Fesno, CA. Another firm, American Cyanamid, also imports diflubenzuron for use in animal health care applications. American Cyanamid has no objection to this legislation.

There is one other competitive product on the market that is used in the U.S. mushroom market only. Under the trade name "Apex", the product is marketed by Sandoz/Zoecon. It is not the same chemical diflubenzuron.

While there are other products that might conceivably be considered competitive, these are insecticides with very different modes of action and are therefore not in fact directly competitive.

V. COSTS/SAVINGS

Dimilin is a high cost product with a high duty rate. It is not imported in great quantities since its use is selective although very important. Approximately 46,000 lbs. of Tech grade and 182,000 lbs. of Dimilin 25 will be imported into the United States in 1989, having a total value of \$3,295,168.00. The duty will be \$377,315.00 on these products. Savings resulting from a temporary duty suspension could be passed on to growers and consumers.

VI. CONCLUSION

There are no U.S. manufacturers of Dimilin. With the current small demand in the United States, there is little likelihood that any U.S. company will seek a license to manufacture this chemical in the United States. Consequently, the enactment of a temporary duty suspension will not cause injury to United States manufacturers or other United States business interests. The product is environmentally safe and is important for agriculture and society. A temporary duty suspension will have a minimal revenue impact and may help encourage its further use in other applications.

For the foregoing reasons, Uniroyal Chemical Co., Inc. supports H.R. 1619, and requests that the committee recommend its passage. The company and its representatives will be happy to respond to any questions or re-

quests for further information about this matter.

Respectfully submitted,
NEVILLE, PETERSON & WILLIAMS,
New York, NY.

By Mr. WIRTH (for himself, Mr. DIXON, Mr. CONRAD, Mr. RIEGLE, and Mr. LIEBERMAN):

S. 2334. A bill to extend the statute of limitations applicable to civil actions brought by the Federal conservator or receiver of a failed depository institution; to the Committee on Banking, Housing, and Urban Affairs.

EXTENSION OF STATUTE OF LIMITATIONS WITH RESPECT TO CERTAIN CIVIL ACTIONS

Mr. WIRTH. Mr. President, I rise at this point to introduce, along with Senator DIXON, Senator CONRAD, Senator RIEGLE, and Senator LIEBERMAN, legislation to extend the statute of limitations applicable to civil actions brought by the Federal Conservator or receiver of a failed depository institution. A big mouth full, Mr. President, but a very, very important piece of legislation, related to the ability of the Federal Government to catch up with people who have gained unlawfully as a result of the S&L crisis, who have effectively cheated the taxpayers, but on whom the statute of limitations is about to run out.

Mr. President, the S&L crisis is going to cost taxpayers more than \$200 billion to resolve. That is in direct payments and does not include the interest payments on the money that we have borrowed to clean up the industry. Those funds are gone forever, lent to borrowers who were unable to repay their loans, squandered to support the luxurious lifestyles of a handful of thrift executives and owners, or lost on risky ill-advised investments.

The foolhardy combination of deregulation and desupervision pursued by the Reagan administration in the early 1980's created a tremendous opportunity for financial fraud and increased the overall cost of the S&L crisis. Many people took advantage of this opportunity to enrich themselves and their associates. Some were simply caught up in the go-go spirit of the times that encouraged people to take excessive risks; they often lost their own shirts along with the losses they have cost the taxpayers. But many engaged in outright fraud and theft or were negligent in their professional responsibilities, overlooking others' fraudulent activities.

Today, Mr. President, I am introducing legislation that will help us get some of the money back from those individuals and businesses. Bank and thrift regulators are able to file civil lawsuits against the officers, management, and board of directors of financial institutions, as well as outside professionals—usually lawyers or accountants—who advised a failed institution. Those suits can lead to recovery of losses caused by fraud or negligence.

Not all the losses can be recovered—too often, the money has disappeared altogether and even claims that are upheld in court cannot be fully paid. But at least taxpayers can reclaim a portion of those funds.

Unfortunately, lawsuits can only be filed for a limited time after a financial institution fails. In 1989, Congress established a 3-year statute of limitations for these civil lawsuits except where State law authorizes a longer period. This provision of FIRREA overrode the shorter timeframes permitted in some States. In effect, what the legislation did in 1989 was to extend the statute of limitations and give us 3 years.

The legislation I am introducing today increases the minimum statute of limitations from 3 years to 5 years. Any longer period established by State law will of course, remain in effect after my legislation is enacted.

We need to provide adequate time for regulators to file suits. Very often, these are complex cases; it takes a great deal of time for regulators to work their way through the tangled books and records of a failed institution and determine if there is reason to sue any party associated with the failure. It then takes additional time to judge if the suit is worth filing. There is a cost to pursuing these cases and not all suits will be worth pursuing. Regulators need sufficient evidence to be reasonably confident of winning a suit and have to determine that the subject of a suit has resources to pay a claim. This process can take a great deal of time.

When we look at individual cases, 3 years may seem reasonable. However, we have to look at regulators' overall workload as well. A very large number of thrifts were closed in 1989 and FIRREA's statute of limitations expires for 318 S&L failures this year alone. The clock has already run out for suits related to 118 thrift failures, including 45 only yesterday. Next Monday is the deadline for suits related to 46 additional thrift failures. Regulators face deadlines for 11 additional institutions this month and another 43 in April including Lincoln Savings and Loan, perhaps the most widely known and notorious failure. Over the next 3 years, regulators will have to examine the potential for lawsuits related to more than 400 additional thrifts. The enormous volume of this workload limits the Federal Government's ability to pursue all of the cases that should be pursued.

We should not allow individuals or businesses that contributed to a bank or thrift failure to escape a lawsuit simply because there was not enough time to develop and pursue a strong case. The volume of failures that has grown out of that ill-timed and ill-advised deregulatory bill of 1982, and the various other factors that contributed

to the S&L crisis has made it difficult for the regulators to give each individual failure the attention it may deserve. The volume of failures and the need to focus on the cases where a reasonable recovery is most likely helps limit regulators' pursuit of weak and frivolous cases. But we should provide more time to file strong cases that could recover some of the taxpayers' losses. At the same time, individuals who were once affiliated with a failed institution should not have to worry indefinitely that they may somehow be named in a lawsuit. Five years strikes me as a reasonable balance given the high volume of failures that regulators must examine today.

In 1989, when we enacted FIRREA, Congress promised the American taxpayer that we would aggressively pursue fraud and criminal activity in the S&L industry both through criminal and civil action. In 1990, Congress provided investigators and regulators with additional resources and tools through the Wirth-Heinz amendment that became law as part of that year's crime bill. The additional resources will indirectly aid regulators' civil efforts because information uncovered in a criminal investigation can sometimes aid in a civil lawsuit. The 1990 legislation also includes a number of provisions that were designed to increase civil recoveries. For example, the legislation allows regulators to recover assets that were fraudulently conveyed during the 5 years before a financial institution failure. In addition, it allows regulators to freeze the assets of those who may be liable in an institution's failure. The 1990 law also prevents institution-affiliated parties from using bankruptcy to avoid liability, fines, or similar claims, expands Federal civil forfeiture authority, and directs courts to give expedited review to cases the Federal Deposit Insurance Corporation [FDIC] and Resolution Trust Corporation [RTC] bring to recover lost funds.

The 1990 legislation gave regulators, investigators, and prosecutors additional tools and resources to promote recoveries. However, that legislation did not become law until November 29, 1990. FIRREA's statute of limitations clock had already wound halfway down for 218 thrifts by the time we provided those tools. It would be a mistake if we were to give regulators what they need to do the job but not give them enough time.

We need to give them the time they need. That is why this legislation is so important. It will give regulators 2 additional years to prepare and file lawsuits, helping them to cope with the large volume of failures that must be examined and to maximize the recovery of taxpayer dollars.

There is a possibility of significant returns. Just yesterday, the FDIC tentatively accepted a \$1.3 billion settlement of claims involving Michael

Milken and Drexel, Burnham, Lambert. We will see many more suits filed this year and in the next few years as regulators rush to act before the current statutes of limitations expire. These are significant amounts of funds that we can recover, but we should not force the regulators to rush when we can give them time to more carefully examine each institution and to more carefully make the case for recovering ill-gotten gains. A longer statute of limitations will help regulators use their limited resources more efficiently and carefully and increase the recovery to taxpayers from civil suits related to financial institution failures.

The statute of limitations will expire for hundreds of failed institutions this year. It is imperative that we move quickly on this matter so that all the cases which should be pursued can be pursued. The Resolution Trust Corporation's current spending authority expires April 1 and the Corporation will need additional authority. Because of its urgency, I believe we should include the legislation I am introducing today in the RTC funding proposal at a minimum. I encourage my colleagues to support this legislation and look forward to working with Senator RIEGLE, Senator GARN, and my other colleagues on the Banking Committee to swiftly enact the measure into law.

I also hope that as many of our colleagues as possible might join in supporting this legislation. I cannot imagine they would like to see the statute of limitations run out before we have a chance to pursue much of the ill-gotten-gains that can be recovered for the taxpayers. Let us extend that statute of limitations, Mr. President. It is a very important step to take.

Mr. President, I introduce the legislation at this point and ask unanimous consent the legislation be printed in the RECORD following my remarks, along with a "Dear Colleague" summarizing the legislation.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2334

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

SECTION 1. EXTENSION OF STATUTE OF LIMITATIONS.

(a) **DEPOSITORY INSTITUTIONS.**—Section 11(d)(14)(A)(ii)(I) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(14)(A)(ii)(I)) is amended by striking "3-year period" and inserting "5-year period".

(b) **CREDIT UNIONS.**—Section 207(b)(14)(A)(ii)(I) of the Federal Credit Union Act (12 U.S.C. 1787(b)(14)(A)(ii)(I)) is amended by striking "3-year period" and inserting "5-year period".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall be construed to have the same effective date as section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

UNITED STATES SENATE,

Washington, DC, March 9, 1992.

DEAR COLLEAGUE: In recent weeks we've seen an increase in the number of civil lawsuits filed by regulators against individuals and firms associated with failed Savings and Loans (S&Ls). These civil suits—filed against an institutions' directors and officers, accountants, lawyers, and others—will allow taxpayers to recover a portion of the funds lost in the S&L crisis.

Just yesterday, a law firm that represented Lincoln Savings and Loan agreed to a \$41 million settlement of a suit filed last week. The FDIC recently rejected a \$1.3 billion settlement in a case involving Michael Milken and Drexel, Burnham, Lambert. These sums are a small portion of the overall cost of the S&L crisis but it's important that those who contributed to the problem pay as much as possible to resolve it.

Regulators are scrambling to file lawsuits today because they are running out of time. Generally, these suits must be filed within three years after the Resolution Trust Corporation (RTC) places an institution in conservatorship. The clock has expired for 73 thrifts already this year. Today is the deadline for 45 more failures and next Monday (March 16) is the last day for 46 more S&Ls. Over the next three years, regulators will have to examine the potential for lawsuits related to more than 400 additional thrifts that have already been closed, with hundreds more still to come.

Tomorrow, I plan to introduce legislation that will help regulators maximize the recovery from civil lawsuits by extending the existing three year statute of limitations to five years. The enormous volume of the workload limits the federal government's ability to pursue all of the cases that should be pursued. These cases are often complex and require a great deal of preparation to determine if a claim will be upheld and if resources are available to pay a judgment. We need to provide regulators with adequate time to prepare and file suits.

The statute of limitations expires for hundreds of failed institutions this year. It's important that we act quickly and I will seek to attach this legislation to RTC funding that must be provided by April 1.

If you would like to cosponsor this legislation or wish further information, please do not hesitate to contact me or Mike Perko of my staff at 224-5852.

With best wishes,
Sincerely yours,

TIMOTHY E. WIRTH.

ADDITIONAL COSPONSORS

S. 15

At the request of Mr. BIDEN, the names of the Senator from Texas [Mr. BENTSEN] and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 15, a bill to combat violence and crimes against women on the streets and in homes.

S. 21

At the request of Mr. CRANSTON, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 21, a bill to provide for the protection of the public lands in the California desert.

S. 405

At the request of Mr. MITCHELL, the name of the Senator from Illinois [Mr.

DIXON] was added as a cosponsor of S. 405, a bill to amend the Harmonized Tariff Schedule of the United States to exclude certain footwear assembled in beneficiary countries from duty-free treatment.

S. 466

At the request of Mr. GRASSLEY, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 466, a bill to amend the Internal Revenue Code of 1986 to provide for a renewable energy production credit, and for other purposes.

S. 588

At the request of Mr. MITCHELL, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 588, a bill to amend the Internal Revenue Code of 1986 with respect to the tax treatment of certain cooperative service organizations of private and community foundations.

S. 757

At the request of Mr. LEAHY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 757, a bill to amend the Food Stamp Act of 1977 to respond to the hunger emergency afflicting American families and children, to attack the causes of hunger among all Americans, to ensure an adequate diet for low-income people who are homeless or at risk of homelessness because of the shortage of affordable housing, to promote self-sufficiency among food stamp recipients, to assist families affected by adverse economic conditions, to simplify food assistance programs' administration, and for other purposes.

S. 798

At the request of Mr. CRANSTON, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 798, a bill to amend title 18, United States Code, to provide a criminal penalty for interfering with access to and egress from a medical facility.

S. 891

At the request of Mr. MACK, the names of the Senator from Arizona [Mr. DECONCINI], the Senator from Wyoming [Mr. WALLOP], and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 891, a bill to amend the Internal Revenue Code of 1986 to provide a refundable credit for qualified cancer screening tests.

S. 914

At the request of Mr. GLENN, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 914, a bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes.

S. 1102

At the request of Mr. MOYNIHAN, the name of the Senator from Pennsylva-

nia [Mr. WOFFORD] was withdrawn as a cosponsor of S. 1102, a bill to amend title XVIII of the Social Security Act to provide coverage of qualified mental health professionals services furnished in community mental health centers.

S. 1423

At the request of Mr. DODD, the names of the Senator from North Dakota [Mr. CONRAD] and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 1423, a bill to amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

S. 1424

At the request of Mr. CONRAD, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 1424, a bill to amend chapter 17 of title 38, United States Code, to require the Secretary of Veterans Affairs to conduct a mobile health care clinic program for furnishing health care to veterans located in rural areas of the United States.

S. 1566

At the request of Mr. PACKWOOD, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1566, a bill to amend the Internal Revenue Code of 1986 to permit withdrawals without penalty from retirement accounts to purchase first homes, to pay education and medical expenses, or to meet expenses during periods of unemployment, and for other purposes.

S. 1571

At the request of Mr. HOLLINGS, his name was added as a cosponsor of S. 1571, a bill to amend the Federal Railroad Safety Act of 1970 to improve railroad safety, and for other purposes.

S. 1622

At the request of Mr. KENNEDY, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 1622, a bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such act with respect to the health and safety of employees, and for other purposes.

S. 1704

At the request of Mr. WALLOP, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1704, a bill to improve the administration and management of public lands, National Forests, units of the National Park System, and related areas by improving the availability of adequate, appropriate, affordable, and cost effective housing for employees needed to effectively manage the public lands.

S. 1860

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 1860, a bill to amend part A of title IV of the Social Security Act to remove barriers and disincentives in the program of aid to families with dependent children so as to enable recipi-

ents of such aid to move toward self-sufficiency through microenterprises.

S. 1872

At the request of Mr. DURENBERGER, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 1872, a bill to provide for improvements in access and affordability of health insurance coverage through small employer health insurance reform, for improvements in the portability of health insurance, and for health care cost containment, and for other purposes.

S. 1962

At the request of Mr. ADAMS, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 1962, a bill to amend the Civil Rights Act of 1991 to apply the act to certain workers, and for other purposes.

S. 1996

At the request of Mr. ROCKEFELLER, the names of the Senator from Rhode Island [Mr. CHAFEE] and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 1996, a bill to amend title XVIII of the Social Security Act to provide for uniform coverage of anticancer drugs under the medicare program, and for other purposes.

S. 2059

At the request of Mr. NUNN, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 2059, a bill to establish youth apprenticeship demonstration programs, and for other purposes.

S. 2062

At the request of Mr. KENNEDY, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 2062, a bill to amend section 1977A of the Revised Statutes to equalize the remedies available to all victims of intentional employment discrimination, and for other purposes.

S. 2064

At the request of Mr. HATFIELD, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 2064, a bill to impose a one-year moratorium on the performance of nuclear weapons tests by the United States unless the Soviet Union conducts a nuclear weapons test during that period.

S. 2085

At the request of Mr. PRYOR, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 2085, a bill entitled the Federal-State Pesticide Regulation Partnership.

S. 2103

At the request of Mr. GRASSLEY, the names of the Senator from Arizona [Mr. MCCAIN] and the Senator from Hawaii [Mr. INOUE] were added as cosponsors of S. 2103, a bill to amend title XVIII of the Social Security Act to

provide for increased medicare reimbursement for nurse practitioners, clinical nurse specialists, and certified nurse midwives, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 2104

At the request of Mr. GRASSLEY, the names of the Senator from Arizona [Mr. McCAIN] and the Senator from Hawaii [Mr. INOUE] were added as cosponsors of S. 2104, a bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physical assistance, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 2106

At the request of Mr. CRANSTON, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Florida [Mr. GRAHAM], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of S. 2106, a bill to grant a Federal charter to the Fleet Reserve Association.

S. 2230

At the request of Mr. BREAUX, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2230, a bill to amend title XVIII of the Social Security Act to provide coverage of outpatient education services under part B of the medicare program for individuals with diabetes.

S. 2235

At the request of Mr. MOYNIHAN, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 2235, a bill to extend until April 1993 the demonstration project under which influenza vaccinations are provided to medicare beneficiaries.

S. 2254

At the request of Mr. McCAIN, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 2254, a bill to provide tax incentives for businesses locating on Indian reservations, and for other purposes.

S. 2255

At the request of Mr. KENNEDY, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 2255, a bill to amend part D of title IV of the Higher Education Act of 1965 to provide for income dependent education assistance.

S. 2290

At the request of Mr. WIRTH, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of S. 2290, a bill to require public disclosure of examination reports of certain failed depository institutions.

SENATE JOINT RESOLUTION 105

At the request of Mr. D'AMATO, the name of the Senator from Nevada [Mr. BRYAN] was added as a cosponsor of Senate Joint Resolution 105, a joint resolution to designate April 14, 1991,

to April 21, 1991, and May 3 to May 10, 1992, as "Jewish Heritage Week."

SENATE JOINT RESOLUTION 166

At the request of Mr. DOLE, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from New York [Mr. D'AMATO], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 166, a joint resolution designating the week of October 6 through 12, 1991, as "National Customer Service Week."

SENATE JOINT RESOLUTION 231

At the request of Mr. THURMOND, the names of the Senator from New Jersey [Mr. BRADLEY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Utah [Mr. GARN], and the Senator from West Virginia [Mr. BYRD] were added as cosponsors of Senate Joint Resolution 231, a joint resolution to designate the month of May 1992, as "National Foster Care Month."

SENATE JOINT RESOLUTION 233

At the request of Mr. BIDEN, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Indiana [Mr. COATS], the Senator from Alabama [Mr. SHELBY], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Joint Resolution 233, a joint resolution to designate the week beginning April 12, 1992, as "National Public Safety Telecommunicators Week."

SENATE JOINT RESOLUTION 236

At the request of Mr. D'AMATO, the names of the Senator from Georgia [Mr. FOWLER] and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Joint Resolution 236, a joint resolution designating the third week in September 1992 as "National Fragrance Week."

SENATE JOINT RESOLUTION 255

At the request of Mr. D'AMATO, the names of the Senator from Mississippi [Mr. COCHRAN] and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 255, a joint resolution to designate September 13, 1992 as "Commodore Barry Day."

SENATE JOINT RESOLUTION 257

At the request of Mr. LAUTENBERG, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 257, a joint resolution to designate the month of June 1992, as "National Scleroderma Awareness month".

SENATE JOINT RESOLUTION 261

At the request of Mr. CRANSTON, the names of the Senator from Virginia [Mr. WARNER], the Senator from North Dakota [Mr. CONRAD], the Senator from Kentucky [Mr. FORD], the Senator from New Jersey [Mr. BRADLEY], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Joint Resolution 261, a joint resolution to designate April 9, 1992, as a "Day of Filipino World War II Veterans."

SENATE JOINT RESOLUTION 262

At the request of Mr. KASTEN, the names of the Senator from Maine [Mr. COHEN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Missouri [Mr. BOND] were added as cosponsors of Senate Joint Resolution 262, a joint resolution designating July 4, 1992, as "Buy American Day."

SENATE JOINT RESOLUTION 263

At the request of Mr. SARBANES, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of Senate Joint Resolution 263, a joint resolution to designate May 4, 1992, through May 10, 1992, as "Public Service Recognition Week."

SENATE JOINT RESOLUTION 267

At the request of Mr. D'AMATO, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Joint Resolution 267, a joint resolution to designate March 17, 1992, as "Irish Brigade Day."

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE CONCURRENT RESOLUTION 89

At the request of Mr. KERRY, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of Senate Concurrent Resolution 89, a concurrent resolution to express the sense of the Congress concerning the United Nations Conference on Environment and Development.

SENATE RESOLUTION 236

At the request of Mr. ADAMS, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of Senate Resolution 236, a resolution expressing the sense of the Senate that the President rescind Department of Defense Directive 1332.14, section H.1, which bans gay, lesbian, and bisexual Americans from serving in the Armed Forces of the United States.

SENATE RESOLUTION 246

At the request of Mr. DOLE, the names of the Senator from Texas [Mr. GRAMM], and the Senator from Arizona [Mr. DECONCINI] were added as cosponsors of Senate Resolution 246, a resolution on the recognition of Croatia and Slovenia.

SENATE RESOLUTION 266

At the request of Mr. McCAIN, the names of the Senator from Texas [Mr. GRAMM], the Senator from Wisconsin [Mr. KASTEN], the Senator from Indiana [Mr. COATS], the Senator from New York [Mr. MOYNIHAN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Rhode Island [Mr. PELL], and the Senator from North

Carolina [Mr. SANFORD] were added as cosponsors of Senate Resolution 266, a resolution expressing the sense of the Senate concerning the arms cargo of the North Korean merchant ship *Dae Hung Ho*.

SENATE CONCURRENT RESOLUTION 99—RELATIVE TO TRAVEL TO TAIWAN

Mr. PELL (for himself, Mr. KENNEDY, and Mr. LIEBERMAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations.

S. CON. RES. 99

Whereas the Universal Declaration of Human Rights states that "Everyone has the right . . . to return to his country";

Whereas several hundred thousand individuals who were born on Taiwan reside in the United States;

Whereas significant political reform on Taiwan over the last 4 years has greatly expanded opportunities for political participation on the island;

Whereas the authorities on Taiwan, before the initiation of these political reform measures, refused to permit the return to Taiwan of those Taiwan-born residents of the United States who were opposed to the authorities on Taiwan;

Whereas since 1987 a number of Taiwan-born residents of the United States who were previously excluded from Taiwan have been permitted to return to their homeland; and

Whereas others remain excluded, apparently because political views are not welcome by the authorities on Taiwan: Now, therefore be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the authorities on Taiwan should permit the return to Taiwan of all current and former citizens who are committed to peaceful change.

• Mr. PELL. Mr. President, today I rise on behalf of Senators KENNEDY and LIEBERMAN and myself to submit a concurrent resolution expressing the sense of the Congress concerning travel to Taiwan.

We have all been impressed by the significant political and economic changes that have occurred in Taiwan over the last few years. The old order is disappearing and a new order is emerging based on free market economics and political pluralism.

These changes could not have been imagined by those of us who have long monitored developments in Taiwan. Recently, a Government task force even recommended revisions in the criminal code eliminating sedition charges against anyone calling for independence of Taiwan. I hope those changes will shortly become law.

A country as mature at Taiwan has become should not fear those who call for independence of their country from the mainland. Whether there is one China or two should be left to the people of Taiwan to determine.

Despite these developments, however, the Taiwanese Government continues

to maintain a blacklist of certain Taiwanese living abroad. The Taiwanese on this blacklist, many of whom are American citizens, including government officials, are almost always refused visas to return to their homeland because they advocate self-determination in Taiwan. They have been excluded from visiting the country of their birth or of their ancestors, even for the purpose of attending family reunions, weddings, and funerals.

A country that wants free trade, that depends on open trade for its well-being must also be open to the free exchange of people and, with them, ideas. Taiwan has nothing to fear from the peaceful advocacy of self-determination.

This resolution expresses the sense of the Congress that the authorities on Taiwan should permit the return to Taiwan of all citizens of Taiwan who are committed to peaceful political change. A similar resolution has been introduced in the House by Congressman SOLARZ.

I encourage all of my colleagues to join with me in support of this concurrent resolution. •

SENATE CONCURRENT RESOLUTION 100—RELATIVE TO THE INTERNATIONAL CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES

Mr. LOTT (for himself, Mr. COCHRAN, Mr. CRAIG, Mr. SYMMS, Mr. BURNS, and Mr. HELMS) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 100

SECTION 1. Whereas the Convention on International Trade in Endangered Species (CITES) has convened in Kyoto, Japan, to consider the regulation of international trade of certain species;

Whereas the U.S. Fish and Wildlife Service, representing the United States Government, has proposed placing two species of mahogany (*S. mahogani* and *S. macrophylla*) on Appendix II of CITES requiring regulation in commercial trade;

Whereas the U.S. Forest Service, which primarily oversees timber issues, testified that due to the lack of information, input and consensus, a thorough scientific assessment is needed to provide necessary data to support an Appendix II listing, and that an Appendix II listing may actually have a negative impact on the species;

Whereas the U.S. is an active participant in the United Nations-sponsored forty-seven member International Tropical Timber Organization, which through its Target 2000 program calls for all woods in international trade to originate from sustainable sources by the year 2000, and finances extensive education and reforestation efforts both within and without the natural range of both species;

Whereas American importers finance an extensive reforestation effort both within and without the natural range of both species;

Whereas the listing provides no greater protection of either species for, under the

proposal, exporting countries would not be required to implement better resource management programs;

Whereas no credible scientific evidence exists to list this commodity-type species in Appendix II, and further study is necessary to determine how such a widely distributed and traded timber product could be considered endangered;

Whereas a broad range of American businesses, from small cabinet makers, to large lumber companies, to furniture makers, will be severely and adversely affected by said proposal, resulting in the loss of jobs for American workers, and having a disruptive effect on the recovery of the U.S. economy;

Whereas the CITES proposal effectively mandates a priority be placed on environmental regulations of questionable scientific value to the protection of mahogany, without the benefit of thoughtful consideration of the economic impact on the tens of thousands of American families dependent on the industry: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the Sense of Congress that—

(1) the Secretary of the Interior instruct the U.S. delegation at the CITES convention to withdraw its proposal and oppose any proposal adding *S. mahogani* and *S. macrophylla* to Appendix II of the CITES endangered species listing; and

(2) the U.S. Forest Service's role in any decision to make such a proposal in the future should be expanded; and

(3) prior to any decision regarding the U.S. position on inclusion of *S. mahogani* and *S. macrophylla* to Appendix II of the CITES endangered species list, the Secretary should conduct a study of the domestic jobs impact of any decision to add either species to Appendix II of the endangered species list, and report to the Congress the results of that study at least 60 days prior to any decision implementation.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the Secretary of Interior and to the U.S. delegation to the CITES convention in Kyoto, Japan.

SEC. 3. The International Tropical Timber Organization and the Convention on International Trade in Endangered Species should coordinate their efforts.

SENATE RESOLUTION 267—AUTHORIZING TESTIMONY BY A SENATE EMPLOYEE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 267

Whereas, in the case of *United States v. Alan Roy Mountain*, No. Cr. No. 91-00006, pending in the United States District Court for the District of Maine, the United States has caused to be issued a subpoena for the testimony of Mary Leblanc, an employee of the Senate on the staff of the Senator Mitchell;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of jus-

tice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Mary Leblanc is authorized to testify in *United States v. Alan Roy Moun-tain*, except concerning matters for which a privilege should be asserted.

SENATE RESOLUTION 268—REL-
ATIVE TO THE DEATH OF
FORMER PRIME MINISTER
MENACHEM BEGIN

Mr. MCCONNELL (for himself, Mr. MCCAIN, Mr. BOND, Mr. SANFORD, Mr. ROBB, Mr. MOYNIHAN, Mr. DURENBERGER, Mr. PACKWOOD, Mr. MURKOWSKI, Mr. SYMMS, Mr. KOHL, Ms. MIKULSKI, Mr. DECONCINI, Mr. SARBANES, Mr. MITCHELL, and Mr. SPECTER) submitted the following resolution; which was considered and agreed to:

S. RES. 268

Whereas Menachem Begin founded the Herut (Freedom) Movement in Israel in 1948; Whereas, throughout his lifetime, Menachem Begin served to protect and defend Israel as Prime Minister and Minister of Defense;

Whereas, for his leadership and courage in the Camp David Accords in 1978, Menachem Begin received the Nobel Prize for Peace; and

Whereas the people of Israel are mourning the passing of this dedicated patriot: Now, therefore, be it

Resolved, That the Senate expresses its sympathy to the people of the State of Israel regarding the death of former Prime Minister Menachem Begin.

SENATE RESOLUTION 269—AU-
THORIZING TESTIMONY BY A
SENATE EMPLOYEE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 269

Whereas, in the case of *Standard Federal Savings Bank v. Roger B. Taber*, No. 3L-78853, pending in Idaho State Court, the plaintiff has caused to be issued a subpoena for the testimony of Tom Andreason, an employee of the Senate on the staff of Senator Larry Craig;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Tom Andreason is authorized to testify in *Standard Federal Savings Bank v. Rober B. Taber, et al.*, except concerning matters for which a privilege should be asserted.

AMENDMENTS SUBMITTED

INDOOR RADON ABATEMENT
REAUTHORIZATION ACT

BURDICK AMENDMENT NO. 1702

Mr. LAUTENBERG (for Mr. BURDICK) proposed an amendment to the bill (S. 792) to reauthorize the Indoor Radon Abatement Act of 1988, and for other purposes, as follows:

On page 11, line 5, strike "1991" and insert "1992".

On page 14, line 6, strike "Business" and insert "business".

On page 14, line 24, strike "and".

On page 15, strike line 2 and insert the following: eral agency, and

"(C) is occupied by the Library of Congress, is part of the White House, or is the residence of the Vice President, and

"(D) is included in the definition of 'Capitol Buildings' under section 16(a) of the Act entitled 'An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes', approved July 31, 1946 (40 U.S.C. 193m)."

On page 15, line 18 and 19, insert "indoor" before "radon" each place it appears.

On page 16, line 14, strike "(15 U.S.C. 2663(a))".

On page 16, strike lines 15 and 16 and insert the following:

by section 4 of this Act) is amended—

(1) by striking "June 1, 1989," and inserting "January 1, 1992,"; and

(2) by inserting "in consultation with the Director of the Centers for Disease Control of the Department of Health and Human Services," after "Administrator" in the last sentence of the subsection.

On page 17, line 13, strike "(15 U.S.C. 2663(b)(2))".

On page 17, line 21, strike "(15 U.S.C. 2664)".

On page 17, after line 24, insert the following new subparagraph:

(B) by inserting "and periodically update" after "develop";

On page 18, strike lines 1 and 2 and insert the following new subparagraph:

(C) by striking the second sentence of the section and inserting the following new subsection:

"(b) CONSULTATION.—In developing and updating standards and techniques pursuant to subsection (a), the Administrator shall consult with—

"(1) the Secretary of Housing and Urban Development;

"(2) organizations that are involved in establishing national building construction standards and techniques; and

"(3) national organizations that represent homebuilders and State and local housing agencies (including public housing agencies).";

On page 18, line 3, strike "(C)" and insert "(E)".

On page 18, line 6, strike "(D)" and insert "(F)".

On page 18, line 8, strike "(E)" and insert "(G)".

On page 18, line 11, strike "(15 U.S.C. 2664)".

On page 18, line 17, insert "by" before "not later".

On page 18, line 21, strike "(15 U.S.C. 2664)".

On page 19, line 12, insert "require the use of reasonably available and economically

achievable techniques, and to" after "be designed to".

On page 19, line 14, insert "where possible by using these techniques" after "304(b)(1)(C)".

On page 19, line 16, strike "(15 U.S.C. 2664)".

On page 20, lines 8 and 20, strike "(15 U.S.C. 2664)" each place it appears.

On page 21, line 6, strike "(15 U.S.C. 2665(a))".

On page 21, strike lines 10 through 12 and insert "disseminate radon information to State and local tenant organizations."

On page 22, line 3, strike "certification" and insert "proficiency".

On page 22, line 5, strike "(15 U.S.C. 2665(a)(2))".

On page 22, line 9, strike "(15 U.S.C. 2665(e)(2))".

Beginning on page 22, line 8, strike all through page 23, line 3, and insert the following:

(2) Section 306(e) of the Toxic Substances Control Act (as redesignated by section 4 of this Act) is amended—

(A) by redesignating paragraph (2) as paragraph (2)(A); and

(B) by adding after paragraph (2)(A), as so redesignated, the following new subparagraphs:

"(B)(i) Except as otherwise provided in clause (ii), for the purposes of this paragraph, the term 'small business' means a corporation, partnership, or unincorporated business that—

"(I) has 150 or fewer employees; and

"(II) for the 3-year period preceding the date of the assessment, has an average annual gross revenue from radon measurement and mitigation activities in an amount that does not exceed \$40,000,000.

"(ii) If, after consultation with the Small Business Administration, the Administrator determines that a modification of the definition of 'small business' under clause (i) is appropriate to characterize small businesses associated with radon measurement and mitigation, the Administrator shall, by regulation, modify the definition in such manner as the Administrator determines to be appropriate.

"(C) The Administrator shall consider reductions of such charges for small businesses pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

"(D) No charges may be imposed on State and local governments. In the case of a State which is administering a radon proficiency program pursuant to section 314(c), the State may impose charges consistent with charges which would have been imposed by the Administrator. Any amounts collected by a State as charges under this paragraph may be used as part of the non-Federal share of a grant awarded pursuant to section 307 of this title."

On page 23, line 6, strike "(15 U.S.C. 2666(b))".

On page 23, line 13, strike "(15 U.S.C. 2666(c))".

On page 24, strike line 19 and insert the following: ment pursuant to paragraph (15).

"(17) Educational programs for members of the housing industry concerning the model construction standards and techniques published pursuant to section 305.

"(18) Financial assistance to conduct surveys to improve the precision of priority radon areas."

On page 24, beginning on line 21, strike "(15 U.S.C. 2666(d))".

On page 25, line 4, strike "(15 U.S.C. 2666(f))".

On page 25, beginning on line 8, strike "(15 U.S.C. 2666(g))".

On page 25, line 23, strike "(15 U.S.C. 2666(h))".

On page 26, line 8, strike "(15 U.S.C. 2666(j))".

On page 26, line 13, strike "(15 U.S.C. 2667)".

On page 27, line 3, insert "in a manner" before "consistent".

On page 27, line 23, strike "the availability of".

On page 28, beginning on line 9, strike "(15 U.S.C. 2668(b))".

On page 28, beginning on line 18, strike "(15 U.S.C. 2669)".

On page 31, line 6, insert "the Secretary of Housing and Urban Development, national organizations that represent State and local housing agencies (including public housing agencies)," before "real estate".

On page 32, line 1, insert "and reliable" before "measurements".

On page 34, line 4, insert "in a manner" before "consistent".

On page 35, line 23, strike "and" and insert a comma.

On page 35, line 23, insert "and the Director of the Centers for Disease Control" before "shall".

On page 38, strike lines 2 through 7 and insert the following: "mitigating elevated radon levels to public housing agencies and Indian housing authorities, as defined in paragraphs (6) and (11), respectively, of section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), and to owners and managers of other housing assisted under other provisions of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) and the National Housing Act (12 U.S.C. 1701 et seq.)."

On page 38, line 19, after the period, insert an ending quotation mark and a period.

Beginning on page 38, line 20, strike all through page 39, line 19.

On page 40, line 2, strike "is authorized to" and insert "shall".

On page 40, line 3, strike "educational" and insert "education".

On page 40, line 3, insert "and is authorized to enter into cooperative agreements" before "to increase public awareness".

On page 40, line 14, insert "the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services, in consultation with the" before "Administrator".

On page 40, line 14, insert a comma after "Administrator".

On page 40, line 17, insert "the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services and" before "the Administrator".

On page 40, line 18, strike "design" and insert "be jointly responsible for designing".

Beginning on page 40, line 24, strike "The survey" and all that follows through page 41, line 17.

On page 41, line 18, strike "(5)" and insert "(3)".

On page 41, line 19, strike "the Administrator" and insert "the Director of the National Institute for Occupational Safety and Health of the Department of Health and Human Services, in consultation with the Administrator".

On page 41, beginning on line 22, strike "For the purpose" and all that follows through the period on line 25.

On page 42, line 1, strike "other than paragraph (a)(4)".

On page 43, line 25, insert "or who provides false information concerning compliance

with section 305(f) to an appropriate Federal official," before "shall be liable".

Beginning on page 47, strike line 23 and all that follows through page 48, line 3, and insert the following new paragraphs:

"(1) against the United States in any case where the United States is alleged to be in violation of section 305(f), 310, or 316, or any rule promulgated thereunder, to restrain such violation;

"(2) against any person who is alleged to be in violation of section 308, 313, or 314, or any rule promulgated thereunder, to restrain such violation; or

On page 48, line 4, strike "(2)" and insert "(3)".

On page 51, line 13, strike "(15 U.S.C. 2665(f))".

On page 51, lines 15 and 20, strike "and 1994" each place it appears and insert ", 1994, and 1995".

On page 51, line 22, strike "(15 U.S.C. 2666(j))".

On page 52, lines 4, 10, and 25, strike "and 1994" each place it occurs and insert ", 1994, and 1995".

On page 52, line 22, strike "(15 U.S.C. 2668(f))".

Beginning on page 53, strike line 15 and all that follows through page 54, line 2, and insert the following:

(1) in subparagraph (A)—
(A) by inserting "develop and" after "to"; and

(B) adding at the end of the subparagraph the following new sentence: "The demonstration program shall include the development and evaluation of innovative low-cost techniques to reduce radon concentrations in existing structures, including structures with low to moderate radon levels, and in new structures, and the development and demonstration of radon mitigation technology for multistory buildings."

**SMITH (AND OTHERS)
AMENDMENT NO. 1703**

Mr. SMITH (for himself, Mr. SEYMOUR, and Mr. WALLOP) proposed an amendment to the bill S. 792, supra, as follows:

At the appropriate place, insert the following new section:

"SEC. . Prior to promulgating any national primary drinking water regulation for radionuclides under the Safe Drinking Water Act, the Administrator of the Environmental Protection Agency shall conduct a multimedia risk assessment of radon considering: (a) the relative risk of adverse human health effects associated with various pathways of exposure to radon; (b) the relative costs of controlling or mitigating exposure to radon from each pathway; and (c) the relative costs for radon control or mitigation experienced by households, communities and other entities including the costs experienced by small communities as the result of such regulation. Such an evaluation shall consider the risks posed by the treatment or disposal of any wastes produced by water treatment. Upon completion of this risk assessment, the Administrator shall report his findings to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce. Nothing in this section shall modify or be the basis for an extension of any statutory or court-ordered deadline for the promulgation of such regulation."

WALLOP AMENDMENT NO. 1704

Mr. WALLOP proposed an amendment to the bill S. 792, supra, as follows:

On page 53, between lines 11 and 12, strike the item relating to section 321 and insert the following new items:

"Sec. 321. Citizens suits.
"Sec. 322. Periodic Reassessment of Health Risks."

On page 55, after line 6, insert the following new section:

SEC. 24. PERIODIC REASSESSMENT OF HEALTH RISKS.

Title III of the Toxic Substances Control Act (15 U.S.C. 2661 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 322. PERIODIC REASSESSMENT OF HEALTH RISKS.

The Administrator, in consultation with the heads of the National Academy of Sciences and the Centers for Disease Control, shall conduct a program to reassess, on a periodic basis, the human health risks associated with radon exposure."

On page 36, line 4, before the semicolon, insert "and include a summary of scientific evidence that demonstrates the human health effects of exposure to radon".

**TAX FAIRNESS AND ECONOMIC
GROWTH ACT**

**SPECTER AMENDMENT NOS. 1705
AND 1706**

(Ordered to lie on the table.)

Mr. SPECTER submitted two amendments intended to be proposed by him to the bill (H.R. 4210) to amend the Internal Revenue Code of 1986 to provide incentives for increased economic growth and to provide tax relief for families, as follows:

AMENDMENT NO. 1705

At the appropriate place, insert:
SEC. DEDUCTIBILITY OF EMPLOYER-PROVIDED PARKING SPACE.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended—

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (l) the following new subsection:

"(m) NO DEDUCTION FOR PARKING EXPENSES UNLESS EMPLOYER PROVIDES CASH ALTERNATIVE.

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for any amount paid or incurred by an employer in connection with the providing of a parking subsidy to any employee unless the employer provides the parking subsidy pursuant to an arrangement under which the employee may elect, in lieu of a parking subsidy, to receive cash or a mass transit, car pool, or van pool subsidy in an amount equal to the fair market value of such parking subsidy.

"(2) CASH IN LIEU OF BENEFIT.—For purposes of this subsection (m), cash received by an employee in lieu of a parking subsidy shall be taxable income.

"(3) NO PREEMPTION OF STATE AND LOCAL LAWS.—The provisions of this subsection (m) shall not preempt any state or local laws, ordinances, or regulations promulgated pursu-

ant to the Clean Air Act Amendments of 1990.

"(4) DEFINITION.—For purposes of this subsection (m), the term "parking subsidy" includes the direct and indirect cost to an employer of providing qualified parking to an employee, not including any amount paid by the employee."

(b) MASS TRANSIT, CAR POOL, OR VAN POOL SUBSIDY IN LIEU OF PARKING.—For purposes of subsection (a) of this section a mass transit, car pool, or van pool subsidy in lieu of a parking subsidy shall be taxable in accordance with section 2513 of this Act.

(c) QUALIFIED PARKING.—For the purposes of subsection (a) of this section, the term "qualified parking" shall have the meaning set forth in section 2513 of this Act and shall be taxable in accordance with section 2513 of this Act.

(d) EFFECTIVE DATE.—The amendment made by this subsection (a) shall apply to taxable years beginning after December 31, 1992.

(e) PARKING SUBSIDY FORMULA.—By December 31, 1992, the Internal Revenue Service shall in conjunction with the Department of Transportation develop a formula for estimating the value of parking places provided in employer owned parking facilities.

AMENDMENT NO. 1706

On page 1421, after line 17, insert the following new title:

TITLE VI—HOME EQUITY CONVERSIONS SEC. 601. SHORT TITLE.

That this Act may be cited as the "Home Equity Conversions Act of 1992".

SEC. 602. DEPRECIATION IN SALE-LEASEBACK TRANSACTIONS.

Section 167 of the Internal Revenue Code of 1986 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(g) SALE-LEASEBACK TRANSACTIONS.—

"(1) IN GENERAL.—In the case of property involved in a sale-leaseback transaction, the purchaser-lessee shall be recognized as the absolute owner of the property, and the deduction shall be allowed to the purchaser-lessee.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) SALE-LEASEBACK.—The term 'sale-leaseback' shall include a transaction in which—

"(i) the seller-lessee—

"(I) has attained the age of 55 before the date of such transaction,

"(II) sells property which during the 5-year period ending on the date of the transaction has been owned and used as a principal residence by such seller-lessee for periods aggregating 3 years or more,

"(III) obtains occupancy rights in such property pursuant to a written lease requiring a fair rental, and

"(IV) receives no option to repurchase the property at a price less than the fair market price of the property unencumbered by any leaseback at the time such option is exercised, and

"(i) the purchaser-lessee—

"(I) is a person,

"(II) is contractually responsible for the risks and burdens of ownership and receives the benefits of ownership (other than the seller-lessee's occupancy rights) after the date of such transaction, and

"(III) pays a purchase price for the property that is not less than the fair market price of such property encumbered by a leaseback, and taking into account the terms of the lease.

"(B) OCCUPANCY RIGHTS.—The term 'occupancy rights' means the right to occupy the property for any period of time, including a period of time measured by the life of the seller-lessee on the date of the sale-leaseback transaction (or the life of the surviving seller-lessee, in the case of jointly-held occupancy rights), or a periodic term subject to a continuing right of renewal by the seller-lessee (or by the surviving seller-lessee, in the case of jointly-held occupancy rights).

"(C) FAIR RENTAL.—For purposes of paragraph (2)(A)(i)(III), the term 'fair rental' shall include a rental for any subsequent year which equals or exceeds the rental for the first year of a sale-leaseback transaction.

SEC. 603. CAPITAL GAINS EXCLUSION IN SALE-LEASEBACK TRANSACTIONS.

Subsection (d) of section 121 of the Internal Revenue Code of 1986 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end thereof the following new paragraph:

"(10) SALE OR EXCHANGE DEFINED.—For purposes of this section, the term 'sale or exchange' shall include a sale-leaseback transaction (as defined in section 167(g))."

SEC. 604. INCOME IN SALE-LEASEBACK TRANSACTION.

(a) GROSS INCOME.—Part III of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by inserting after section 121 the following new section:

"SEC. 121A. INCOME IN SALE-LEASEBACK TRANSACTIONS.

"Gross income to the seller-lessee or the purchaser-lessee in a sale-leaseback transaction (as defined in section 167(g)) does not include any value of occupancy rights or discount from the fair market price of the property unencumbered by any leaseback, which is attributable to any leaseback."

(b) GAIN OR LOSS.—Subsection (b) of section 1001 of such Code is amended—

(1) by striking "and" at the end of paragraph (1),

(2) by striking the period at the end of paragraph (2) and inserting ", and", and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) in the case of a sale-leaseback transaction (as defined in section 167(g))—

"(A) there shall not be taken into account any value of occupancy rights or discount from the fair market price of the property unencumbered by any leaseback, which is attributable to any leaseback, and

"(B) there shall be taken into account the cost of any annuity purchased for a seller-lessee by a purchaser-lessee."

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of subtitle A of such Code is amended by inserting after the item relating to section 121 the following new item:

"Sec. 121A. Income in sale-leaseback transactions."

SEC. 605. INSTALLMENT SALES IN SALE-LEASEBACK TRANSACTIONS.

Section 453 of the Internal Revenue Code of 1986 (relating to installment method) is amended by adding at the end thereof the following new subsection:

"(m) APPLICATION WITH SECTION 167(I).—

"(1) IN GENERAL.—In the case of an installment sale in a sale-leaseback transaction (as defined in section 167(g)), subsection (a) shall apply.

"(2) SPECIAL RULE FOR ANNUITIES.—In the case of an annuity purchased for the seller-

lessee by the purchaser-lessee in a sale-leaseback transaction, the purchase cost of such annuity shall constitute the amount of consideration received by such seller-lessee attributable to such annuity and shall be deemed received in the year of disposition."

SEC. 606. BASIS OF ANNUITY RECEIVED IN SALE-LEASEBACK TRANSACTION.

Subparagraph (A) of section 72(c)(1) of the Internal Revenue Code of 1986 (relating to annuities) is amended by inserting before the comma "(including such amount paid by a purchaser-lessee in a sale-leaseback transaction as defined in section 167(g))".

SEC. 607. SALE-LEASEBACK TRANSACTION ENGAGED IN FOR PROFIT.

(a) FOR PROFIT PRESUMPTION.—Section 183 of the Internal Revenue Code of 1986 (relating to activities not engaged in for profit) is amended—

(1) by striking "If" in subsection (d) and inserting "(1) IN GENERAL.—If",

(2) by inserting after paragraph (1) of subsection (d) (as designated by paragraph (1)) the following new paragraph:

"(2) SALE-LEASEBACK TRANSACTION.—Any sale-leaseback transaction (as defined in section 167(g)), unless the Secretary establishes to the contrary, shall be presumed for purposes of this chapter to be an activity engaged in for profit.", and

"(3) by inserting '(1)' after 'subsection (d)' each place it appears in subsection (e)."

(b) USE OF DWELLING UNIT.—Paragraph (3) of section 280A(d) of such Code (relating to disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.) is amended by adding at the end thereof the following new subparagraph:

"(E) FAIR RENTAL IN A SALE-LEASEBACK TRANSACTION.—Any rental that constitutes a fair rental in a sale-leaseback transaction pursuant to section 167(g)(2)(C) shall be treated as a fair rental for purposes of subparagraph (A)."

SEC. 608. ACCELERATED COST RECOVERY SYSTEM IN SALE-LEASEBACK TRANSACTIONS.

Subparagraph (A) of section 168(f)(5) of the Internal Revenue Code of 1986 (relating to certain property placed in service in churning transactions) is amended by inserting "(except property acquired by the taxpayer in a sale-leaseback transaction as defined in section 167(g))" after "Property".

SEC. 609. EFFECTIVE DATE.

The amendments made by this title shall apply to sales after the date of the enactment of this Act, in taxable years ending after such date. Enactment of this title shall not raise any presumption that sales occurring prior to such enactment should not be treated as valid sales-leaseback transactions.

SPECTER (AND DOMENICI) AMENDMENT NO. 1707

(Ordered to lie on the table.)

Mr. SPECTER (for himself and Mr. DOMENICI) submitted an amendment intended to be proposed by them to the bill H.R. 4210, supra, as follows:

At the appropriate place, insert:

SEC. . PENALTY-FREE WITHDRAWALS FROM PENSION PLANS THROUGH 1992.

(a) IN GENERAL.—In the case of any qualified withdrawal—

(1) no additional tax shall be imposed under section 72(t)(1) of the Internal Revenue Code of 1986 with respect to such qualified withdrawal, and

(2) except as provided in subsection (b), any amount includible in gross income by reason of such qualified withdrawal (determined without regard to this section) shall be includible ratably over the 4-taxable year period beginning with the taxable year in which such qualified withdrawal occurs.

(b) ELECTION TO RECONTRIBUTE TO PLAN.—
(1) IN GENERAL.—The amount required to be included in gross income for any taxable year under subsection (a)(2) shall be reduced by any designated recontribution.

(2) DESIGNATED RECONTRIBUTION.—For purposes of paragraph (1), a designated recontribution is any contribution to any plan described in subsection (c)(1)(B)—

(A) which the taxpayer designates (in such manner as the Secretary of the Treasury may prescribe) as in lieu of all (or any portion of) any amount required to be included in gross income under subsection (a)(2) for a taxable year, and

(B) which is made not later than the due date (without extensions) for such taxable year.

(3) NO DEDUCTION ALLOWED FOR RECONTRIBUTION, ETC.—For purposes of the Internal Revenue Code of 1986, a designated recontribution shall not be treated as a contribution for any taxable year.

(c) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

(1) IN GENERAL.—Subsection (a) shall not apply to any taxpayer if the adjusted gross income of the taxpayer for the taxpayer's first taxable year beginning in 1991 exceeds—

(A) \$100,000 in the case of married individuals filing a joint return,

(B) \$50,000 in the case of a married individual filing a separate return, and

(C) \$75,000 in the case of any other taxpayer.

(2) SPECIAL RULE FOR GRANDPARENTS AND PARENTS.—If a withdrawal is used to pay qualified acquisition costs of a first-time homebuyer who is the child or grandchild of a taxpayer, paragraph (1) shall be applied by reference to the adjusted gross income of the child or grandchild (and, if applicable, their spouse).

(d) QUALIFIED WITHDRAWAL.—For purposes of this section—

(1) IN GENERAL.—The term "qualified withdrawal" means any payment or distribution—

(A) which is made to an individual during 1992,

(B) which is made from—

(i) an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) established for the benefit of the individual, or

(ii) amounts attributable to employer contributions made on behalf of the individual pursuant to elective deferrals described in section 402(g)(3)(A) or (C) or 501(c)(18)(D)(iii) of such Code, and

(C) which is used by the individual for a qualified acquisition not later than the earlier of—

(i) the date which is 6 months after the date of such payment or distribution, or

(ii) the date on which the individual files the individual's income tax return for the taxable year in which such payment or distribution occurs.

(2) QUALIFIED ACQUISITION.—The term "qualified acquisition" means—

(A) the payment of qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is the taxpayer or the child or grandchild of the taxpayer, or

(B) the purchase of a new passenger automobile.

(C) DOLLAR LIMITATION.—The aggregate amount which may be treated as qualified withdrawals under paragraph (1) with respect to all plans and amounts of an individual described in subsection (c)(1)(B) shall not exceed \$10,000.

(4) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED ACQUISITION COSTS.—The term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs associated with such qualified acquisition costs.

(B) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—

(i) FIRST-TIME HOMEBUYER.—The term "first-time homebuyer" means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

(ii) PRINCIPAL RESIDENCE.—The term "principal residence" has the same meaning as when used in section 1034.

(iii) DATE OF ACQUISITION.—The term "date of acquisition" means the date—

(I) on which a binding contract to acquire the principal residence to which this subsection applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(C) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

(i) Any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in paragraph (1), and

(ii) by reason of a delay in the acquisition of the residence, the requirements of paragraph (1) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) of the Internal Revenue Code of 1986 without regard to section 408(d)(3)(B) of such Code, and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) of such Code applies to any other amount.

(D) DISTRIBUTION RULES.—Any qualified withdrawal shall not be treated as failing to meet the requirements of sections 401(k)(2)(B)(i) or 403(b)(11) of such Code.

(e) ORDERING RULES FOR INCOME TAX PURPOSES.—For purposes of the Internal Revenue Code of 1986—

(1) all plans and amounts described in subsection (c)(1)(B) with respect to an individual shall be treated as one plan, and

(2) qualified withdrawals from such plan shall be treated as made—

NOTICES OF HEARINGS

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, March 26, 1992, beginning at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills currently pending before the subcommittee. The bills are:

S. 1439, to authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, Louisiana;

S. 1663, to amend the act of May 17, 1954, relating to the Jefferson National Expansion Memorial, to authorize increased funding for the East Saint Louis portion of the Memorial, and for other purposes;

S. 1664, to establish the Keweenaw National Historical Park, and for other purposes;

S. 2079, to establish the Marsh-Billings National Historical Park in the State of Vermont, and for other purposes; and

H.R. 2790, to withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, anyone wishing to submit written testimony to be included in the hearing record is welcome to do so. Those wishing to submit written testimony should send two copies to the Subcommittee on Public Lands, National Parks and Forests, Committee on Energy and Natural Resources, 304 Dirksen Senate Office Building, Washington, DC 20510.

For further information regarding the hearing, please contact David Brooks of the subcommittee staff at (202) 224-9863.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, March 10, 1992, at 10:30 a.m., for a hearing on Secretary Martin and Department of Labor regulatory policy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 10, 1992, at 10 a.m., to hold a hearing on strategic nuclear reductions in a post-cold war world.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, March 10, 1992, at 3 p.m., to hold an open confirmation hearing on Vice Adm. William O. Studeman to be Deputy Director of Central Intelligence.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CHILDREN, FAMILY, DRUGS
AND ALCOHOLISM

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Children, Family, Drugs and Alcoholism of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Tuesday, March 10, 1992, at 9:30 a.m., for a hearing on the common good: forging public-private partnerships for the new economy.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

FAREWELL TO JOSEPH VERNER
REED

• Mr. DODD. Mr. President, I would like to give special recognition to Ambassador Joseph Verner Reed, who served as the U.S. Chief of Protocol from February, 1989 to October, 1991. As Chief of Protocol, Ambassador Reed acted on behalf of the United States as host to all foreign ambassadors. Through his innovative brand of diplomacy, he successfully brought together representatives from all over the world and integrated them into the political life of this country. He was particularly known for his warmth and hospitality toward foreign visitors.

Ambassador Reed has departed Washington for his new post as Public Delegate to the United Nations. He will be sorely missed by all who were familiar with his own special approach to matters of protocol and the art of diplomacy.

For these reasons, I would like to call attention to a very insightful column about Ambassador Reed, entitled "Diplomacy delivered with a smile," that was written by the distinguished syndicated columnist, Georgie Anne Geyer. This column very eloquently depicts the rare and warm diplomacy that characterized Ambassador Reed's tenure as Chief of Protocol. I would urge my colleagues to read it. Mr. President, I would ask unanimous consent that the column be printed in the RECORD at this point.

In conclusion, I wish to thank Ambassador Reed for his service to our country, and to wish him well in his new endeavors.

DIPLOMACY DELIVERED WITH A SMILE

(By Georgie Anne Geyer)

Even the best of American diplomats leave Washington in a farewell aura of gray respectability. Genuine wit, much less a healthy sense of mischievousness, is harder to come by here than a Quaker prayer in a Baghdad mosque.

So, when U.S. Chief of Protocol Joseph Verner Reed leaves this month, the nation's capital will be losing its most irreplaceable human spirit, a man who has been the Bush administration's first face and first handshake to the foreign diplomatic world.

"The art of protocol is to set the stage for diplomacy, where diplomats can conduct for-

eign affairs. If that stage is not carefully scripted and cadenced, you have a recipe for disaster"—this is one of his many serious and wise observations on his world.

But perhaps the better measure of this "different" (to put it mildly) diplomat can be taken in ways seldom considered around here. "Of course, this is show biz," this man who is responsible for the hospitality for all foreign diplomats and guests mused with me recently. "But politics is show biz. To set the stage for a state visit is La Scala!"

On every level, Ambassador Joseph Reed's nearly three years here have indeed played like a production at La Scala. He is perfectly capable of waltzing into lunch at Blair House for African diplomats in an African robe, delighting most and jarring some. He dispatches his own "Joseph's Jelly" with funny cards to special friends. (If you don't get the jelly, you still might get one of the gold pens with his name on it.) He obviously delights in his cornucopia of 21 decorations (at last count, who knows what today will bring?) from foreign governments around the globe.

The 54-year-old Mr. Reed immediately attracts attention with his rangy slimness (6 foot 3 inches) and his engaging, encompassing smile. Physically, he is a kind of cross between Prince Philip and the Tin Woodman, his elegantly cut Savile Row suits emblazoned by elegant medals and rosettes from smaller countries like Niger and Mali.

The inborn theatricality—which somehow sprang out of a patrician upbringing in Greenwich, Conn., and some years working as chief of staff for David Rockefeller—elicits snickers among some "serious" Washingtonians. He is sometimes criticized for his bedeviling (and his bemedaling).

But when one watches him and analyzes this rare diplomacy of his, one wonders whether in such a different view of diplomacy a true seriousness might not be found.

Mr. Reed could have come to Washington from his ambassadorship to Morocco and from his subsequent job as an undersecretary at the United Nations and done the usual formal protocol job of cultivating the "big" countries. Instead, he immediately cultivated and invited to luncheons at Blair House the Third World diplomats who have most often been left on their own in Washington. Having worked on the major U.N. "special session" on Africa in 1986 and having crisscrossed the continent because of it, he has been particularly close to the African ambassadors.

"I came to the position with a determined plan to bring the various regions of the world together," he told me. "What I tried to do with the Blair House luncheons was to mix the regions—lunch, briefings, coffee. The ambassador from Mauritius had been here a total of 23 years, for instance, and he had never been to a Fourth of July celebration." (Not surprisingly, Mr. Reed gave a Fourth of July party for the diplomats, complete with hot dogs and an ice cream truck.)

Overseeing "the maintenance, care and concern for 228,000 diplomats and their families in the United States is like being the leader of a fairly good-sized town," he said.

Or, as a close friend summed up with admiration, "Joseph treats everybody equally and makes everyone feel good."

Making everybody feel good has not, however, meant doing everything perfectly: One premier faux pas occurred when Queen Elizabeth II visited in the spring and only the queen's big hat was visible over the lectern as she addressed a crowd outside the White House. Someone had forgotten to put a stool there for her to step onto, but after genteelly

taking the blame, he immediately came back with the big smile and said, "I thought her hat was so beautiful. I wanted all of Washington to see it."

Mr. Reed becomes this month America's "public delegate" to the United Nations he served and loved before. Surely there will be more decorations (indeed, a French Legion of Honor is in the works). But what Joseph Reed will be remembered more for here, at least by many of us, is his merriment about the world—in the end, a serious merriment that served his country well. •

LETTER TO SUPREME COURT
JUSTICE CLARENCE THOMAS

• Mr. SIMON. Mr. President, rarely have I read a more eloquent or more moving article than the open letter addressed to Justice Clarence Thomas from the retired chief judge of the U.S. Court of Appeals for the Third Circuit, Judge A. Leon Higginbotham, Jr. It appeared in the University of Pennsylvania Law Review of January.

Judge Higginbotham is known to most of us as one of the pioneering African-American judges on the Federal courts.

I had always had an excellent impression of Judge Higginbotham, but I frankly did not know or understand his eloquence, passion, and scholarship as thoroughly as I should have.

I could comment on specifics in his open letter to Justice Thomas, but it would detract from the document itself.

I ask that the letter from Judge Higginbotham be printed in the RECORD at this point.

The letter follows:

AN OPEN LETTER TO JUSTICE CLARENCE THOMAS
AS FROM A FEDERAL JUDICIAL COLLEAGUE

(By A. Leon Higginbotham, Jr.)*

DEAR JUSTICE THOMAS: The President has signed your Commission and you have now become the 106th Justice of the United States Supreme Court. I congratulate you on this high honor!

It has been a long time since we talked. I believe it was in 1980 during your first year as a Trustee at Holy Cross College. I was there to receive an honorary degree. You were thirty-one years old and on the staff of Senator John Danforth. You had not yet started your meteoric climb through the government and federal judicial hierarchy. Much has changed since then.

At first I thought that I should write you privately—the way one normally corresponds with a colleague or friend. I still feel ambivalent about making this letter public but I do so because your appointment is profoundly important to this country and the world, and because all Americans need to understand the issues you will face on the Supreme Court. In short, Justice Thomas, I write this letter as a public record so that this generation can understand the challenges you face as an Associate Justice to the Supreme Court, and the next can evaluate the choices you have made or will make.

The Supreme Court can be a lonely and insular environment. Eight of the present Justices' lives would not have been very dif-

*Footnotes at end of article.

ferent if the Brown case had never been decided as it was. Four attended Harvard Law School, which did not accept women law students until 1950.¹ Two attended Stanford Law School prior to the time when the first Black matriculated there.² None has been called a "nigger"³ or suffered the acute deprivations of poverty.⁴ Justice O'Connor is the only other Justice on the Court who at one time was adversely affected by a white-male dominated system that often excludes both women and minorities from equal access to the rewards of hard work and talent.

By elevating you to the Supreme Court, President Bush has suddenly vested in you the option to preserve or dilute the gains this country has made in the struggle for equality. This is a grave responsibility indeed. In order to discharge it you will need to recognize what James Baldwin called the "force of history" within you.⁵ You will need to recognize that both your public life and your private life reflect this country's history in the area of racial discrimination and civil rights. And, while much has been said about your admirable determination to overcome terrible obstacles, it is also important to remember how you arrived where you are now, because you did not get there by yourself.

When I think of your appointment to the Supreme Court, I see not only the result of your own ambition, but also the culmination of years of heartbreaking work by thousands who preceded you. I know you may not want to be burdened by the memory of their sacrifices. But I also know that you have no right to forget that history. Your life is very different from what it would have been had these men and women never lived. That is why today I write to you about this country's history of civil rights lawyers and civil rights organizations; its history of voting rights; and its history of housing and privacy rights. This history has affected your past and present life. And forty years from now, when your grandchildren and other Americans measure your performance on the Supreme Court, that same history will determine whether you fulfilled your responsibility with the vision and grace of the Justice whose seat you have been appointed to fill: Thurgood Marshall.

1. Measures of Greatness or Failure of Supreme Court Justices

In 1977 a group of one hundred scholars evaluated the first one hundred justices on the Supreme Court.⁶ Eight of the justices were categorized as failures, six as below average, fifty-five as average, fifteen as near great and twelve as great.⁷ Among those ranked as great were John Marshall, Joseph Story, Roger B. Taney, John M. Harlan, Oliver Wendell Holmes, Jr., Charles E. Hughes, Louis D. Brandeis, Harlan F. Stone, Benjamin N. Cardozo, Hugo L. Black, and Felix Frankfurter.⁸ Because you have often criticized the Warren Court,⁹ you should be interested to know that the list of great jurists on the Supreme Court also included Earl Warren.¹⁰

Even long after the deaths of the Justices that I have named, informed Americans are grateful for the extraordinary wisdom and compassion they brought to their judicial opinions. Each in his own way viewed the Constitution as an instrument for justice. They made us a far better people and this country a far better place. I think that Justices Thurgood Marshall, William J. Brennan, Harry Blackmun, Lewis Powell, and John Paul Stevens will come to be revered by future scholars and future generations with the same gratitude. Over the next four

decades you will cast many historic votes on issues that will profoundly affect the quality of life for our citizens for generations to come. You can become an exemplar of fairness and the rational interpretation of the Constitution, or you can become an archetype of inequality and the retrogressive evaluation of human rights. The choice as to whether you will build a decisional record of true greatness or of more mediocrity is yours.

II. OUR MAJOR SIMILARITY

My more than twenty-seven years as a federal judge made me listen with intense interest to the many persons who testified both in favor of and against your nomination. I studied the hearings carefully and afterwards pondered your testimony and the comments others made about you. After reading almost every word of your testimony, I concluded that what you and I have most in common is that we are both graduates of Yale Law School. Though our graduation classes are twenty-two years apart, we have both benefited from our old Eli connections.

If you had gone to one of the law schools in your home state, Georgia, you probably would not have met Senator John Danforth who, more than twenty years ago, served with me as a member of the Yale Corporation. Dean Guido Calabresi mentioned you to Senator Danforth, who hired you right after graduation from law school and became one of your primary sponsors. If I had not gone to Yale Law School, I would probably not have met Justice Curtis Bok, nor Yale Law School alumni such as Austin Norris, a distinguished black lawyer, and Richardson Dilworth, a distinguished white lawyer, who became my mentors and gave me my first jobs. Nevertheless, now that you sit on the Supreme Court, there are issues far more important to the welfare of our nation than our Ivy League connections. I trust that you will not be overly impressed with the fact that all of the other Justices are graduates of what laymen would call the nation's most prestigious law schools.

Black Ivy League alumni in particular should never be too impressed by the educational pedigree of Supreme Court Justices. The most wretched decision ever rendered against black people in the past century was *Plessy v. Ferguson*.¹¹ It was written in 1896 by Justice Henry Billings Brown, who had attended both Yale and Harvard Law Schools. The opinion was joined by Justice George Shiras, a graduate of Yale Law School, as well as by Chief Justice Melville Fuller and Justice Horace Gray, both alumni of Harvard Law School.

If those four Ivy League alumni on the Supreme Court in 1896 had been as faithful in their interpretation of the Constitution as Justice John Harlan, a graduate of Transylvania, a small law school in Kentucky, then the venal precedent of *Plessy v. Ferguson*, which established the federal "separate but equal" doctrine and legitimized the worst forms of race discrimination, would not have been the law of our nation for sixty years. The separate but equal doctrine, also known as Jim Crow, created the foundations of separate and unequal allocation of resources, and oppression of the human rights of Blacks.

During your confirmation hearing I heard you refer frequently to your grandparents and your experiences in Georgia. Perhaps now is the time to recognize that if the four Ivy League alumni—all northerners—of the *Plessy* majority had been as sensitive to the plight of black people as was Justice John Harlan, a former slave holder from Ken-

tucky,¹² the American statutes that sanctioned racism might not have been on the books—and many of the racial injustices that your grandfather, Myers Anderson, and my grandfather, Moses Higginbotham, endured would never have occurred.

The tragedy with *Plessy v. Ferguson*, is not that the Justices had the "wrong" education, or that they attended the "wrong" law schools. The tragedy is that the Justices had the wrong values, and that these values poisoned this society for decades. Even worse, millions of Blacks today still suffer from the tragic sequelae of *Plessy*—a case which Chief Justice Rehnquist,¹³ Justice Kennedy,¹⁴ and most scholars now say was wrongly decided.¹⁵

As you sit on the Supreme Court confronting the profound issues that come before you, never be impressed with how bright your colleagues are. You must always focus on what values they bring to the task of interpreting the Constitution. Our Constitution has an unavoidable—though desirable—level of ambiguity, and there are many interstitial spaces which as a Justice of the Supreme Court you will have to fill in.¹⁶ To borrow Justice Cardozo's elegant phrase: "We do not pick our rules of law full blossomed from the trees."¹⁷ You and the other Justices cannot avoid putting your imprimatur on a set of values. The dilemma will always be which particular values you choose to sanction in law. You can be part of what Chief Justice Warren, Justice Brennan, Justice Blackmun, and Justice Marshall and others have called the evolutionary movement of the Constitution¹⁸—an evolutionary movement that has benefited you greatly.

III. YOUR CRITIQUES OF CIVIL RIGHTS ORGANIZATIONS AND THE SUPREME COURT DURING THE LAST EIGHT YEARS

I have read almost every article you have published, every speech you have given, and virtually every public comment you have made during the past decade. Until your confirmation hearing I could not find one shred of evidence suggesting an insightful understanding on your part on how the evolutionary movement of the Constitution and the work of civil rights organizations have benefited you. Like Sharon McPhail, the President of the National Bar Association, I kept asking myself: Will the Real Clarence Thomas Stand Up?¹⁹ Like her, I wondered: "Is Clarence Thomas a 'conservative with a common touch' as Ruth Marcus refers to him . . . or the 'counterfeit hero' he is accused of being by Haywood Burns . . . ?"²⁰

While you were a presidential appointee for eight years, as Chairman of the Equal Opportunity Commission and as an Assistant Secretary of the Department of Education, you made what I would regard as unwarranted criticisms of civil rights organizations,²¹ the Warren Court,²² and even of Justice Thurgood Marshall.²³ Perhaps these criticisms were motivated by what you perceived to be your political duty to the Reagan and Bush administrations. Now that you have assumed what should be the non-partisan role of a Supreme Court Justice, I hope you will take time out to carefully evaluate some of these unjustified attacks.

In October 1987, you wrote a letter to the San Diego Union & Tribune criticizing a speech given by Justice Marshall on the 200th anniversary celebration of the Constitution.²⁴ Justice Marshall had cautioned all Americans not to overlook the momentous events that followed the drafting of that document, and to "seek . . . a sensitive understanding of the Constitution's inherent defects, and its promising evolution through 200 years of history."²⁵

Your response dismissed Justice Marshall's "sensitive understanding" as an "exasperating and incomprehensible . . . assault on the Bicentennial, the Founding, and the Constitution itself."²⁵ Yet, however high and noble the Founders' intentions may have been, Justice Marshall was correct in believing that the men who gathered in Philadelphia in 1787 "could not have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and the descendant of an African slave."²⁷ That, however, was neither an assault on the Constitution nor an indictment of the Founders. Instead, it was simply a recognition that in the midst of the Bicentennial celebration, "[s]ome may more quietly commemorate the suffering, the struggle and sacrifice that has triumphed over much of what was wrong with the original document, and observe the anniversary with hopes not realized and promises not fulfilled."²⁸

Justice Marshall's comments, much like his judicial philosophy, were grounded in history and were driven by the knowledge that even today, for millions of Americans, there still remain "hopes not realized and promises not fulfilled." His reminder to the nation that patriotic feelings should not get in the way of thoughtful reflection on this country's continued struggle for equality was neither new nor misplaced.²⁹ Twenty-five years earlier, in December 1962, while this country was celebrating the 100th anniversary of the emancipation proclamation, James Baldwin had written to his young nephew:

"This is your home, my friend, do not be driven from it; great men have done great things here, and will again, and we can make America what America must become. . . . [But] you know, and I know that the country is celebrating one hundred years of freedom one hundred years too soon."³⁰

Your response to Justice Marshall's speech, as well as your criticisms of the Warren court and civil rights organizations, may have been nothing more than your expression of allegiance to the conservatives who made you Chairman of the EEOC, and who have now elevated you to the Supreme Court. Buy your comments troubled me then and trouble me still because they convey a stunted knowledge of history and an unformed judicial philosophy. Now that you sit on the Supreme Court you must sort matters out for yourself and form your own judicial philosophy, and you must reflect more deeply on legal history than you ever have before. You are no longer privileged to offer flashy one-liners to delight the conservative establishment. Now what you write must inform, not entertain. Now your statements and your votes can shape the destiny of the entire nation.

Notwithstanding the role you have played in the past, I believe you have the intellectual depth to reflect upon and rethink the great issues the Court has confronted in the past and to become truly your own man. But to be your own man the first in the series of questions you must ask yourself is this: Beyond your own admirable personal drive, what were the primary forces or acts of good fortune that made your major achievements possible? This is a hard and difficult question. Let me suggest that you focus on at least four areas: (a) the impact of the work of civil rights lawyers and civil rights organizations on your life; (2) other than having picked a few individuals to be their favorite colored person, what it is that the conserv-

atives of each generation have done that has been of significant benefit to African-Americans, women, or other minorities; (3) the impact of the eradication of racial barriers in the voting on your own confirmation; and (4) the impact of civil rights victories in the area of housing and privacy on your personal life.

IV. THE IMPACT OF THE WORK ON CIVIL RIGHTS LAWYERS AND CIVIL RIGHTS ORGANIZATIONS ON YOUR LIFE

During the time when civil rights organizations were challenging the Reagan Administration, I was frankly dismayed by some of your responses to and denigrations of these organizations. In 1984, the Washington Post reported that you had criticized traditional civil rights leaders because, instead of trying to reshape the Administration's policies, they had gone to the news media to "bitch, bitch, bitch, moan and moan, whine and whine."³¹ If that is still your assessment of these civil rights organizations or their leaders, I suggest, Justice Thomas, that you should ask yourself every day what would have happened to you if there had never been a Charles Hamilton Houston, a William Henry Hastie, a Thurgood Marshall, and that small cadre of other lawyers associated with them, who laid the groundwork for success in the twentieth-century racial civil rights cases? Couldn't they have been similarly charged with, as you phrased it, bitching and moaning and whining when they challenged the racism in the administrations of prior presidents, governors, and public officials? If there had never been an effective NAACP, isn't it highly probable that you might still be in Pin Point, Georgia, working as a laborer as some of your relatives did for decades?

Even though you had the good fortune to move to Savannah, Georgia, in 1955, would you have been able to get out of Savannah and get a responsible job if decades earlier the NAACP had not been challenging racial injustice throughout America? If the NAACP had not been lobbying, picketing, protesting, and picketing for a 1964 Civil Rights Act, would Monsanto Chemical Company have opened their doors to you in 1977? If Title VII had not been enacted might not American companies still continue to discriminate on the basis of race, gender, and national origin?

The philosophy of civil rights protest evolved out of the fact that black people were forced to confront this country's racist institutions without the benefit of equal access to those institutions. For example, in January of 1941, A. Philip Randolph planned a march on Washington, D.C., to protest widespread employment discrimination in the defense industry.³² In order to avoid the prospect of a demonstration by potentially tens of thousands of Blacks, President Franklin Delano Roosevelt issued Executive Order 8802 barring discrimination in defense industries or government. The order led to the inclusion of anti-discrimination clauses in all government defense contracts and the establishment of the Fair Employment Practices Committee.³³

In 1940, President Roosevelt appointed William Henry Hastie as civilian aide to Secretary of War Henry L. Stimson. Hastie fought tirelessly against discrimination, but when confronted with an unabated program of segregation in all areas of the armed forces, he resigned on January 31, 1943. His visible and dramatic protest sparked the move towards integrating the armed forces, with immediate and far-reaching results in the army air corps.³⁴

A. Philip Randolph and William Hastie understood—though I wonder if you do—what Frederick Douglass meant when he wrote:

"The whole history of the progress of human liberty shows that all concessions yet made to her august claims, have been born of earnest struggle. . . . If there is no struggle there is no progress. . . ."

"This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will."³⁵

The struggles of civil rights organizations and civil rights lawyers have been both moral and physical, and their victories have been neither easy nor sudden. Though the *Brown* decision was issued only six years after your birth, the road to *Brown* started more than a century earlier. It started when Prudence Crandall was arrested in Connecticut in 1833 for attempting to provide schooling for colored girls.³⁶ It was continued in 1849 when Charles Sumner, a white lawyer and abolitionist, and Benjamin Roberts, a black lawyer,³⁷ challenged segregated schools in Boston.³⁸ It was continued as the NAACP, starting with Charles Hamilton Houston's suit, *Murray v. Pearson*,³⁹ in 1936, challenged Maryland's policy of excluding Blacks from the University of Maryland Law School. It was continued in *Gaines v. Missouri*,⁴⁰ when Houston challenged a 1937 decision to the Missouri Supreme Court. The Missouri courts had held that because law schools in the states of Illinois, Iowa, Kansas, and Nebraska accepted Negroes, a twenty-five-year-old black citizen of Missouri was not being denied his constitutional right to equal protection under the law when he was excluded from the only state supported law school in Missouri. It was continued in *Sweatt v. Painter*⁴¹ in 1946, when Herman Marion Sweatt filed suit for admission to the Law School of the University of Texas after his application was rejected solely because he was black. Rather than admit him, the University postponed the matter for years and put up a separate and unaccredited law school for Blacks. It was continued in a series of cases against the University of Oklahoma, when, in 1950, in *McLaurin v. Oklahoma*,⁴² G.W. McLaurin, a sixty-eight-year-old man, applied to the University of Oklahoma to obtain a Doctorate in education. He had earned his Master's degree in 1948, and had been teaching at Langston University, the state's college for Negroes.⁴³ Yet he was "required to sit apart at . . . designated desk(s) in an anteroom adjoining the classroom . . . [and] on the mezzanine floor of the library, . . . and to sit at a designated table and to eat at a different time from the other students in the school cafeteria."⁴⁴

The significance of the victory in the *Brown* case cannot be overstated. *Brown* changed the moral tone of America; by eliminating the legitimization of state-imposed racism, it implicitly questioned racism wherever it was used. It created a milieu in which private colleges were forced to recognize their failures in excluding or not welcoming minority students. I submit that even your distinguished undergraduate college, Holy Cross, and Yale University were influenced by the milieu created by *Brown* and thus became more sensitive to the need to create programs for the recruitment of competent minority students. In short, isn't it possible that you might not have gone to Holy Cross if the NAACP and other civil rights organizations, Martin Luther King and the Supreme Court, had not recast the racial mores of America? And if you had not

gone to Holy Cross, and instead had gone to some underfunded state college for Negroes in Georgia, would you have been admitted to Yale Law School, and would you have met the alumni who played such a prominent role in maximizing your professional options?

I have cited this litany of NAACP⁴⁵ cases because I don't understand why you appeared so eager to criticize civil rights organizations or their leaders. In the 1980s, Benjamin Hooks and John Jacobs worked just as tirelessly in the cause of civil rights as did their predecessors Walter White, Roy Wilkins, Whitney Young, and Vernon Jordan in the 1950s and '60s. As you now start to adjudicate cases involving civil rights, I hope you will have more judicial integrity than to demean those advocates of the disadvantaged who appear before you. If you and I had not gotten many of the positive reinforcements that these organizations fought for and that the post-*Brown* era made possible, probably neither you nor I would be federal judges today.

V. WHAT HAVE THE CONSERVATIVES EVER CONTRIBUTED TO AFRICAN-AMERICANS?

During the last ten years, you have often described yourself as a black conservative. I must confess that, other than their own self-advancement, I am at a loss to understand what is it that the so-called conservatives are so anxious to conserve. Now that you no longer have to be outspoken on their behalf, perhaps you will recognize that in the past it was the white "conservatives" who screamed "segregation now, segregation forever!" It was primarily the conservatives who attacked the Warren Court relentlessly because of *Brown v. Board of Education* and who stood in the way of almost every measure to ensure gender and racial advancement.

For example, on March 11, 1956, ninety-six members of Congress, representing eleven southern states, issued the "Southern Manifesto," in which they declared that the *Brown* decision was an "unwarranted exercise of power by the Court, contrary to the Constitution."⁴⁶ Ironically, those members of Congress reasoned that the *Brown* decision was "destroying the amicable relations between the white and negro races,"⁴⁷ and that "it had planted hatred and suspicion where there had been heretofore friendship and understanding."⁴⁸ They then pledged to use all lawful means to bring about the reversal of the decision, and praised those states which had declared the intention to resist its implementation.⁴⁹ The Southern Manifesto was more than mere political posturing by Southern Democrats. It was a thinly disguised racist attack on the constitutional and moral foundations of *Brown*. Where were the conservatives in the 1950s when the cause of equal rights needed every fair-minded voice it could find?

At every turn, the conservatives, either by tacit approbation or by active complicity, tried to derail the struggle for equal rights in this country. In the 1960s, it was the conservatives, including the then-senatorial candidate from Texas, George Bush,⁵⁰ the then-Governor from California, Ronald Reagan,⁵¹ and the omnipresent Senator Strom Thurmond,⁵² who argued that the 1964 Civil Rights Act was unconstitutional. In fact Senator Thurmond's 24 hour 18 minute filibuster during Senate deliberations on the 1957 Civil Rights Act set an all-time record.⁵³ He argued on the floor of the Senate that the provisions of the Act guaranteeing equal access to public accommodations amounted to an enslavement of white people.⁵⁴ If twenty-seven years ago George Bush, Ronald Reagan, and Strom Thurmond had succeeded, there would have been no position for

you to fill as Assistant Secretary for Civil Rights in the Department of Education. There would have been no such agency as the Equal Employment Commission for you to chair.

Thus, I think now is the time for you to reflect on the evolution of American constitutional and statutory law, as it has affected your personal options and improved the options for so many Americans, particularly non-whites, women, and the poor. If the conservative agenda of the 1950s, '60s, and '70s had been implemented, what would have been the results of the important Supreme Court cases that now protect your rights and the rights of millions of other Americans who can now no longer be discriminated against because of their race, religion, national origin, or physical disabilities? If, in 1954, the United States Supreme Court had accepted the traditional rationale that so many conservatives then espoused, would the 1896 *Plessy v. Ferguson* case, which announced the nefarious doctrine of "separate but equal," and which allowed massive inequalities, still be the law of the land? In short, if the conservatives of the 1950s had had their way, would there ever have been a *Brown v. Board of Education* to prohibit state-imposed racial segregation?

VI. THE IMPACT OF ERADICATING RACIAL BARRIERS TO VOTING

Of the fifty-two senators who voted in favor of your confirmation, some thirteen hailed from nine southern states. Some may have voted for you because they agreed with President Bush's assessment that you were "the best person for the position."⁵⁵ But, candidly, Justice Thomas, I do not believe that you were indeed the most competent person to be on the Supreme Court. Charles Bowser, a distinguished African-American Philadelphia lawyer, said "I'd be willing to bet . . . that not one of the senators who voted to confirm Clarence Thomas would hire him as their lawyer."⁵⁶

Thus, realistically, many senators probably did not think that you were the most qualified person available. Rather, they were acting solely as politicians, weighing the potential backlash in their states of the black vote that favored you for emotional reasons and the conservative white vote that favored you for ideological reasons. The black voting constituency is important in many states, and today it could make a difference as to whether many senators are or are not re-elected. So here, too, you benefitted from civil rights progress.

No longer could a United States Senator say what Senator Benjamin Tillman of South Carolina said in anger when President Theodore Roosevelt invited a moderate Negro, Booker T. Washington, to lunch at the White House: "Now that Roosevelt has eaten with that nigger Washington, we shall have to kill a thousand niggers to get them back to their place."⁵⁷ Senator Tillman did not have to fear any retaliation by Blacks because South Carolina and most southern states kept Blacks "in their place" by manipulating the ballot box. For example, because they did not have to confront the restraints and prohibitions of later Supreme Court cases, the manipulated "white" primary allowed Tillman and other racist senators to profit from the threat of violence to Blacks who voted, and from the disproportionate electoral power given to rural whites. For years, the NAACP litigated some of the most significant cases attacking racism at the ballot box. That organization almost singlehandedly created the foundation for black political power that led in part to the 1965 Civil Rights Act.

Moreover, if it had not been for the Supreme Court's opinion, in *Smith v. Allright*,⁵⁸ a case which Thurgood Marshall argued, most all the southern senators who voted for you would have been elected in what was once called a "white primary"—a process which precluded Blacks from effective voting in the southern primary election, where the real decisions were made on who would run every hamlet, township, city, county and state. The seminal case of *Baker v. Carr*,⁵⁹ which articulated the concept of one man-one vote, was part of a series of Supreme Court precedents that caused southern senators to recognize that patently racist diatribes could cost them an election. Thus your success even in your several confirmation votes is directly attributable to the efforts that the "activist" Warren Court and civil rights organizations have made over the decades.

VII. HOUSING AND PRIVACY

If you are willing, Justice Thomas, to consider how the history of civil rights in this country has shaped your public life, then imagine for a moment how it has affected your private life. With some reluctance, I make the following comments about housing and marriage because I hope that reflecting on their constitutional implications may raise your consciousness and level of insight about the dangers of excessive intrusion by the state in personal and family relations.

From what I have seen of your house on television scans and in newspaper photos, it is apparent that you live in a comfortable Virginia neighborhood. Thus I start with Holmes's view that "a page of history is worth a volume of logic."⁶⁰ The history of Virginia's legislatively and judicially imposed racism should be particularly significant to you now that as a Supreme Court Justice you must determine the limits of a state's intrusion on family and other matters of privacy.

It is worthwhile pondering what the impact on you would have been if Virginia's legalized racism had been allowed to continue as a viable constitutional doctrine. In 1912, Virginia enacted a statute giving cities and towns the right to pass ordinances which would divide the city into segregated districts for black and white residents.⁶¹ Segregated districts were designated white or black depending on the race of the majority of the residents.⁶² It became a crime for any black person to move into and occupy a residence in an area known as a white district.⁶³ Similarly, it was a crime for any white person to move into a black district.⁶⁴

Even prior to the Virginia statute of 1912, the cities of Ashland and Richmond had enacted such segregationist statutes.⁶⁵ The ordinances also imposed the same segregationist policies on any "place of public assembly."⁶⁶ Apparently schools, churches, and meeting places were defined by the color of their members. Thus, white Christian Virginia wanted to make sure that no black Christian churches were in their white Christian neighborhoods.

The impact of these statutes can be assessed by reviewing the experiences of two African-Americans, John Coleman and Mary Hopkins. Coleman purchased property in Ashland, Virginia in 1911.⁶⁷ In many ways he symbolized the American dream of achieving some modest upward mobility by being able to purchase a home earned through initiative and hard work. But shortly after moving to his home, he was arrested for violating Ashland's segregation ordinance because a majority of the residents in the block were white. Also, in 1911, the City of Richmond

prosecuted and convicted a black woman, Mary S. Hopkins, for moving into a predominantly white block.⁶⁸

Coleman and Hopkins appealed their convictions to the Supreme Court of Virginia which held that the ordinances of Ashland and Richmond did not violate the United States Constitution and that the fines and convictions were valid.⁶⁹

If Virginia's law of 1912 still prevailed, and if your community passed laws like the ordinances of Richmond and Ashland, you would not be able to live in your own house. Fortunately, the Virginia ordinances and statutes were in effect nullified by a case brought by the NAACP in 1915, where a similar statute of the City of Louisville was declared unconstitutional.⁷⁰ But even if your town council had not passed such an ordinance, the developers would in all probability have incorporated racially restrictive covenants in the title deeds to the individual homes. Thus, had it not been for the vigor of the NAACP's litigation efforts in a series of persistent attacks against racial covenants you would have been excluded from your own home. Fortunately, in 1948, in *Shelley v. Kraemer*,⁷¹ a case argued by Thurgood Marshall, the NAACP succeeded in having such racially restrictive covenants declared unconstitutional.

Yet with all of those litigation victories, you still might not have been able to live in your present house because a private developer might have refused to sell you a home solely because you are an African-American. Again you would be saved because in 1968 the Supreme Court, in *Jones v. Alfred H. Mayer Co.*, in an opinion by Justice Stewart, held that the 1866 Civil Rights Act precluded such private racial discrimination.⁷² It was a relatively close case; the two dissenting justices said that the majority opinion was "ill considered and ill-advised."⁷³ It was the values of the majority which made the difference. And it is your values that will determine the vitality of other civil rights acts for decades to come.

Had you overcome all of those barriers to housing and if you and your present wife decided that you wanted to reside in Virginia, you would nonetheless have been violating the Racial Integrity Act of 1924,⁷⁴ which the Virginia Supreme Court as late as 1966 said was consistent with the federal constitution because of the overriding state interest in the institution of marriage.⁷⁵ Although it was four years after the *Brown* case, Richard Perry Loving and his wife, Mildred Jeter Loving were convicted in 1958 and originally sentenced to one year in jail because of their interracial marriage. As an act of magnanimity the trial court later suspended the sentences, "for a period of 25 years upon the provision that both accused leave Caroline County and the state of Virginia at once and do not return together or at the same time to said county and state for a period of 25 years."⁷⁶

The conviction was affirmed by a unanimous Supreme Court of Virginia, though they remanded the case back as to the resentencing phase. Incidentally, the Virginia trial judge justified the constitutionality of the prohibition against interracial marriages as follows:

"Almighty God created the races white, black, yellow, Malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."⁷⁷

If the Virginia courts had been sustained by the United States Supreme Court in 1966,

and if, after your marriage, you and your wife had, like the Lovings, defied the Virginia statute by continuing to live in your present residence, you could have been in the penitentiary today rather than serving as an Associate Justice of the United States Supreme Court.

I note these pages of record from American legal history because they exemplify the tragedy of excessive intrusion on individual and family rights. The only persistent protector of privacy and family rights has been the United States Supreme Court, and such protection has occurred only when a majority of the Justices has possessed a broad vision of human rights. Will you, in your moment of truth, take for granted that the Constitution protects you and your wife against all forms of deliberate state intrusion into family and privacy matters, and protects you even against some forms of discrimination by other private parties such as the real estate developer, but nevertheless find that it does not protect the privacy rights of others, and particularly women, to make similarly highly personal and private decisions?

CONCLUSION

This letter may imply that I am somewhat skeptical as to what your performance will be as a Supreme Court Justice. Candidly, I and many other thoughtful Americans are very concerned about your appointment to the Supreme Court. But I am also sufficiently familiar with the history of the Supreme Court to know that a few of its members (not many) about whom there was substantial skepticism at the time of their appointment became truly outstanding Justices. In that context I think of Justice Hugo Black. I am impressed by the fact that at the very beginning of his illustrious career he articulated his vision of the responsibility of the Supreme Court. In one of his early major opinions he wrote, "courts stand . . . as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or . . . are nonconforming victims of prejudice and public excitement."⁷⁸

While there are many other equally important issues that you must consider and on which I have not commented, none will determine your place in history as much as your defense of the weak, the poor, minorities, women, the disabled and the powerless. I trust that you will ponder often the significance of the statement of Justice Blackmun, in a vigorous dissent of two years ago, when he said: "[S]adly . . . one wonders whether the majority [of the Court] still believes that . . . race discrimination—or more accurately, race discrimination against non-whites—is a problem in our society, or even remembers that it ever was."⁷⁹

You, however, must try to remember that the fundamental problems of the disadvantaged, women, minorities, and the powerless have not all been solved simply because you have "moved on up" from Pin Point, Georgia, to the Supreme Court. In your opening remarks to the Judiciary Committee, you described your life in Pin Point, Georgia, as "far removed in space and time from this room, this day and this moment."⁸⁰ I have written to tell you that your life today, however, should be not far removed from the visions and struggles of Frederick Douglass, Sojourner Truth, Harriet Tubman, Charles Hamilton Houston, A. Philip Randolph, Mary McLeod Bethune, W.E.B. Dubois, Roy Wilkins, Whitney Young, Martin Luther King, Judge William Henry Hastie, Justices Thurgood Marshall, Earl Warren, and William Brennan, as well as the thousands of others who dedicated much of their lives to

create the America that made your opportunities possible.⁸¹ I hope you have the strength of character to exemplify those values so that the sacrifices of all these men and women will not have been in vain.

I am sixty-three years old. In my lifetime I have seen African-Americans denied the right to vote, the opportunities to a proper education, to work, and to live where they choose.⁸² I have seen and known racial segregation and discrimination.⁸³ But I have also seen the decision in *Brown* rendered. I have seen the first African-American sit on the Supreme Court. And I have seen brave and courageous people, black and white, give their lives for the civil rights cause. My memory of them has always been without bitterness or nostalgia. But today it is sometimes without hope; for I wonder whether their magnificent achievements are in jeopardy. I wonder whether (and how far) the majority of the Supreme Court will continue to retreat from protecting the rights of the poor, women, the disadvantaged, minorities, and the powerless.⁸⁴ And if tragically, a majority of the Court continues to retreat, I wonder whether you, Justice Thomas, an African-American, will be part of that majority.

No one would be happier than I if the record you will establish on the Supreme Court in years to come demonstrates that my apprehensions were unfounded.⁸⁵ You were born into injustice, tempered by the hard reality of what it means to be poor and black in America, and especially to be poor because you are black. You have found a door newly cracked open and you have escaped. I trust you shall not forget that many who preceded you and many who follow you have found, and will find, the door of equal opportunity slammed in their faces through no fault of their own. And I also know that time and the tides of history often call out of men and women qualities that even did not know lay within them. And so, with hope to balance my apprehensions, I wish you well as a thoughtful and worthy successor to Justice Marshall in the ever ongoing struggle to assure equal justice under law for all persons.

Sincerely,

A. LEON HIGGINBOTHAM, Jr.

FOOTNOTES

*Chief Justice Emeritus, U.S. Court of Appeals for the Third Circuit, Senior Fellow University of Pennsylvania School of Law. Except for a few minor changes in the footnotes this article is a verbatim copy of the text of the letter sent to Justice Clarence Thomas on November 29, 1991. I would like to thank Judges Nathaniel Jones, Damon Keith, and Louis J. Pollak and Dr. Evelyn Brooks Higginbotham for their very helpful insights. I gratefully acknowledge the very substantial assistance of my law clerk Anderson Belgarde Francois, New York University School of Law, J.D. 1991. Some research assistance was provided by Nelson S. T. Thayer, Sonya Johnson, and Michael Tein from the University of Pennsylvania Law School. What errors remain are mine.

¹Justices Blackmun, Scalia, Kennedy, and Souter were members of the Harvard Law School Classes of 1932, 1960, 1961, and 1966 respectively. See "The American Bench," 16, 46, 72, 1566 (Marie T. Hough ed., 1989). The first woman to graduate from Harvard Law School was a member of the Class of 1963. Telephone interview with Emily Farnam, Alumni Affairs Office, Harvard University (Aug. 8, 1991).

²Chief Justice Rehnquist and Justice O'Connor were members of the Stanford Law School Class of 1952. See "The American Bench," *supra* note 1, at 63, 69. Stanford did not graduate its first black law student until 1968. Telephone interview with Shirley Wedlake, Assistant to the Dean of Student Affairs, Stanford University Law School (Dec. 10, 1991).

³Even courts have at times tolerated the use of the term "nigger" in one or another of its variations. In the not too distant past, appellate courts

have upheld convictions despite prosecutors' references to black defendants and witnesses in such racist terms as "black rascal," "burr-headed nigger," "mean negro," "big nigger," "pickaninny," "mean nigger," "three nigger men," "nigger men," "niggers," and "nothing but just a common Negro, [a] black whore." See A. Leon Higginbotham, Jr., *Racism in American and South African Courts: Similarities and Differences*, 65 "N.Y.U. L. Rev." 479, 542-43 (1990).

In addition, at least one Justice of the Supreme Court, James McReynolds, was a "white supremacist" who referred to Blacks as "niggers." See Randall Kennedy, *Race Relations Law and the Tradition of Celebration: The Case of Professor Schmidt*, 86 Colum. L. Rev. 1622, 1641 (1986); see also David Burner, James McReynolds, in 3 "The Justices of the United States Supreme Court 1789-1969," at 2023, 2024 (Leon Friedman & Fred L. Israel eds., 1969) (reviewing Justice McReynolds's numerous lone dissents as evidence of blatant racism). In 1938, a landmark desegregation case was argued before the Supreme Court by Charles Hamilton Houston, the brilliant black lawyer who laid the foundation for *Brown v. Board of Education*. During Houston's oral argument, McReynolds turned his back on the attorney and stared at the wall of the courtroom. Videotaped Statement of Judge Robert Carter to Judge Higginbotham (August 1987) (reviewing his observation of the argument in Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938)). In his autobiography, Justice William O. Douglas described how McReynolds received a rare, but well deserved comeuppance when he made a disparaging comment about Howard University.

"One day McReynolds went to the barbershop in the Court. Gates, the black barber, put the sheet around his neck and over his lap, and as he was pinning it behind him McReynolds said, 'Gates, tell me, where is this nigger university in Washington, D.C.?' Gates removed the white cloth from McReynolds, walked around and faced him, and said in a very calm and dignified manner, 'Mr. Justice, I am shocked that any Justice would call a Negro a nigger. There is a Negro college in Washington, D.C. Its name is Howard University and we are very proud of it.' McReynolds muttered some kind of apology and Gates resumed his work in silence." William O. Douglas, "The Court Years: 1939-1975," at 14-15 (1980).

"By contrast, according to the Census Bureau's definition of poverty, in 1991, one in five American children (and one in four preschoolers) is poor. See Clifford M. Johnson et al., "Child Poverty in America" 1 (Children's Defense Fund report, 1991).

"James Baldwin, *White Man's Guilt*, in "The Price of the Ticket" 409, 410 (1985).

"See Albert P. Blaustein & Roy M. Mersky, "The First One Hundred Justices" (1978). The published survey included ratings of only the first ninety-six justices because the four Nixon appointees (Burger, Blackman, Powell, and Rehnquist) had then been on the Court too short a time for an accurate evaluation to be made. See id., at 35-36.

"Id. at 37-40.

"Id. at 37.

"You have been particularly critical of its decision in *Brown v. Board of Education*. See, e.g., Clarence Thomas, *Toward a 'Plain Reading' of the Constitution—The Declaration of Independence in Constitutional Interpretation*, 30 How. L.J. 983, 990-92 (1987) (criticizing the emphasis on social stigma in the *Brown* opinion, which left the court's decision resting on "feelings" rather than "reason and moral and political principles"); Clarence Thomas, *Civil Rights as a Principle Versus Civil Rights as an Interest*, Speech to the Cato Institute (Oct. 2, 1987), in "Assessing the Reagan Years" 391, 392-93 (David Boaz ed., 1988) (arguing that the Court's opinion in *Brown* failed to articulate a clear principle to guide later decisions, leading to opinions in the area of race that overemphasized groups at the expense of individuals, and "argue[d] against what was best in the American political tradition"); Clarence Thomas, *The Higher Law Background of the Privileges and Immunities Clause of the Fourteenth Amendment*, Speech to the Federalist Society for Law and Policy Studies, University of Virginia School of Law (Mar. 5, 1988), in 12 "Harv. J.L. & Pub. Pol'y" 63, 68 (1989) (asserting that adoption of Justice Harlan's view that the Constitution is "color-blind" would have provided the Court's civil rights opinions with the higher-law foundation necessary for a "just, wise, and constitutional decision").

"See Blaustein & Mersky, supra note 6, at 37.

"163 U.S. 537 (1896).

"See Alan F. Westin, *John Marshall Harlan and the Constitutional Rights of Negroes: The Transformation of a Southerner*, 66 Yale L.J. 637, 638 (1957).

"Fullilove v. Klutznick, 448 U.S. 448, 522 (1980) (Stewart, J., joined by Rehnquist, J., dissenting).

"Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997, 3044 (1990) (Kennedy, J., dissenting).

"For a thorough review of the background of *Plessy v. Ferguson*, and a particularly sharp criticism of the majority opinion, see Loren Miller, *The Petitioners: The Story of the Supreme Court of the United States and the Negro 165-82* (1966). As an example of scholars who have criticized the opinion and the result in *Plessy*, see Laurence H. Tribe, *American Constitutional Law 1474-75* (2d ed., 1988).

"See, e.g., Benjamin Cardozo, *The Nature of the Judicial Process 10* (1921) noting that "judge-made law [is] one of the existing realities of life".

"Id. at 103.

"The concept of the 'evolutionary movement' of the Constitution has been expressed by Justice Brennan in *Regents of the University of California v. Bakke*, 438 U.S. 312 (1978), and by Justice Marshall in his speech given on the occasion of the bicentennial of the Constitution. In *Bakke*, in a partial dissent joined by Justices White, Marshall, and Blackman, Justice Brennan discussed how Congress has "eschewed any static definition of discrimination [in Title VI of the 1964 Civil Rights Act] in favor of broad language that could be shaped by experience, administrative necessity and evolving judicial doctrine." Id. at 337 (Brennan, J., dissenting in part) (emphasis added). In Justice Brennan's view, Congress was aware of the "evolutionary change that constitutional law in the area of racial discrimination was undergoing in 1964." Id. at 340. Congress, thus, equated Title VI's prohibition against discrimination with the commands of the Fifth and Fourteenth Amendment to the Constitution so that the meaning of the statute's prohibition would evolve with the interpretations of the command of the Constitution. See id. at 340. In another context, during his speech given on the occasion of the bicentennial of the Constitution, Justice Marshall commented that he did "not believe that the meaning of the Constitution was forever 'fixed' at the Philadelphia Convention." Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 Harv. L. Rev. 1, 2 (1987). In Justice Marshall's view, the Constitution had been made far more meaningful through its "promising evolution through 200 years of history." Id. at 5 (emphasis added).

"Sharon McPhail, *Will The Real Clarence Thomas Stand Up*, Nat'l B. Ass'n Mag., Oct. 1991, at 1.

"Id.; see Ruth Marcus, *Self-Made Conservative; Nominee Insists He Be Judged on Merits*, Wash. Post, July 2, 1991, at A1; Haywood Burns, *Clarence Thomas, A Counterfeit Hero*, N.Y. Times, July 9, 1991, at A19.

"See, e.g., Clarence Thomas, *The Equal Employment Opportunity Commission: Reflections on a New Philosophy*, 15 Stetson L. Rev. 29, 35 (1985) (asserting that the civil rights community is "wallowing in self-delusion and pulling the public with it"); Juan Williams, *EEOC Chairman Blasts Black Leaders*, Wash. Post, Oct. 25, 1984, at A7 "These guys [black leaders] are sitting there watching the destruction of our race . . . Ronald Reagan isn't the problem. Former President Jimmy Carter was not the problem. The lack of black leadership is the problem.").

"See supra note 9.

"See Clarence Thomas, *Black Americans Based Claim for Freedom on Constitution*, San Diego Union Trib., Oct. 6, 1987, at B7 (claiming that Marshall's observation of the deficiencies in some respects of the Framers' constitutional vision "alienates all Americans, and not just black Americans, from their high and noble intention").

"See id.

"Marshall, supra note 18, at 5.

"Thomas, supra note 23, at B7. In the same diatribe, you also quoted out of context excerpts from the works of Frederick Douglass, Martin Luther King, Jr. and John Hope Franklin. See id. Their works, however, provide no support for what amounted to a scurrilous attack on Justice Marshall. In fact, John Hope Franklin wrote the epilogue to a report by the NAACP opposing your nomination to the Supreme Court. See John Hope Franklin, *Booker T. Washington, Revisited*, N.Y. Times, Aug. 1, 1991, at A21. There he quite properly observed that, by adopting a philosophy of alleged self-help without seeking to assure equal opportunities to all persons, you "placed [yourself] in the unseemly position of denying to others the very opportunities and the kind of assistance from public and private quarters that have placed [you] where you are today." Id.

"Marshall, supra note 18, at 5.

"Id.

"On April 1, 1987, some weeks before Justice Marshall's speech, I gave the Herman Phleger Lecture at Stanford University. I stated in my presentation:

"In this year of the Bicentennial you will hear a great deal that is laudatory about our nation's Constitution and legal heritage. Much of this praise will be justified. The danger is that the current oratory and scholarship may lapse into mere self-congratulatory back-patting, suggesting that everything in America has been, or is, near perfect.

"We must not allow our euphoria to cause us to focus solely on our strengths. Somewhat like physicians examining a mighty patient, we also must diagnose and evaluate the pathologies that have disabled our otherwise healthy institutions.

"I trust that you will understand that my critiques of our nation's past and present shortcomings do not imply that I am oblivious to its many exceptional virtues. I freely acknowledge the importance of two centuries of our enduring and evolving Constitution, the subsequently enacted Bill of Rights, the Thirteenth, Fourteenth, Fifteenth and Nineteenth Amendments, and the protections of these rights, more often than not, by federal courts.

"Passion for freedom and commitment to liberty are important values in American society. If we can retain this passion and commitment and direct it towards eradicating the remaining significant areas of social injustice on our nation's unfinished agenda, our pride should persist—despite the daily tragic reminders that there are far too many homeless, far too many hungry, and far too many victims of racism, sexism, and pernicious biases against those of different religions and national origins. The truth is that, even with these faults, we have been building a society with increasing levels of social justice embracing more and more Americans each decade." A. Leon Higginbotham, Jr., *The Bicentennial of the Constitution: A Racial Perspective*, Stan. Law., Fall 1987, at 8.

"James Baldwin, *The Fire Next Time*, in "The Price of the Ticket" 336 (1985). In a similar vein, on April 5, 1976, at the dedication of Independence Hall in Philadelphia on the anniversary of the Declaration of Independence, Judge William Hastie told the celebrants that, although there was reason to salute the nation on its bicentennial, "a nation's beginning is a proper source of reflective pride only to the extent that the subsequent and continuing process of its becoming deserves celebration." "Gilbert Ware, William Hastie: Grace Under Pressure" 242 (1994).

"See Williams, supra note 21, at A7 (quoting Clarence Thomas).

"See John Hope Franklin & Alfred A. Moss, Jr., "From Slavery to Freedom: A History of Negro Americans" 388-89 (1988); see also Richard Kluger, "Simple Justice: The History of *Brown v. Board of Education* and Black America's Struggle for Equality" 219 (1975).

"See Franklin & Moss, supra note 32, at 388-89; Kluger, supra note 32, at 219.

"See Ware, supra note 30, at 95-98, 124-33.

"Frederick Douglass, *Speech Before The West Indian Emancipation Society* Aug. 4, 1857), in 2 Philip S. Foner, "The Life and Writings of Frederick Douglass" 437 (1960).

"See *Crandall v. State*, 10 Conn. 339 (1834).

"See Leon F. Litwack, "North of Slavery: The Negro in the Free States," 1790-1860, at 147 (1961).

"See *Roberts v. City of Boston*, 59 Mass. (5 Cush.) 198 (1850).

"182 A. 500 (1936).

"305 U.S. 337 (1938).

"339 U.S. 629 (1950).

"339 U.S. 637 (1950).

"See Miller, supra note 15, at 336.

"McLaurin, 339 U.S. at 640.

"I have used the term NAACP to include both the NAACP and the NAACP Legal Defense Fund. For examples of civil rights cases, see Derrick A. Bell, Jr., *Race, Racism and American Law 57-59, 157-62, 186-92, 250-58, 287-300, 477-99* (2d ed. 1980); Jack Greenberg, *Race Relations and American Law 32-61* (1959).

"102 Cong. Rec. 4255, 4515 (1956).

"Id. at 4515.

"Id.

"See id.

"'Excellent Chance,' Houston Post, Oct. 11, 1964, §17, at 8.

"See David S. Broder, *Reagan Attacks the Great Society*, N.Y. Times, June 17, 1966, at 41.

"See Charles Whalen and Barbara Whalen, *The Longest Debate: A Legislative History of the 1964 Civil Rights Act 143* (1967).

⁵³ *Id.*
⁵⁴ Senate Commerce Comm., Civil Rights—Public Accommodation, S. Rep. No. 872, 88th Cong., 2d Sess. 62-63, 75-76 (1964) (Individual Views of Senator Strom Thurmond).

⁵⁵ *The Supreme Court; Excerpts From News Conference Announcing Court Nominee*, N.Y. Times, July 2, 1991, at A14 (statement of President Bush).

⁵⁶ Peter Binzre, *Bowser Is an Old Hand at Playing the Political Game in Philadelphia*, Phila. Inquirer, Nov. 13, 1991, at A11 (quoting Charles Bowser).

⁵⁷ William A. Sinclair, *The Aftermath of Slavery: A Study of the Condition and Environment of the American Negro 187* (Afro-Am Press 1969) (1905) (quoting Senator Benjamin Tillman).

⁵⁸ 321 U.S. 649 (1944).

⁵⁹ 369 U.S. 186 (1962).

⁶⁰ *New York Trust Company v. Eisner*, 256 U.S. 345, 339 (1921).

⁶¹ Act of Mar. 12, 1912, ch. 157, §1, 1912 Va. Acts 330, 330.

⁶² *Id.* §3, at 330-31.

⁶³ *Id.* §4, at 331.

⁶⁴ *Id.* There were a few statutory exceptions, the most important being that the servants of "the other race" could reside upon the premises that his or her employer owned or occupied. *Id.* §9, at 332.

⁶⁵ See *Ashland, Va., Ordinance* (Sept. 12, 1911) [hereinafter, *Ashland Ordinance*]; Richmond, Va., Ordinance.

⁶⁷ See *Hopkins v. City of Richmond*, 86 S.E. 139, 142 (Va. 1915). At the time of the purchase, the house was occupied by a black tenant who had lived there prior to the enactment of the ordinance, so the purchase precipitated no change in the color composition or racial density of the neighborhood or block.

vindicated. This retrenchment . . . caused Justice Marshall's dissents to escalate from a total of 19 in his first five years while Earl Warren was Chief Justice, to a total of 225 in the five years since William Rehnquist became Chief Justice." Higginbotham, *supra* note 83, at 65 n.55 (1991) (citation omitted); see also Higginbotham, *supra* note 3, at 587 & n.526 (citing Justice Marshall's warning that "[i]t is difficult to characterize last term's decisions [of the Supreme Court] as the product of anything other than a deliberate retrenchment of the civil rights agenda"); A. Leon Higginbotham, Jr., F. Michael Higginbotham & Sandile Ngobo, *De Jure Housing Segregation in the United States and South Africa: The Difficult Pursuit for Racial Justice*, 4 U. Ill. L. Rev. 763, 874 n.612 (1990) (noting the recent tendency of the Supreme Court to ignore race discrimination).

⁶⁵ In his recent tribute to Justice Marshall, Justice Brennan wrote: "In his twenty-four Terms on the Supreme Court, Justice Marshall played a crucial role in enforcing the constitutional protections that distinguish our democracy. Indeed, he leaves behind an enviable record of opinions supporting the rights of the less powerful and less fortunate." William J. Brennan, Jr., *A Tribute To Justice Marshall*, 105 Harv. L. Rev. 23 (1991). You may serve on the Supreme Court twenty years longer than Justice Marshall. At the end of your career, I hope that thoughtful Americans may be able to speak similarly of you.■

DEAF AWARENESS WEEK 1992

● Mr. HARKIN. Mr. President, 4 years ago this month, Dr. I. King Jordan became the first deaf president at the world's only liberal arts university for people who are deaf or hard of hearing. The faculty, students, and administrators of Gallaudet University protested the board of trustees' decision to bypass two qualified deaf candidates for president and choose a hearing candidate. Their protests were successful and Dr. Jordan was named the official president of the university in the spring of 1988.

Since then, we have made great stride in opening doors of opportunities for people who are deaf and hard of hearing. The Americans With Disabilities Act, which I sponsored, was passed by the body in September 1989 and signed into law in July 1990. The ADA ensures that individuals with disabilities are entitled to be treated with dignity and respect and that they can and will be judged as individuals on the basis of their abilities, not on the basis of ignorance, irrational fears, or patronizing attitudes. The ADA also removes communication barriers that prevent people with disabilities from participating in the mainstream of American society.

Shortly after the ADA passed the Television Decoder Circuitry Act, which I also sponsored, passed the Senate and House. Today, television has become a pervasive and integral vehicle for sharing information in American society. Television provides a vital link to the world, providing news, which was an important factor in drawing worldwide attention to the Gallaudet protests. In addition, television provides emergency and educational programming. Unfortunately, many Americans with hearing loss are denied full and equal access to these critical sources of information. The promise of ensuring full integration into the

mainstream of society will not become a reality for the deaf and hard of hearing community until equal access to the television is ensured.

The Television Decoder Circuitry Act, now law, addresses this situation by requiring that by July 1993, all televisions with screens 13 inches or larger have built-in decoder circuitry to display closed-captioned television transmissions.

Mr. President, I am very pleased that the Senate has now joined the House of Representatives in close-captioning its floor proceedings. Now all Americans will begin to have full and equal access to the legislative activities of their elected officials.

Mr. President, the Subcommittee on Disability Policy is now in the process of reauthorizing the Education of the Deaf Act. I am hopeful that we can continue to ensure quality education for the many children who are deaf or hard of hearing.

With the help of King Jordan and other distinguished professionals who are deaf or hard of hearing, we will put forth efforts to stay on top of modern technology and continue to eliminate opportunities for patronizing attitudes. I am confident that we can continue to make strides in the fight for equal rights and opportunities for Americans who are deaf or hard of hearing.

With Deaf Awareness Week, we can continue to open doors for the deaf and hard of hearing community. Mr. President, I am proud to join my distinguished colleagues in recognizing the efforts and achievements of Americans who are deaf and hard of hearing.■

APPLIED PHYSICS LABORATORY'S 50TH ANNIVERSARY

● Mr. SARBANES. Mr. President, it is my pleasure to bring to the attention of my colleagues the 50th anniversary of the founding of the Applied Physics Laboratory of the Johns Hopkins University. APL is a regular division of the university, located halfway between Baltimore and Washington, DC. From its inception on March 10, 1942, until today, the Applied Physics Laboratory has been justifiably recognized as a national resource.

There is no other organization in the United States that has the breadth of experience and demonstrated achievement in carrying out the technological programs of the U.S. Navy. As the Defense Department begins down-sizing our Armed Forces, it is reassuring to know that APL is working every day to keep our Navy strong.

Modernization and technological advancement of naval defense capabilities is the common thread running through a half century of laboratory effort and accomplishment. During World War II, APL-developed variable-time proximity fuzes helped our fleet defend itself against air attack in the

Pacific, the British to stave off buzz bomb attacks, and the Army to turn the tide at the Battle of the Bulge. Military historians rank the VT fuze along with radar and the atomic bomb as the most significant technological developments of the war.

Weapons become obsolete, but the systems engineering approach employed by APL has remained a potent tool as weapons and systems have evolved since World War II. From fuzes to shipboard guided missiles, from advanced radars to the Aegis system that shields our battle groups, the Applied Physics Laboratory has remained a resolute partner with the Navy in providing a strong national defense. APL innovations, including updates to Tomahawk missile guidance, played a key role in allied successes in the Persian Gulf.

The laboratory is characterized by its ability to respond quickly to urgent national problems. When the Soviets shocked the world by launching sputnik, APL scientists soon devised a way to use satellites for precise, all-weather global navigation. The result was Transit, a satellite system that has been guiding our fleet and the world's commercial shipping for nearly 30 years. Over this span APL has become a major center for space activity, building more than 50 spacecraft. The laboratory has been a major participant in the Delta series of experiments for the Strategic Defense Initiative, a role recognized by a Presidential commendation.

The reliability and security of our strategic submarine forces have been assured by the rigorous testing and careful research conducted by APL since the beginnings of the Polaris program.

Along with its mission of enhancing the security of the United States by applying advanced science and technology, APL is also chartered to conduct basic research and participate in educational programs. Here again, the laboratory has become a valuable resource. Programs carried on in its Milton S. Eisenhower Research Center compliment the development work of the laboratory. APL originated the GEM program that today accounts for 10 percent of the master's degrees awarded annually to minority engineering students throughout the country. Last year the laboratory was awarded one of the Department of Labor's distinguished Exemplary Voluntary Effort awards for promoting job opportunities for minorities.

The Applied Physics Laboratory has been a major economic resource to my own State of Maryland. In 1990 APL brought over \$400 million in new income into the State. And indirect spin-off income generated as these dollars circulated through Maryland's economy added another \$300 million to the State's economy.

Mr. President, although there must be a significant reduction in defense spending, our Nation must not lose the technological superiority we have achieved. In a world where leadership may be based on one's economy more than one's military power, sustaining this superiority is vital for preserving the U.S. as a world economic and military power. The Applied Physics Laboratory has played, and continues to play, a key role in maintaining our technological superiority. In many instances, APL has led the way in civilian application and transferred this technology to other areas, notably medical, ecological, energy, and humanitarian applications.

I take great pride in recognizing the accomplishments of this outstanding organization, and I salute its dedicated and resourceful staff members as they help our Nation meet the technological challenges of the 21st century.●

ADDRESS BY SUPREME COURT JUSTICE JOHN PAUL STEVENS

● Mr. SIMON. Mr. President, one of the most significant and finest acts of Gerald Ford, when he served this Nation as President, was the appointment of John Paul Stevens as an Associate Justice of the United States Supreme Court. My belief is that history will record the most significant thing that President Ford did was to restore a sense of decency and integrity to the White House. This country will forever be grateful to him for that. But his naming of Justice Stevens was not a small contribution.

Recently, Justice Stevens spoke at the University of Chicago at a celebration marking the bicentennial of the Bill of Rights.

It is an address that anyone concerned about basic civil liberties in this country should read.

Among other things, he says that, "an extraordinarily aggressive Supreme Court has reached out to announce a host of new rules narrowing the Federal Constitution's protection of individual liberties."

He calls the Supreme Court's performance in 1991, "extraordinarily disappointing."

I mention these things because there is no task the U.S. Senate has that is more significant for the future of the country, other than a declaration of war, than when we advise and consent to a Supreme Court nomination.

I ask unanimous consent that the remarks of Justice John Paul Stevens be printed in the RECORD at this point and urge my colleagues and their staffs to read what he has to say.

The remarks follows:

THE BILL OF RIGHTS: A CENTURY OF PROGRESS (By Justice John Paul Stevens)

In an otherwise mundane tax opinion construing language in the Internal Revenue Code, Oliver Wendell Holmes observed that

"a word * * * is the skin of a living thought."¹ As the years pass, an idea may mature, changing its shape, its power, and its complexion, even while the symbols that identify it remain constant. There is a special vitality in words like "commerce," "equality," and "liberty."

In southwestern England, the huge sarsen pillars that primitive astronomers erected and arranged at Stonehenge centuries ago convey a profound message about man's ability to reason and to create. Even though the intent of the framers of Stonehenge is shrouded in mystery and obscurity, their message is nevertheless majestic and inspiring. Only a few miles away, the highest church spire in England, the Salisbury Cathedral, stands as a symbol of the creativity, the industry, and the faith of the Christian architects and engineers of the Thirteenth Century. A visitor to that cathedral may view one of the four remaining copies of a famous document that was signed at Runnymede early in that Century.

The message to be found in the text of the Magna Carta is neither clear nor unambiguous because its language is not plain and its style and lettering are unfamiliar. It is, nevertheless, an important symbol because it constitutes evidence that a once powerful ruler, King John the First, promised a group of his subjects that the occupant of the throne of England would thereafter obey "the law of the land."²

The significance of King John's promise has been anything but constant. In the two centuries after it was made, one English King after another deposed his predecessor by means that violated the law of the land. Although Henry the Seventh was crowned after his victory at the Battle of Bosworth on August 22, 1485, he established August 21st as the date when he had become King, thus retroactively condemning his former adversaries as traitors because they had fought to defend the then recognized occupant of the throne.³ In the late Sixteenth Century, when the greatest author of all time dramatized the life of King John, he did not even mention the Magna Carta.⁴ Today, at least in America, the reign of King John is remembered because of that document. In Elizabethan England, however, that great symbol had either been forgotten, or at least was not viewed with any special favor by the most popular spokesman for the establishment.

Today we focus our attention on another great symbol—a promise made 200 years ago that the newly created federal sovereign would obey the law in this land. That promise has surely not been forgotten but its meaning has changed dramatically during the two centuries of its life. To emphasize the importance and the character of that change, I have entitled my remarks: "The Bill of Rights—A Century of Progress." Because some of you may wonder why I refer to only one century, and also why I refer to "progress," I shall begin with a comment on my title.

This important Conference is a tribute to Chicago and to this great University. I am proud to be one of its graduates and to have taught briefly in its law school. The University is now 100 years old. Its participation in the development of American education—and more particularly legal education—unquestionably merits characterization as "A Century of Progress." Just two years after the University was founded, the Midway which adjoins this campus was the location of the famous amusement park in the 1893

¹ Footnotes at end of article.

World's Fair where Little Egypt became famous for her erotic dancing. Forty years later, in 1933, the City of Chicago celebrated its 100th anniversary by sponsoring another enormously successful World's Fair, which also brought fame to a nude dancer named Sally Rand. Whether her performances were protected by the First Amendment is a question that two illustrious Chicago professors, who also wear judicial robes, recently debated in a case that I believe was correctly decided by the Court of Appeal for the Seventh Circuit⁵ and incorrectly decided by a confused and fractured majority of the Justices of the Supreme Court of the United States.⁶

1933 was a year in which this City—indeed the entire Western world—was in the throes of a severe economic depression. Adolf Hitler came to power in 1933 and book-burning became fashionable in Nazi Germany. Chicago was then known throughout the world as the home of Al Capone, the master of organized crime who had made millions during the Federal Government's war on alcoholic beverages. At that time, less prosperous criminals were sometimes treated brutally by Chicago police officers seeking confessions of guilt.⁷ 1933 was the year in which the City's mayor was killed in an attempt to assassinate President Roosevelt. Before the Fair opened, there were many reasons to be pessimistic about Chicago. Nevertheless the Fair was appropriately given a name that focused on the positive and inspired Chicagoans to build for a glorious future. The Fair was named "A Century of Progress."

My selection of a title for this address reflects more than a nostalgic memory of that World's Fair. It was motivated, in part, by the fact that 1991 is a year in which an occasional echo of 1933 has sounded an alarming note. A volatile stock market, an ever-escalating deficit, and disturbing reports of mismanagement of major financial institutions remind us that in 1991—as in 1933—risk is a characteristic of a free economy. The stagnation of the Soviet economy—reminiscent of Germany in 1933—furnished the setting for the attempted coup by the KGB and the military that produced frightening, through brief, memories of Hitler's rise to power and the ruthless behavior of his Gestapo. In Great Britain, 1991 is a year in which the re-examination of the convictions of alleged Irish terrorists has reminded us that trusted police officers sometimes fabricate confessions to obtain convictions.⁸

In this country, while dozens of universities and communities throughout the land are celebrating the bicentennial of the Bill of Rights, an extraordinarily aggressive Supreme Court has reached out to announce a host of new rules narrowing the Federal Constitution's protection of individual liberties. The prosecutor's use of a coerced confession—no matter how vicious the police conduct may have been—may now constitute harmless error.⁹ In a totally unnecessary and unprecedented decision, the Court placed its stamp of approval on the use of victim impact evidence to facilitate the imposition of the death penalty.¹⁰ The Court condoned the use of mandatory sentences that are manifestly and grossly disproportionate to the moral guilt of the offender.¹¹ It broadened the powers of the police to invade the privacy of individual citizens,¹² and even to detain them without any finding of probable cause¹³ or reasonable suspicion.¹⁴ And, in perhaps its most blatant exercise of lawmaking power marching under the banner of federalism, it completely rewrote the procedural rules governing postconviction pro-

ceedings to foreclose judicial review of even meritorious constitutional claims in capital cases.¹⁵ An attorney's untimely filing of a notice of appeal from a state court's refusal to grant postconviction relief—a negligent misstep that previously would merely have foreclosed appellate review of that refusal in the state's judicial system—is now also a bar to federal review of a claim that the Bill of Rights was violated when the death sentence was imposed on the attorney's client.¹⁶

Although the Court's extraordinarily disappointing performance in 1991 can only have a sobering influence on bicentennial celebrations such as this, the work product of a single Term must be viewed from a broader perspective. Even while American judges are depreciating the value of liberty, this is a time when—thanks largely to the vision of Mikhail Gorbachev, and perhaps also to the symbolic power of documents like the Bill of Rights—the voices of freedom have produced the beautiful music of debate, controversy, and progress in most of Eastern Europe. Perhaps, in time, the free exchange of ideas in other parts of the world will give Americans the incentive and the courage to re-examine the reasons why our prison population—and particularly the number of inmates on death row¹⁷—steadily expands at an alarming rate¹⁸ while armed conflict in the streets of our cities continues to flourish.

The broader perspective from which the Supreme Court's recent decisions should be viewed is temporal as well as geographic. My topic is intended to suggest that it is appropriate to consider the significance of the Bill of Rights during an entire century and, more particularly, to determine whether that century of jurisprudence represents legitimate progress.

Prior to the Civil War and the subsequent adoption of the Fourteenth Amendment, the Bill of Rights was merely a limitation on the power of the Federal Government.¹⁹ Arguably, the first Ten Amendments were redundant because they did little more than identify some of the outer boundaries of the powers that the original Constitution conferred on the Federal Sovereign.²⁰ In the first century of its existence, the Bill of Rights was, in some respects, comparable to the Magna Carta—a relatively static symbol expressing the general idea that the Federal Government has an obligation to obey the law of the land.

In the second century of its life, however, the Bill of Rights became a dynamic force in the development of American law. The United States Supreme Court played a major role in that development. Its liberal—one might say "activist"—interpretation of the word "commerce" in Article I of the Constitution created the gateway to a vast expansion of the Federal Government's power to regulate the lives of individual citizens.²¹ Increased federal regulation, as well as federal participation in criminal law enforcement, inevitably gave rise to individual claims that the Federal Sovereign was invading territory protected by the Bill of Rights. Of even greater significance was the Supreme Court's determination that the basic concepts described in the Bill of Rights are incorporated in the Fourteenth Amendment's guarantee that no State may deprive any person of liberty without due process of law. The construction of the Due Process Clause, or as I prefer to call it, the Liberty Clause in the Fourteenth Amendment has transformed the Bill of Rights from a mere constraint on federal power into a source of federal authority to constrain state power.

In this century, most of the significant cases raising Bill of Rights issues, in the

final analysis, have actually been interpreting the word "liberty" in the Fourteenth Amendment. Indeed, the impact of that Amendment on the Bill of Rights has also led to an expansion of the meaning of the word "liberty" as it is used in the Fifth Amendment. When the Court held that the racial segregation of students in the public schools in Topeka, Kansas, violated the Equal Protection Clause,²² simple justice indicated that the same rule should obtain in the federal enclave known as the District of Columbia. Unable to rely on the Equal Protection Clause because it applies only to state action, the Court unanimously found what is now known as the equal protection component of the Due Process Clause embedded in the word "liberty" as it is used in the Fifth Amendment. Thus, through the process of judicial construction, the Bill of Rights has become a shield against invidious discrimination by the Federal Government as well as a shield against the misuse of state power.

The Judiciary's reconstruction of the term "commerce" during this century is generally accepted as legitimate by even the most conservative critics of the Supreme Court's work product. Respected scholars have, however, questioned the legitimacy of the Court's doctrine incorporating portions of the Bill of Rights into the Liberty Clause of the Fourteenth Amendment as well as the decisions incorporating the idea of equality into the Liberty Clause of the Fifth Amendment.²³ Because the Fifth Amendment has been a part of the Bill of Rights throughout its 200-year history, it is appropriate to say a few words about the latter criticism before discussing the broader question of incorporation.

If the task of judicial construction began and ended with a grammatical and etymological analysis of legal text, or even if it is slightly expanded to encompass an analysis of the original intent of those who drafted and enacted that text into positive law, one would expect an impartial court to reject any claim that the word "liberty," as used in the 1791 Constitution, had endorsed the revolutionary idea that all men are created equal. For the text of the Constitution in 1791, before as well as after the ratification of the Bill of Rights, expressly approved of invidious discrimination. Article IV provided positive protection for the institution of slavery²⁴ and Article I provided that for the purpose of apportioning congressional representatives, each slave should be counted as three-fifths of a person.²⁵ The interest in protecting individual freedom that animated the adoption of the Bill of Rights left these odious portions of the original Constitution untouched. The Framers had constructed a document that, like the fledgling Nation itself, could be described as a house divided against itself—an institution that was half slave and half free. A Constitution that expressly tolerated the worst kind of discrimination could not simultaneously condemn all irrational discrimination.

Those who argue that the meaning of the word "liberty" as used in the Bill of Rights is the same today as it was in 1791 correctly point out that the draftsmen of the Equal Protection Clause of the Fourteenth Amendment proposed no parallel provision to expand the coverage of the Liberty Clause of the Fifth Amendment. Because the text of the 1791 Amendment has not been changed, they assume that we should simply ignore other changes in our fundamental law in the process of constructing that text today. The logic of that straightforward argument leads

to the conclusion that the unanimous decision of the Supreme Court in *Bolling v. Sharpe*,²⁶ was simply wrong and that—as some critics suggest—the Justices had arrogantly assumed a lawmaking role to implement their own notions of wise social policy.

Notwithstanding the force of this hybrid plain language-original intent argument, the judicial recognition of the Equal Protection component of the Liberty Clause of the Fifth Amendment is so well settled²⁷ that there is no need for judicial opinions to contain an explanation of the legitimacy of the rule. In a symposium such as this, however, it is appropriate to explain why the rule is firmly grounded in our law for reasons that are even stronger than the doctrine of *stare decisis*.

Just as the task of statutory construction requires a judge to examine the entire text of the relevant statute in order to understand the meaning of the provision in dispute, so does constitutional interpretation often involve a study of interrelated provisions. The changes in constitutional text that were affected by the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments breathed new life into the entire document. The purge of the odious provisions that infected the 1791 text made it appropriate in the post-Civil War period to give the word "liberty" its ordinary meaning—indeed, a meaning that is not only acceptable to today's judges but one that presumably would have been acceptable to an Eighteenth Century jurist if the original Constitution has not contained those odious provisions.

As the Court noted in its opinion in *Bolling v. Sharpe*, it has not defined the word "liberty" with any great precision, though it has often made it clear that the concept encompasses more than a freedom from bodily restraint. Whether the concept is broad enough to encompass the idea of equality is a question that is easily answered by reference to the standard articulated by Justice Holmes in his *Lochner* dissent: It is a matter of fundamental principle that has been so "understood by the traditions of our people and our law."²⁸

Perhaps the most articulate authority on these traditions was a lawyer named Abraham Lincoln. He unquestionably would have agreed with the Court's conclusion that the term "liberty" includes a right to equal treatment under the law. For in his address calling for "a new birth of freedom,"²⁹ he identified the direct connection between the idea of liberty that was to prevail when General Lee ordered the Confederate Army to retreat from Gettysburg on July 4, 1863, and the idea of liberty that had prevailed when the Declaration of Independence was signed on July 4, 1776. Lincoln's calculation of "four score and seven years"³⁰ as the interval between his dedication at Gettysburg and the birth of the Nation identifies the Declaration of Independence, rather than the Constitution or the Bill of Rights, as the source of his understanding of the term "liberty." The self-evident proposition enshrined in the Declaration—the proposition that all men are created equal—is not merely an aspect of social policy that judges are free to accept or reject; it is a matter of principle that is so firmly grounded in the "traditions of our people" that it is properly viewed as a component of the liberty protected by the Fifth Amendment. The positive command expressed in the Bill of Rights that the federal sovereign must obey the law of the land unquestionably requires federal judges to respect the proposition to which the forefathers dedicated the founding of the Nation itself.

The text of the Liberty Clause of the Fourteenth Amendment, which provides that no State shall "deprive any person of life, liberty, or property, without due process of law,"³¹ offers a different basis for criticizing the Supreme Court's decisions applying provisions of the Bill of Rights to the actions of the sovereign States.³² As is true of the Fifth Amendment, a literal reading of that clause provides the individual with a guarantee of fair procedure before the State may deprive him of life, liberty, or property, but it does not, in terms, impose any constraint on the kinds of deprivations the State may impose on its citizens. Moreover, the general requirement that there must be "due process"—which appears in both the Fifth and the Fourteenth Amendments—arguably should not encompass such specific guarantees as the right to a speedy trial, the right to counsel, or the right to compulsory process because the Sixth Amendment would have been redundant if those rights were already protected by the general guarantee of due process in the Fifth Amendment.³³ The Supreme Court has nevertheless concluded in a long and unbroken line of cases that the Due Process Clause of the Fourteenth Amendment does require the States not only to comply with specific procedural protections in the Bill of Rights, but also to respect certain substantive guarantees. The Court's interpretation of that clause makes some state action entirely invalid regardless of the procedures the State may employ in enforcing its command.

The most striking evidence of the Court's willingness to ignore the literal meaning of constitutional text is provided by cases preventing the States from abridging the freedoms protected by the First Amendment. The text of that Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."³⁴

A judge who strictly construes that text must find it difficult to understand how it limits the power of any governmental body other than the Congress of the United States. Even when the First Amendment is read in the light of the Fourteenth Amendment's command that States may not deprive anyone of liberty without due process of law, the puzzlement remains. To find the solution it is necessary to search judicial opinions.

Although the earliest of the opinions endorsing the proposition that the Federal Constitution protects speech and associational freedom from State action were written by two of our greatest Justices—Justice Holmes and Justice Brandeis—neither of them bothered to quote any part of the text of the First Amendment to support that proposition. In his dissent in *Gitlow v. New York*, 286 U.S. 652 (1925), Justice Holmes merely asserted: "The general principle of free speech, it seems to me, must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word 'liberty' as there used . . ." *Id.*, at 672.³⁵

Two years later, in his separate opinion in *Whitney v. California*, 274 U.S. 357, 373 (1927), Justice Brandeis expressly endorsed the conclusion that the Due Process Clause provides substantive as well as procedural protection and also the proposition that the term liberty embraces the right of free speech. I quote two sentences from his opinion to em-

phasize the nontextual basis for his conclusion:

"Despite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as to matters of procedure. Thus all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States." *Id.*, at 373. Of particular interest is the fact that the first two cases that Justice Brandeis cited to support that conclusion were *Meyer v. Nebraska*,³⁶ and *Pierce v. Society of Sisters*.³⁷ Those, of course, are the two leading cases holding that certain fundamental rights that are neither enumerated nor expressly mentioned in the text of the Constitution are protected from substantive deprivation by State action. Thus, although it is familiar learning that so-called "enumerated rights"—those specifically described in the first Ten Amendments to the Constitution—are incorporated in the Due Process Clause of the Fourteenth Amendment, we sometimes forget that the source of the doctrine of incorporation was the product of judicial evaluation of the fundamental character of the rights at stake rather than an analysis of the text of the Constitution itself.

Moreover, as the doctrine developed, the Court unequivocally rejected the position espoused by Justice Black that the boundaries of the idea of liberty are precisely measured by the contours of the first Ten Amendments. Contrary to the position he advanced in his dissent in *Adamson v. California*, 332 U.S. 46, 68 (1947), the Court has neither incorporated all of the provisions of the Bill of Rights into the Fourteenth Amendment nor retreated from the position taken in *Meyer* and *Pierce* that the concept of liberty includes unenumerated rights.

During the past century, while the relevant constitutional text has been as immutable as the Stonehenge monument, some of the propositions of law identified by that text have changed significantly. Two guarantees in the Bill of Rights—one procedural and one substantive—illustrate this point.

The Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right "to have the assistance of counsel for his defense."³⁸ Unlike the English common law, which pervasively limited the right to misdemeanor trials, the American right to counsel has always extended to more serious crimes.³⁹ Whether the Amendment merely guaranteed a lawyer to the defendant who could afford to hire one or also protected the indigent is a question that the text of the Amendment did not answer. It seems clear, however, that the early practice in federal as well as state courts did not require the appointment of counsel unless the defendant made a timely request for such assistance. A series of judicial decisions in this century has defined and expanded the right.

Powell v. Alabama, 287 U.S. 45, decided in 1932, was the groundbreaking case. Special circumstances creating an intolerable risk of unfairness in a capital case convinced a majority of the Court that the absence of counsel had made the trial fundamentally unfair.⁴⁰ A few years later, in *Johnson v. Zerbst*, 304 U.S. 458 (1938), the Court construed the Sixth Amendment to deprive federal courts in all criminal proceedings of the power to take away the defendant's liberty unless he has, or has waived, the assistance of counsel; the Court rejected the Solicitor General's argument that the failure to request counsel constituted such a waiver. The rule that was

applied to state criminal prosecutions during the 1940's and 50's required counsel in all capital cases but not in noncapital cases unless special circumstances made the particular trial unfair.⁴¹ In 1963, in *Gideon v. Wainwright*, the Court overruled earlier decisions and dispensed with the special circumstances requirement, at least in felony cases.⁴² More recently, the Court has extended the rule to lesser offenses;⁴³ it has also concluded that the Constitution mandates that counsel be competent.⁴⁴ The rule of law created by the last clause of the Sixth Amendment and the Liberty Clause of the Fourteenth Amendment has unquestionably changed while the text of those Amendments has remained the same.

So it is with the Religion Clauses of the First Amendment. Their application to the States was the product of judicial opinions that did little more than announce an interpretation of the idea of liberty that was self-evident to the Justices. The complete explanation of this conclusion in the Court's opinion in *Cantwell v. Connecticut* reads as follows:

"We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws."⁴⁵

History teaches us that these Clauses were motivated by a concern about rivalry among Christian sects. The intolerance that characterized Sixteenth and Seventeenth Century England—when royal decrees made martyrs of Edmund Campion and Thomas More, when Oliver Cromwell's puritan roundheads covered renaissance art and literature with the austere blanket of censorship, and when English emigrants burned witches at the stake in Salem, Massachusetts—that intolerance was the product of competition among different groups sharing the same fundamental belief in the resurrection of Jesus Christ. In his commentaries on the Constitution, Justice Story explained that the "real object of the [First] [A]mendment was not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government."⁴⁶

If the protection of the First Amendment were narrowly circumscribed by the specific concerns that motivated its adoption, presumably a democratic majority could discriminate against non-Christian religions, against agnostics and against atheists. The Court, however, has unequivocally rejected that view because the principle of tolerance embodied in the First Amendment is broader than the particular history that was familiar to its authors.

"Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom of mind, so also the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority. At one time it was thought that this right merely

proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism. But when the underlying principle has been examined in the crucible of litigation, the Court has unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all."⁴⁷

It is the principle of tolerance that, in time, must provide the answer to the controversy that inflames so many of our most sincere and zealous citizens. Fueling that controversy is a disagreement over the point at which a seed—to use St. Thomas Aquinas' term⁴⁸—becomes a human being. In *Stanley v. Georgia*,⁴⁹ and *Griswold v. Connecticut*,⁵⁰ the Court implicitly determined that a potential father, as well as a pair of potential parents, have a constitutional right to waste the seeds of potential life. In *Skinner v. Oklahoma ex rel. Williamson*,⁵¹ the Court held that the State could not sterilize the defendant and thus deprive him of "the right to have offspring," which is a "basic liberty," because he had committed at least two felonies.⁵² In the *Cruzan* case two Terms ago, the Court made it clear that the Liberty Clause protects a woman's right to make basic decisions about the physical treatment of her own body.⁵³ If a small tumor threatens her well-being, she has the right—a constitutionally protected right embedded in the Liberty Clause of the Fourteenth Amendment—to decide whether or not it shall be removed.⁵⁴ As a purely secular matter, if we regard a growth within her body that is no larger than an acorn as still just a seed rather than a human being—as St. Thomas did—the constitutional predicate for the decisions in *Stanley*, *Griswold*, and *Cruzan*, inexorably leads to the conclusion that the woman has a right to decide whether to waste or to preserve that seed.

That right, of course, is not absolute. Personal decisions involving the treatment of diseases, for example, must take into account the welfare of society.⁵⁵ But while the individual choice may be influenced, or even dictated, by the tenets of religious faith, the majority's decision to override such a decision must be justified by secular considerations. Many Americans are sincerely convinced that the duty to protect potential life after the moment of conception is just as imperative as it is immediately after birth when a fetus becomes a person within the meaning of the Constitution. To the extent that such a conviction rests on religious faith rather than physical differences between potential persons at different stages of their development, it does not provide a permissible basis for imposing the majority's will upon the individual.

The standard that should govern the Judiciary in deciding whether a legislature had an adequate secular basis for interfering with an individual's decision respecting the disposition of a growth within or upon her body has been debated in a number of thought-provoking opinions.⁵⁶ Whatever standard may ultimately be applied in answering the legal questions that are generated by the abortion controversy, the decisional process must recognize the validity of at least three settled propositions.

First, neither a seed nor a fetus is a "person" within the meaning of the Fourteenth Amendment.⁵⁷ The meaning of that term is unquestionably a matter of federal law that cannot be modified by the actions of state

legislatures. Responsible critics of the decision in *Roe v. Wade*—those who argue that every State should have broad latitude in regulating abortion—necessarily reject any suggestion that a fetus is a person prior to birth.⁵⁸

Second, the justification for the legislative decision not only must be secular;⁵⁹ it also must be rational.⁶⁰ Theoretically, a prohibition against abortion, like a prohibition against birth control, might be justified by a general interest in increasing the population of the community or the planet. Although such a justification might make a good deal of sense after a community has been devastated by war or plague, it would surely be irrational in urban America today.

Third, the constitutional issues generated by the abortion controversy cannot be entirely divorced from the topics that you will be considering during a comprehensive symposium on the Bill of Rights. For the Supreme Court decisions involving so-called unenumerated rights—such as the right to marry, the right to travel, the right to exercise dominion over one's body, and the right to decide whether to bear or to beget a child—make it clear that those rights have the same source as those that are enumerated in those parts of the Bill of Rights that are enforced against the States under the incorporation doctrine.

That source is the idea of liberty. Although that idea is difficult to define, the Court has given it meaning in specific cases and controversies. On the whole, the Court's decisions interpreting and reinterpreting the idea of liberty have enlarged the concept. For example, I have no doubt that the views expressed by Justice Holmes and Justice Brandeis in their separate opinions in *Gilow v. New York*, and *Whitney v. California*, though then unacceptable to the majority, are now part of our law. The right to marry a person of a different race or a person incarcerated in a different prison, though unmentioned in the text of the Constitution, is now protected by unanimous holdings of the Supreme Court.⁶¹ The general trend of these decisions raises two questions that are far more important than the wisdom or lack of wisdom of any particular holding. Do they represent progress toward the constitutional goal of forming a more perfect union, and if so, has that progress been attained by legitimate means?

The answer to the first question does not depend on the means by which the change has been accomplished. It would be the same if every addition to the concept of liberty that has been produced by judicial decision had, instead, been achieved by the cumbersome process of amending the text of the Constitution. If that procedure had been followed, would we have a more perfect union today than we had in 1791? Mortimer Adler has recently suggested how that question should be answered.

Although I do not endorse his suggestion that the Court should wield the power to invalidate unjust legislation even if it is not unconstitutional, he is persuasive when he argues that one's views about a just society will determine whether a change in the law represents progress. Commenting on Judge Bork's confirmation hearings, he wrote:

"The nominee might even have been asked whether he thought the eighteenth-century Constitution, allowing as it did for the disenfranchisement of women, blacks, and the poor who could not pay poll taxes, was or was not unjust. If he said that no objectively valid principles of justice enabled him to answer that question, he might still have been

asked on what grounds the thirteenth, fourteenth, fifteenth, nineteenth, and twenty-fourth amendments were adopted in subsequent years and whether they represented progress in the direction of social justice, regression, or neither?⁶²

In my judgment, no matter how one defines the just society or the perfect union that is mentioned in the Preamble to the Constitution, the Amendments identified by Dr. Adler as well as the trend of decisions that I have identified this afternoon, are appropriately characterized as progress.

I am also convinced that the progress in the development of our constitutional law has been achieved by legitimate means. The risk of unwise decisions is always present, and that concern is greatest when the Court concludes that the strong presumption of validity that attaches to decisions made by the elected representatives of the majority has been overcome.⁶³ Moreover, just as risk is a characteristic of a free economic market, so also may every expansion of individual liberty pose some additional danger for society. But risk—even serious risk—is part of the price that must be paid for freedom.

Unlike their French counterparts, the Framers of our Constitution wisely refused to stake the fate of the Nation on the will of the transient majority. With equal wisdom they made no attempt to fashion a Napoleonic Code that would provide detailed answers to the many questions that would inevitably confront future generations. Instead, they used general language to construct a framework that would allocate decisionmaking powers among different branches of government. The provisions for the appointment and life tenure of federal judges were obviously designed to enable them to perform their professional tasks impartially, without fear of popular disapproval. Their duty to adjudicate cases and controversies obviously encompasses an obligation to interpret the text of the Constitution. As Justice Cardozo has reminded us, "this power of interpretation must be lodged somewhere, and the customs of the constitution has lodged it in the judges. If they are to fulfill their function as judges, it could hardly be lodged elsewhere."⁶⁴ I firmly believe that the Framers of the Constitution expected and intended the vast open spaces in our charter of government to be filled not only by legislative enactment but also by the common-law process of step-by-step adjudication⁶⁵ that was largely responsible for the development of the law at the time this Nation was conceived.⁶⁶ That is the process that has largely eliminated the use of coerced confessions in criminal trials, curtailed racial discrimination in the selection of juries, and extended First Amendment protection to artistic expression as well as to political speech.

Disagreement with a particular decision does not justify an attack on the entire decisional process. Judgments that apply principles that are embedded in the Constitution, that are supported by a candid attempt to explain the application of the principles and the relevance of prior decisions, represent appropriate developments of the law even when neither text nor history supplies the entire basis for the new decision. For the work of federal judges from the days of John Marshall to the present, like the work of the English common-law judges, sometimes requires the exercise of judgment⁶⁷—a faculty that inevitably calls into play notions of justice, fairness, and concern about the future impact of a decision. The fact that such concerns play a role in the

decisional process does not undermine the legitimacy of the process that, for the most part, has served the Nation well for two centuries.

Progress in the development of the law, to borrow again from Justice Cardozo "is neither a straight line nor a curve. It is a series of dots and dashes. Progress comes *per saltum*, by successive compromises between extremes, compromises often, if I may borrow Professor Cohen's phrase, between 'positivism and idealism.' The notion that a jurist can dispense with any consideration as to what the law ought to be arises from the fiction that the law is a complete and closed system, and that judges and jurists are mere automata to record its will or phonographs to pronounce its provisions.' Ideas of justice will no more submit to be 'banished from the theory of law' than 'from its administration.'"⁶⁸

An important protection against the unwise use of the judicial power to interpret the Constitution has its origin in common-law jurisprudence. Judges have always attached less importance to dicta than to the portions of an opinion that are necessary to explain a judgment. The doctrine of judicial restraint, which counsels against the use of unnecessary dicta, also imposes on federal judges the obligation to avoid unnecessary or unduly expansive constitutional adjudication.⁶⁹ It is of interest that Justice Brandeis is the author of the leading opinion expounding this doctrine—I refer of course to his opinion in *Ashwander v. Tennessee Valley Authority*⁷⁰—as well as some of the Court's most inspiring words about the idea of liberty. I quote three sentences from his opinion in *Whitney v. California*, to illustrate the latter point:

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty." *Whitney v. California*, 274 U.S. 357, 375 (1926).

In response to Abraham Lincoln's call for "a new birth of freedom" in his Gettysburg Address, the second century of the history of the Bill of Rights witnessed significant progressive changes in the idea of liberty. Historical and textual analyses have played an important role during that century of progress, but they did not absolutely limit the Court's exercise of judgment in performing its task of interpreting the underlying meaning of a dynamic concept. Let us hope that the inability to decipher the actual intent of the architects of the Constitution—like the inability to decipher the Stonehenge text—will not prevent the exercise of sound judgment from continuing the progressive development of the idea of liberty during the third century of the life of the Bill of Rights.

FOOTNOTES

¹ *Towne v. Eisner*, 245 U.S. 418 425 (1918).
² By that instrument, the King, representing the sovereignty of the Nation, pledged that "no freeman shall be taken, or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we [not] pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land." *Hurtado v. California*, 110 U.S. 516, 542 (1884).
³ R. Horrox, Richard III 327 (1989); S. Chrimes, Henry VII 50, 63 (1967); T. Costain, *The Last Plantagenets* 384 (1962).
⁴ W. Shakespeare, *King John* (ed. R. Smallwood 1974).
⁵ *Miller v. Civil City of South Bend*, 904 F.2d 1081 (CA7 1990) (en banc); *id.*, at 1089 (Posner, J., concur-

ring in the opinion and judgment of the court) (dance is expressive and therefore should be protected under the First Amendment); *id.*, at 1120 (Easterbrook, J., dissenting) (Indiana law regulates public nudity, which is conduct, not speech, and therefore does not violate the First Amendment).

⁶ *Barnes v. Glen Theatre, Inc.*, — U.S. — (111 S.Ct. 2456) (1991). *Barnes* was a 5-4 decision, in which Chief Justice Rehnquist, was joined by Justice O'Connor and Justice Kennedy. Justice Scalia and Justice Souter each filed separate opinions concurring in the judgment.

⁷ See, e.g., *People v. LaFrana*, 4 Ill. 2d 261, 122 N.E. 2d 583 (1954).

⁸ *R v. McKenny*, *The Independent*, Mar. 28 1991 (police fabricated confessions in case of alleged terrorists known as the Birmingham Six). Earlier, in 1989, it also came to light that the police had fabricated interview notes and relied on faulty forensic tests to secure the conviction of other alleged Irish Republican Army terrorists known as the Guildford Four. See *R v. Richardson*, *The Times*, Oct. 20, 1989.

These, and similar, cases have "badly shaken" the British courts, and have led the Government to set up a Royal Commission to study the criminal justice system in order "to minimize as far as possible the likelihood of such events happening again." Schmidt, *British Court to Review 1974 Bombing Case*, *The New York Times*, Sept. 18, 1991, p. A4. The ten-person commission, whose members include prominent academics, journalists, and businessmen, represent "a wide range of experience." Ames, *Commission Line-up Welcomed*, 88 *Law Society's Guardian Gazette* 4 (1991). The commission will examine "all stages of the criminal process" and will consider "the investigation and pretrial process including the conduct of the police investigations and their supervision, the right to silence, the role of the prosecutor in obtaining evidence and deciding whether to proceed with a case and arrangements for disclosing material to the defense." McKeone, *Lawyers Urge Interim Criminal Justice Reforms*, 88 *Law Society's Gazette* (1991). The mission of the commission is nothing short of reform of the criminal justice system.

⁹ *Arizona v. Fulminante*, — U.S. — (111 S.Ct. 1246) (1991). The Supreme Court affirmed the judgment of the State Supreme Court, which had held that Fulminante's confessions were coerced and that harmless error analysis did not apply. On the one hand, three of the four Members of the Court who voted to reverse concluded that no error had occurred because the confessions were not coerced; accordingly, they had no need to reach the harmless error issue. On the other hand, because it was clear to the five Members of the majority who voted to affirm that the introduction of the confessions had not been harmless, there was no need for them to re-examine the settled rule that the use of a coerced confession requires automatic reversal. Only the vote of Justice Scalia, who agreed that the confessions were coerced but thought that their admission was harmless, depended on the answer to the question whether harmless error analysis applies to coerced confessions.

As a result of the Court's decision in *Fulminante*, State Supreme Courts must now look to their State Constitutions to hold that "a coerced confession may so infect the trial process that its admission into evidence demands reversal" and that the admission of a coerced confession is not subject to harmless error analysis. *Iona v. Quintero*, 60 US Law 2165 (Sept. 17, 1991) (en banc).

¹⁰ *Payne v. Tennessee*, — U.S. — (111 S.Ct. 2597) (1991). Here, as in *Arizona v. Fulminante*, the Court reached out to address an issue that it need not have considered. In *Payne*, the Court ordered the parties to brief and argue "whether *Booth v. Maryland*, 482 U.S. 496 (1987), and *South Carolina v. Gathers*, 482 U.S. 496 (1987), and *South Carolina v. Gathers*, 490 U.S. 805 (1989), should be overruled." — (111 S.Ct. 1407) (1991). As the Court's order indicates, this was an issue that was not even raised in the petition for certiorari. See Pet. for Cert. 3. The Court need not have revisited *Booth* and *Gathers* in any event because the Tennessee Supreme Court had held that there was no *Booth* violation, and as an alternative ground, that even if there had been a *Booth* violation, it was harmless beyond a reasonable doubt. See *State v. Payne*, 791 S.W.2d 10, 18-19 (Tenn. 1990).

¹¹ *Harmelin v. Michigan*, — U.S. — (111 S.Ct. 2680) (1991) (upholding mandatory life sentence without possibility of parole for possession of 672 grams of cocaine). Relying on the plain language of the Eighth Amendment and a scholarly examination of

historical evidence concerning the intent of the Framers, Justice Scalia argued that proportionality should not even be considered in construing the constitutional prohibition against "cruel and unusual punishments." Significantly, seven members of the Court refused to adopt an argument that was clearly at odds with the Court's prior Eighth Amendment jurisprudence. See, e.g., *Weems v. United States*, 217 U.S. 349 (1910); *Gregg v. Georgia*, 428 U.S. 153 (1976); *Coker v. Georgia*, 433 U.S. 584 (1977); *Enmund v. Florida*, 458 U.S. 782 (1982); *Solem v. Helm*, 463 U.S. 277 (1983).

¹¹ *Chapman v. United States*, — U.S. (111 S.Ct. 1919) (1991), the Court construed a statute to authorize grossly disparate sentencing. For example, under the Court's construction of the statute, a person distributing 1,000 doses of LSD in liquid form is subject to no minimum penalty, whereas a person handing another person a single dose on a sugar cube, which weighs about 2 grams, is subject to a mandatory five-year penalty.

¹² In *California v. Acevedo*, — U.S. (111 S.Ct. 1982) (1991), the Supreme Court overruled *Arkansas v. Sanders*, 442 U.S. 753 (1979), and held that the police may search a closed container in an automobile even though they do not have a search warrant, as long as they have probable cause to believe the container contains contraband. See also *Florida v. Jimeno*, — U.S. (111 S.Ct. 1801) (1991) (consent to search car includes consent to search any closed containers found in car).

¹³ *County of Riverside v. McLaughlin*, — U.S. (111 S.Ct. 1661) (1991) (Fourth Amendment permits individual to be detained for 48 hours without probable cause hearing).

¹⁴ *California v. Hodari*, — U.S. (111 S.Ct. 1647) (1991) (Fourth Amendment when police officer pursued and ran toward him without reasonable suspicion); *Florida v. Bostick*, — U.S. (111 S.Ct. 2382) (1991) (Fourth Amendment does not prohibit police officers from boarding bus and searching passengers, even though officers lack reasonable suspicion to conduct such a search, if passengers "consent" to search).

¹⁵ *Coleman v. Thompson*, — U.S. (111 S.Ct. 2546) (1991); *Ylst v. Nunnemaker*, — U.S. (111 S.Ct. 2590) (1991); *McCleskey v. Zant*, — U.S. (111 S.Ct. 1454) (1991).

¹⁶ *Coleman v. Thompson*, — U.S. at — (111 S.Ct., at 2546).

¹⁷ Department of Justice figures indicate that as of 12/31/80 there were 714 prisoners under sentence of death in the United States, and as of 12/31/89 there were 2,250 prisoners under sentence of death. U.S. Department of Justice, Capital Punishment 1990, at 2; U.S. Department of Justice, Capital Punishment 1989, at 6. In less than a decade, the total number of prisoners under sentence of death in the United States has increased by 215%. According to Bureau of Justice Statistics Director Steven Dillingham, since 1976 there have been 3,834 people sentenced to death, 40% on Death Row Are Black, New Figures Show, *The New York Times*, Sept. 30, 1991, p. A15.

¹⁸ In the 1980s, the United States' prison population has doubled, whereas during the same time period in the Soviet Union, the prison population has declined and in South Africa, the prison population has increased by only 11%. The Sentencing Project, *Americans Behind Bars: A Comparison of International Rates of Incarceration* 6 (1991); Ostrow, U.S. Imprisons Black Men at 4 Times S. Africa's Rate, *The Los Angeles Times*, Jan. 5, 1991, p. A1, col. 5. The United States "now has the world's highest known rate of incarceration"; it imprisons 426 people per 100,000 population, whereas the Soviet Union imprisons 268 per 100,000 population and South Africa imprisons 333 per 100,000 population. *Americans Behind Bars*, at 3-5. In comparison, incarceration rates in Western Europe range from 35 to 120 per 100,000 population, and rates in Asia range from 21 to 140 per 100,000 population. *Ibid.* For example, the United States' incarceration rate is almost ten times that of Japan's incarceration rate. See *id.*, at 5.

¹⁹ *Barron v. Baltimore*, 7 Pet. 243 (1833) (holding first Eight Amendments inapplicable to the States); see also *Withers v. Buckley*, 20 How. 84, 90-91 (1857).

²⁰ "I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. . . . For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?" *The Federalist*, No. 84, P. 535 (B. Wright ed. 1961) (A. Hamilton).

²¹ See, e.g., *Shreveport Rate Case*, 234 U.S. 342, 351 (1914) (poser of Congress to regulate rates of interstate railroads included power "to control . . . all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance"); *Wickard v. Filburn*, 317 U.S. 111, 127-128 (1942) (Congress could control farmer's production of wheat for home consumption because cumulative effect of home consumption of wheat by many farmers would affect supply and demand relations of interstate commodity market); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964) ("Congress may . . . prohibit racial discrimination by motels serving travelers, however 'local' their operations may appear"); *Perez v. United States*, 402 U.S. 146, 154 (1971) ("Extortionate credit transactions, though purely intrastate, may in the judgment of Congress affect interstate commerce"). These cases stand in stark contrast to some of the Supreme Court's earlier cases, such as *United States v. E. C. Knight Co.*, 156 U.S. 1, 13 (1895), in which the Supreme Court "allowed but little scope to the power of Congress." *Wickard v. Filburn*, 317 U.S., at 121-122.

²² *Brown v. Board of Education* 347 U.S. 483 (1954).

²³ See, e.g., *Berger*, *Activist Censures of Robert Bork*, 85 *Northwestern L. Rev.* 993, 1015 (1991); *J. Ely*, *Democracy and Distrust* 32-33 (1980).

²⁴ "No Person shall to Service or Labour in one State, under the Laws thereof, escaping into another, shall in Consequence of any Law or Regulation therein, be discharged from such Service of Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due." U.S. Const., Art. IV, § 2.

²⁵ "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." U.S. Const., Art. I, § 2, ¶ 3 (superseded by § 2 of the Fourteenth Amendment).

²⁶ 347 U.S. 497 (1954) (holding racial segregation in District of Columbia public schools was denial of fifth amendment due process).

²⁷ See e.g., *Califano v. Webster*, 430 U.S. 313, 317 (1977) (*per curiam*) (holding constitutional under fifth amendment federal social security statute treating female wage earners more favorably than male wage earners to redress "our society's longstanding disparate treatment of women"); *Califano v. Goldfarb*, 430 U.S. 199, 201 (1977) (federal statute denying survivors' benefits to female wage earner's spouse unless he can show he "was receiving at least one-half of his support" from his deceased wife, but not requiring male wage earner's surviving spouse to make the same showing of dependency, violates Due Process Clause of Fifth Amendment); *United States Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973) (food stamp statute excluding any household containing individual unrelated to any other member of the household violates Due Process Clause of Fifth Amendment); *Frontiero v. Richardson*, 411 U.S. 677, 680 (1973) (holding unconstitutional under fifth amendment federal statutes providing that spouses of male members of the armed services were "dependents" for purposes of military benefits, but that spouses of female members were not unless they depended on their wives for more than one-half of their support); *Shapiro v. Thompson*, 394 U.S. 618, 641-642 (1969) (holding unconstitutional state and federal provisions denying welfare benefits to individuals who had resided in the administering jurisdiction less than one year); *Schneider v. Rust*, 377 U.S. 163, 168 (1964) (holding statute treating naturalized citizens as less reliable than native born citizens is unconstitutional because "while the Fifth Amendment contains no equal protection clause it does forbid discrimination that is 'so unjustifiable as to be violative of due process'").

²⁸ "I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said . . . that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law." *Lochner v. New York*, 198 U.S. 45, 76 (1905) (Holmes, J., dissenting).

This standard has been incorporated into subsequent cases as well. See, e.g., *Snyder v. Massachu-*

setts, 291 U.S. 97, 105 (1934) (opinion of Cardozo, J.) (State is free to regulate its procedure "unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental"); *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion) (defining fundamental liberties as those that are "deeply rooted in this Nation's history and tradition").

²⁹ A. Lincoln, *Gettysburg Address*, 1 *Documents of American History* 429 (H. Commager ed.) (9th ed. 1973).

³⁰ *Id.* at 428.

³¹ U.S. Const., Amdt. 14, § 1.

³² "The words, 'due process of law,' were undoubtedly intended to convey the same meaning as the words, 'by the law of the land,' in *Magna Carta*." *Murray's Lessees v. Hoboken Land and Improvement Co.*, 18 How. 272, 276 (1856). In *Davidson v. New Orleans*, 96 U.S. 97, 101 (1877), the Supreme Court recognized that one was the equivalent of the other. See also 2 J. Story, *Commentaries on the Constitution of the United States* 565-567 (5th ed. 1891). Learned Hand reached the same conclusion: "It is my understanding that the 'Due Process Clause,' when it first appeared in Chapter III of the 28th of Edward III—about a century and a half after *Magna Carta*—was a substitute for, and was regarded as the equivalent of, the phrase, *per legem terrae*, which meant no more than customary legal procedure." L. Hand, *The Bill of Rights* 35 (1958).

³³ This, in essence, is the argument that the Court accepted to explain its conclusion that due process of law does not require an indictment by a grand jury as a prerequisite to a prosecution for murder. See *Hurtado v. California*, 110 U.S. 516 (1884).

³⁴ U.S. Const., Amdt. 1.

³⁵ The majority did not disagree with this proposition. It wrote:

"For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." 268 U.S. 652, 666 (1925).

³⁶ 262 U.S. 390, 400 (1923) (holding unconstitutional an act prohibiting the teaching of foreign languages to children because the teacher's "right thus to teach and the right of parents to engage him so to instruct their children . . . are within the liberty of the [Fourteenth] Amendment").

³⁷ 268 U.S. 510, 534-535 (1925) (holding unconstitutional an act that forbade parents from sending their children to private schools because it "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control").

³⁸ U.S. Const., Amdt. 6.

³⁹ *Powell v. Alabama*, 287 U.S. 45, 60-65, 69 (1932).

⁴⁰ The Court concluded that given the special circumstances in the record, "the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. To hold otherwise would be to ignore the fundamental postulate, already adverted to, 'that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.' *Holden v. Hardy*, [169 U.S. 366 (1898)]." 287 U.S., at 71-72.

⁴¹ See *Gideon v. Wainwright*, 372 U.S. 335, 350-351 (1963) (Harlan, J., concurring).

⁴² *Id.*, at 344-345.

⁴³ See *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) ("absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial") (footnotes omitted).

⁴⁴ See, e.g., *United States v. Cronin*, 466 U.S. 648 (1984) (adversarial process protected by Sixth Amendment requires accused to have counsel acting as advo-

cate); *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (convicted defendant's claim of ineffective assistance of counsel requires showing that counsel's performance was deficient and that the deficiency prejudiced the defendant); see also *Cuyler v. Sullivan*, 446 U.S. 355, 348 (1980) (actual conflict of interest adversely affecting lawyer's performance renders assistance ineffective); *Holloway v. Arkansas*, 435 U.S. 475 (1978) (Sixth Amendment right to effective assistance of counsel includes right of representation by attorney who does not owe conflicting duties to other defendants).

⁴⁵*Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (footnote omitted).

⁴²J. Story, *Commentaries on the Constitution of the United States* 631-632 (5th ed. 1891).

⁴⁷*Wallace v. Jaffree*, 472 U.S. 38, 52-53 (1985) (footnote omitted).

The view held by St. Thomas Aquinas is explained in a report prepared by the Congressional Research Service of the Library of Congress, entitled "Catholic Teaching on Abortion": "For St. Thomas, 'seed and what is not seed is determined by sensation and movement.' What is destroyed in abortion of the unborn fetus is seed, not man." C. Whittier, *Catholic Teaching on Abortion: Its Origin and Later Development* (1981), reprinted in *Brief for Americans United for Separation of Church and State as Amicus Curiae* 13a, 17a (quoting *In octo libros politicorum* 7.12, attributed to St. Thomas Aquinas); see *Webster v. Reproductive Health Services*, 492 U.S. 490, 567-569 (1989) (Stevens, J., concurring in part and dissenting in part); see also *Roe v. Wade*, 410 U.S. 113, 134 (1973).

⁴⁹394 U.S. 557 (1969). The precise holding was, of course, that the "First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime." *Id.*, at 568 (footnote omitted). The Supreme Court reasoned that the Constitution protected the rights to receive ideas and to be free from unwanted governmental intrusions into one's privacy: "If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch." *Id.*, at 565.

⁵⁰391 U.S. 479 (1965) (holding Connecticut law prohibiting the purchase and use of contraceptives by married couples to be unconstitutional); see also *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (holding Massachusetts statute prohibiting distribution of contraceptives to single persons to be unconstitutional under the Equal Protection Clause of the Fourteenth Amendment).

⁵¹316 U.S. 535 (1942).

⁵²*Id.*, at 536, 541. I recognize, of course, that the Court's opinion, written when the concept of "substantive due process" was in special disfavor, relied on an equal protection rationale. I believe this is one of several cases that is more appropriately explained as reflecting a judgment about individual liberty. See Stevens, *The Third Branch of Liberty*, 41 U. Miami L. Rev. 277, 286, 288 (1986).

⁵³*Cruzan v. Director, Missouri Dept. of Health*, — U.S. — (110 S. Ct. 2841) (1990). Justice Scalia, however, did not accept this conclusion. See *id.*, at — (110 S. Ct., at 2861-2863).

⁵⁴"Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages." *Schloendorff v. Society of New York Hospital*, 211 N.Y. 125, 129-130, 105 N.E. 92, 93 (1914) (opinion of Cardozo, J.).

⁵⁵*Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905) (balancing individual's liberty interest in declining unwanted smallpox vaccine against State's interest in preventing disease and upholding law because it is "of paramount necessity" to State's fight against epidemic).

⁵⁶See, e.g., *Thornburg v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 795 (1986) (White, J., dissenting) ("the State's interest, if compelling after viability, is equally compelling before viability," but "compelling" interest is not required for a right that is not fundamental); *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 453 (1983) (O'Connor, J., dissenting) (regulation imposed on abortion is not unconstitutional unless it "unduly burdens the right to seek an abortion" at any point in the pregnancy); *Roe v. Wade*, 410 U.S. 113, 155 (1973) (opinion of Blackmun, J.) (where fundamental rights are concerned, state regulation may be justified only by a "compelling state interest" and must be "narrowly drawn to express only the legitimate state interests at stake"; the State's interest

becomes "compelling" at viability); *id.*, at 170 (Stewart, J., concurring) (right to abortion is "embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment" and any state interests in abridging this right must "survive the particularly careful scrutiny" that the Fourteenth Amendment requires here"); *id.*, at 173 (Rehnquist, J., dissenting) ("The test traditionally applied in the area of social and economic legislation is whether or not a law such as that challenged has a rational relation to a valid state objective"); see also *Poe v. Ullman*, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting) ("[T]he full scope of the liberty guaranteed by the Due Process Clause . . . is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment"); *Griswold v. Connecticut*, 381 U.S., at 500 (Harlan, J., concurring); *Moore v. East Cleveland*, 431 U.S. 494 (1977) (opinion of Powell, J.) (plurality opinion); *id.*, at 541 (White, J., dissenting).

⁵⁷*Webster*, 492 U.S., at 568, n. 13 (Stevens, J., concurring in part and dissenting in part); *Thornburgh*, 476 U.S., at 779, n. 8 (Stevens, J., concurring).

⁵⁸In his dissent in *Roe v. Wade*, then Justice Rehnquist wrote "I agree with the statement of Mr. Justice Stewart in his concurring opinion that the 'liberty,' against deprivation of which without due process the Fourteenth Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law such as that challenged has a rational relation to a valid state objective. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 491 (1955). The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit, albeit a broad one, on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in *Williamson*, supra." 410 U.S., at 172-173.

⁵⁹See *Webster v. Reproductive Health Services*, 492 U.S., at 569 (Stevens, J., concurring in part and dissenting in part); see also *Cruzan*, — U.S., at — (110 S. Ct., at 2888) (Stevens, J., dissenting) ("It is not within the province of secular government to circumscribe the liberties of the people by regulations designed wholly for the purpose of establishing a sectarian definition of life"); *Hodgson v. Minnesota*, — U.S. — (110 S.Ct. 2926, 2937) (1990) (opinion of Stevens, J.) ("[T]he regulation of constitutionally protected decisions . . . must be predicated on legitimate state concerns other than disagreement with the choice the individual has made Otherwise, the interest in liberty protected by the Due Process Clause would be a nullity").

⁶⁰See *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923) ("liberty may not be interested under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect"); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ("rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State"); *Thornburgh*, 476 U.S. at 789 (White, J., dissenting) ("State action impinging on individual interests need only be rational to survive strict scrutiny under the Due Process Clause, and the determination of rationality is to be made with a heavy dose of deference to the policy choices of the legislature").

⁶¹See *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discrimination"); *Turner v. Safley*, 482 U.S. 78 (1987) (state regulation banning marriages among inmates without supervisor's approval violates Fourteenth Amendment).

⁶²M. Adler, *Robert Bork: The Lessons to Be Learned*, 84 Northwestern L. Rev. 1121, 1123 (1990).

⁶³As Justice Powell observed in *Moore v. East Cleveland*, "[t]here are risks when the judicial branch gives enhanced protection to certain substantive liberties without guidance of the more specific provisions of the Bill of Rights." 431 U.S., at 502. Even against the backdrop of *Lochner*, however, he concluded that although "history counsels cau-

tion and restraint . . . it does not counsel abandonment . . ." *Ibid.*

⁶⁴B. Cardozo, *The Nature of the Judicial Process* 135-136 (1921).

⁶⁵Cardozo's description of the judge's task in statutory construction is equally appropriate in describing the judge's task in constitutional interpretation:

"There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed that at times, but it is often something more." *Id.*, at 14-15.

"Interpretation, thus enlarged, becomes more than the ascertainment of the meaning and intent of lawmakers whose collective will has been declared. It supplements the declaration, and fills the vacant spaces, by the same processes and methods that have built up the customary law." *Id.*, at 17.

⁶⁶"Originalism was not the original interpretive doctrine of the framers nor of the framing generation. It was taken for granted that the Constitution, like other legal texts, would be interpreted by men who were learned in the law, arguing cases and writing judgments in the way lawyers and judges had done for centuries in England and its colonies." C. Fried, *Order and Law* 68 (1991).

For an account of the interpretive techniques used in the framers' day, see Powell, *The Original Understanding of Original Intent*, 98 Harv. L. Rev. 885 (1985) (arguing that approaches to constitutional interpretation in the framers' day differ from the approach now taken by those who say we should look to the framers' intent).

⁶⁷Justice Harlan's advice to those engaged in the difficult task of defining due process is equally apt to those engaged in the difficult task of judging: "No formula could serve as a substitute. . . . For judgment and restraint." *Poe v. Ullman*, 367 U.S., at 542 (Harlan, J., dissenting).

⁶⁸B. Cardozo, *The Paradoxes of Legal Science* 26-27 (1927) (footnotes omitted).

⁶⁹"The doctrine teaches judges to focus their attention on the issue that must be addressed in order to decide the case or controversy between the specific litigants before the Court." J. Stevens, *Judicial Restraint*, 22 San Diego L. Rev. 437, 446 (1985).

⁷⁰297 U.S. 288, 346 (1936) ("The Court will not anticipate a question of constitutional law in advance of the necessity of deciding it" (quoting *Liverpool, New York and Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 1, 33, 39 (1885)); see also *Burton v. United States*, 196 U.S. 283, 295 (1905) ("It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case").

AIDS UPDATE

● Mr. CRANSTON. Mr. President, according to the Centers for Disease Control, as of January 31, 1992, 209,693 Americans have been diagnosed with AIDS; 133,554 Americans have died from AIDS; and 76,139 Americans are currently living with AIDS.

THE RYAN WHITE CARE ACT

When the Congress enacted the Ryan White Comprehensive AIDS Resource Emergency [CARE] Act of 1990, we laid the cornerstone for the entire structure of Federal assistance to people with AIDS and to the institutions and organizations that care for them. Last week a number of Californians who represent community HIV service planning councils established under title I of the act visited my office to bring me up to date on their progress and their concerns.

Title I of the CARE Act provides that any U.S. city with over 2,000 AIDS cases, or more than 25 cases per 100,000 people, be declared a disaster city.

Right now, 18 cities across the Nation receive title I assistance. These cities account for more than 60 percent of all the AIDS cases in America. By fiscal year 1993, six additional cities will likely be added, because the AIDS case-load in these cities has reached emergency proportions.

Four California cities—Los Angeles, San Francisco, Oakland, and San Diego—are title I recipients.

In Los Angeles, 13,309 AIDS cases were diagnosed by the end of 1991. This was a 24.8-percent increase in AIDS cases over the previous year and 38,616 people are estimated to be infected with the HIV virus. By 1993, without an expanded definition of AIDS, 24,653 AIDS cases are projected.

In San Francisco, AIDS cases diagnosed through the end of 1991 totaled 12,379. AIDS cases increased by 21.0 percent over 1990—40,000 San Franciscans are thought to be infected with HIV. AIDS is currently the third leading cause of death for men of all ages, yet the wait for scheduling an initial appointment for each intervention service ranges from 2 to 6 weeks.

Cases of AIDS diagnosed in San Diego through December of 1991 were 2,947. This was a 26.6-percent increase over the previous year with 30,000 persons estimated to be infected with the HIV virus. Seventy-four percent of inpatient care to people with AIDS is either paid by public systems or uncompensated. Hispanic AIDS cases in San Diego increased 130 percent from 1989 to 1991.

Oakland AIDS cases through the end of 1991 totaled 2,481, a 20.5-percent increase with 13,900 people thought to be infected with the HIV virus. More than 7,813 people are waiting for title I services. Between 1988 and 1990, Hispanic AIDS cases rose 233 percent; AIDS cases among African Americans rose 150 percent. Only 13 percent of those people in need of case management are receiving help.

Mr. President, the story is similar all across the country. Inadequate resources are thinly spread as title I cities report the need for millions of additional dollars in HIV services and care. For example, Boston's title I Planning Council has documented \$10 in care needs for every title I dollar presently available.

I believe we must fully fund the Ryan White CARE Act in fiscal year 1993. I am particularly concerned that our hard-hit title I cities, crying for relief from the daily emergency they face, deserve the full \$275 million authorized for title I. The AIDS epidemic grows worse as more and more Americans are diagnosed with AIDS. The public health systems in our Nation's major cities are stretched to the breaking point. This is an emergency care crisis, Mr. President, and it needs our urgent, compassionate response in the upcoming appropriations process for fiscal year 1993.●

CANADA'S UNFAIR CHICKEN SUPPLY MANAGEMENT

● Mr. PRYOR. Mr. President, I wish to bring to your attention, and indeed to the attention of all Americans, the unfair system of supply management of chickens the Canadian Government currently uses to restrict the amount and type of foreign chickens entering that country. By doing so I would like to say that I feel strongly about the concurrent resolution submitted by myself and Senator MCCONNELL that would bring this issue to the forefront of the many trade issues facing our country.

This so-called system used in Canada amounts to nothing more than a trade barrier against foreign-produced poultry, and as representative of our country's largest poultry producing State I can tell you first hand how important it is that we make the Canadian Government see the light, and for that matter, see the hypocrisy of their current policy. To advocate free trade through the NAFTA negotiations and yet construct a protectionist wall to keep only 2,400 Canadian poultry producers from having to compete with United States producers makes it clear that they want it both ways.

Mr. President, a remedy to this situation would not only help the United States poultry industry, and by that I mean the producers themselves, the feed companies, the people who transport the products, the processors, and so on, but it would also help the Canadian retailers and the millions of Canadian consumers who are forced to pay the artificially high prices brought about by this management system.

In the spirit of the North American Free Trade Agreement or NAFTA, I would like to see some effort on the part of the Canadians to address this most legitimate concern. Indeed, I believe that bilateral negotiations between the United States and Canada could prove to be very beneficial given the alternative of seeking a ruling from a GATT panel which I think, and I believe the Canadian Government does as well, would rule in favor of the United States.

Mr. President, I cannot stress enough to you how the United States is in such a unique position to increase our exports to Canada. The United States poultry industry is larger and more efficient than the Canadian poultry industry. And most importantly, ours is the safest in the world. It just makes sense that we can more easily supply our neighbors to the north with a product their consumers want than any other country in the world, including their own. Mr. President, this year the United States will produce 35 percent of the total world production of chicken, with a value of approximately \$13.8 billion; however, United States chicken exports to Canada last year amounted to just \$135 million, or 8 percent of total Canadian chicken consumption.

Practically all of the fresh and processed chicken now entering the Canadian market is United States-sourced. You do not have to have eagle eyes to see that the elimination of Canada's supply management system for poultry will principally benefit United States suppliers. Mr. President, it is estimated that if the Canadian market were fully opened that United States sales would increase by \$300 to \$700 million annually. Even at \$300 million, Canada would be the largest United States chicken export market in the world. Imagine, if you will, what increased sales of \$300 million could do for the communities where this poultry is produced and processed. Using the multiplier effect that these increased sales bring about, that could translate into \$1.5 billion injected into our economy. At a time when our trade deficit is soaring, interest on the national debt is increasing at seemingly exponential rates, and more and more people are losing their jobs every day, this is the kind of benefit our economy needs right now. For almost certainly there will be new jobs created to meet the demand of added exports.

Mr. President, the administration, and in fact all of Congress, wants to do something to get our feet back on the ground and to stimulate the economy. Support for this resolution will show our poultry industry that we do care and are going to do something about it. The United States market is completely open to chicken imports that meet United States health and inspection requirements, and we should be able to expect the same treatment from Canada. Elimination of Canada's chicken supply management system will provide open and fair access to the Canadian market for United States chicken producers, processors, and United States retailers operating in Canada. I would urge my colleagues to support this resolution as a step toward removing this unfair trade barrier against our poultry industry.●

INDIANS TURNING TO TRIBAL COLLEGES FOR OPPORTUNITY AND CULTURAL VALUES

● Mr. SIMON. Mr. President, one of the developments that gives encouragement to American Indians is the development of the tribally controlled community college.

I have had the privilege of being able to encourage that development over the years, being the chief sponsor of the reauthorization of that legislation some years ago in the House.

Recently, the New York Times had an article by Michel Marriott titled "Indians Turning to Tribal Colleges for Opportunity and Cultural Values."

Let me add that one of the things the tribally controlled colleges needs is a stronger financial base. Their work has been praised by former Education Com-

missioner Ernest Boyer in a report he issued for the Carnegie Endowment.

The MacArthur Foundation and others have provided assistance to the tribally controlled colleges. But they need a stronger base of Federal support, which I hope we will give it, and they need growth in their endowments, which are extremely weak.

I serve on the board of regents of a fine liberal arts college in Nebraska, Dana College, where I attended for 2 years. It has an anemic endowment, and that prevents the college from doing many things that it should do. I hope that we can gradually increase that endowment. But weak as that endowment is, the endowments for the tribally controlled community colleges are even weaker.

I hope that Members of the House and Senate will do what they can to encourage the tribally controlled community colleges, and I ask that the article by Michel Marriott be printed in the RECORD at this point.

The article follows:

[From the New York Times, Feb. 26, 1992]
INDIANS TURNING TO TRIBAL COLLEGES FOR OPPORTUNITY AND CULTURAL VALUES

(By Michel Marriott)

FORT YATES, N.D.—For years Ted and Jenny Eagle moved through a rhythmless dance of dead-end jobs, empty pockets and, in desperate resignation, drunken staggers. The life of American Indians on the High Plains has proved little more promising for them than it was for their ancestors a century ago, when official policy held native tribes on vast and vacant reservations.

But the Eagles, who live on the Standing Rock Indian Reservation here with their four children in a two-bedroom mobile home on a field of junked cars, recently decided to aim for a better life. Last fall Mr. Eagle, who is 44 years old, and Mrs. Eagle, 36, enrolled in college.

They went to the only place they believed would believe in them: Standing Rock College, one of 24 colleges in the United States owned and operated by American Indians.

It is a decision a relatively small but growing number of Indians are making as they increasingly turn to their own institutions for answers, understanding and their own brand of traditional values.

'SENSITIVE TO THEIR CULTURE'

"I think tribal colleges do for native Americans what predominantly Hispanic institutions do for Latinos, what historically black colleges do for African-Americans," said Richard C. Richardson Jr., professor of educational leadership and policy studies at Arizona State University. "they provide an institution that is sensitive to their culture and focuses on the needs of the communities that they represent."

That sensitivity was the original motivation for tribal colleges, which were created because Indians living on reservations had few opportunities to obtain a postsecondary education near where they lived. And if they left their areas to get a higher education, many often dropped out because the mainstream colleges were generally unprepared or unwilling to deal with Indians' special needs.

Long after blacks, Jews, Roman Catholics and other ethnic and religious groups had established colleges to serve their special

needs, American Indians founded a string of their own colleges.

The first tribal college, the Navajo Community College, was founded in 1968 on the Navajo Reservation in Tsaile, Ariz. Now there are 24 colleges on reservations and two more predominantly Indian colleges run by the Federal Government. But only 15 are fully accredited. All but three are two-year community colleges.

MOST GRADUATES HAVE JOBS

The average tribal college student is 30 years old, female and has children, according to the American Indian College Fund, a nonprofit group that began to raise money for Indian colleges in 1989. More than 80 percent of those who do graduate are employed, fund officials said.

The fund does not keep conclusive data on the number of students who drop out each year. But it notes that most of the dropouts eventually return. Last year at Standing Rock, 24 percent of the students dropped out; officials say this is generally typical of most tribal colleges.

Some educators said they were concerned that Indian colleges that emphasize tribal values and traditions may not be adequately preparing the students for work and life in the larger society off the reservation.

In some tribal colleges, for example, competition among individual students gives way to a more Indian tradition of students working together to achieve. At one college an attempt is made to have male professors teach only male students because Indian tradition dictates that women teach women and men teach men, a tribal college official said.

But in the case of people like the Eagles, a tribal college offers unusual sensitivity to their circumstances, special assistance to help them attend and a reasonable expectation for success that can lead them to aim for higher goals than they had thought possible.

"When I came here I just wanted to get the basics so I could go to trade school," said Mr. Eagle, who left school at the age of 13 to break in horses for room and board. "When we signed up, our advisers talked about human services, and we kind of got interested in that."

Because of their advisers' confidence in them, the Eagles said, they decided to set a more ambitious goal: becoming counselors for addicted adolescents.

While sometimes makeshift, threadbare and meagerly staffed, the tribal colleges nonetheless represent a sharp departure in Indian education; historically, formal education has been imposed on tribes by outsiders, often with disastrous effects, tribal leaders and educators say.

"Since white society came here, we were told that we were inferior" said David L. Archambault, the former president of Standing Rock College. "We were told everything about us was not good—our language, traditions, culture."

Tribal colleges, he said, strive to give American Indians a quality education while teaching them to preserve and enhance their understanding of a culture that has narrowly escaped extinction.

"We have integrated native American history and culture in noncultural courses," said Ron McNeal, the new president of Standing Rock. "We use Indian examples in science, chemistry and biology, showing how our traditions contributed."

ENROLLMENT STATISTICS

While precise numbers are sketchy, about 13,000 full- and part-time students attend the

24 tribal colleges—those situated on or near Indian reservations—and the two other Indian colleges operated by the Federal Government's Bureau of Indian Affairs, according to a survey of the colleges recently conducted by the American Indian Higher Education Consortium, a group representing all Indian colleges.

Altogether, about 103,000 Indians were enrolled in colleges in 1990, the United States Department of Education, compared with 10.6 million whites, 1.2 million blacks and 758,000 Hispanic students. The nation's Indian population is about two million, according to the 1990 census.

Typically small, tribal colleges have enrollments ranging from 80 to 1,800. And almost all the institutions are poorly financed. Most manage on modest annual assistance from the Federal Government—about \$3,000 for each Indian student—plus private donations and tuition. But tuition is generally low, considering that most students come from areas steeped in multi-generational poverty, alcoholism and unemployment rates as high as 80 percent.

Most of the tribal colleges are situated in the High Plains. Nearly two-thirds are clustered in North and South Dakota and Montana, with names like Dull Knife Memorial Community College, Little Hoop Community College and Oglala Lakota College. Only three of the 26 are four-year institutions; one, Sinte Gleska University in Rosebud, S.D., also offers a master's degree in education.

IMPRESSIVE RESULTS

By concentrating on Indian culture the colleges, already isolated geographically, may increase the Indian students' general isolation, said Dr. Richardson of the University of Arizona. But he and other education experts concede that close attention and sensitivity to Indian needs by tribal colleges have yielded some impressive results.

"We've been most impressed with their concern for individual students and their recognition of the range of problems some of their students face, and their efforts to deal with them in a very practical and immediate way," said Jon W. Fuller, president of the Consortium for the Advancement of Private Higher Education, a nonprofit group that supports small private colleges.

Discussing Indians who attend non-Indian universities, Mr. McNeal, the president of Standing Rock, said: "The problem is, when they go on to four-year institutions the success rate for the first year isn't nearly as good as that of the tribal colleges. There, they don't have the support system to allow students to achieve."

Mr. McNeal, who is 33 and wears his hair long, much the way his great-great-grandfather, Sitting Bull, wore his, said a tribal college's mission is clear: "First and foremost, give your students the tools necessary—an education—to live and define themselves. That means being native American living in a predominantly non-Indian society."

Varying from one tribal college to another, students are offered a wide range of courses, including standard college courses like English, mathematics and history. Many emphasize practical skills, especially those needed on reservations today. Topping the list are usually studies in land and resource management and human welfare and health services.

A MOBILE CLASSROOM

On a recent morning, Standing Rock College was busy with the commotion of students and teachers making their way to

class. Outside, a sign with hand-painted letters in the shape of giant feathers makes the college—two modest, single-story buildings on a muddy clearing—look more like a tourist trading post than an institution of higher education.

A recreational vehicle is parked outside. Equipped with portable computers, it is a mobile classroom that travels to the reservation's distant towns to offer college courses and high school equivalency classes.

Ted and Jenny Eagle are lucky. They live only five miles from the college, and drive here each day in their old Oldsmobile because there is no public transportation.

"I can't even get a clerical job because I don't have a one- or two-year certificate from a learning institution," said Mrs. Eagle, who wears her long hair parted neatly down the middle. "I looked at different avenues I could take and I had to make this decision for myself, my family and my children."

A STRUGGLE FOR SURVIVAL

Mr. Eagle said he and his family had struggled for years to survive, sometimes turning to public assistance. He has earned money doing construction work, driving trucks and school buses and buying, selling and trading old cars and their parts.

After a trucking accident 19 months ago left Mr. Eagle unable to do strenuous physical work, the couple decided to go back to school. When they graduate from Standing Rock, they plan to go to a four-year college off the reservation and earn bachelor's degrees.

The Eagles said they want to counsel young Indians on the reservation to avoid the mistakes they made with alcohol.

But it was a lack of a sufficient education, Mr. Eagle said, that stood as his greatest obstacle. "Some of the time it really got rough," he said. "It seemed like we tried almost everything."

Now, they said, they are trying education.●

SALUTING THE FLORIDA EMPLOYMENT AND TRAINING ASSOCIATION

● Mr. GRAHAM. Mr. President, the vital contributions of volunteers to the well-being and progress of this Nation are well known. What may not be so well known are the achievements, and private business partnership, of the Florida Employment and Training Association.

My purpose today is to recognize and salute the dedicated practitioners and volunteers of this dynamic and productive association.

Floridians believe that in order for industry to flourish into the next decade, our State must train and educate the disadvantaged citizens in our local communities in a cost effective and supportive environment. The Private Industry Councils, through their membership in the Florida Employment and Training Association, offer this opportunity.

Through the Job Training Partnership Act, disadvantaged youths, unskilled adults, former offenders, needy single parents, and those with learning disabilities are getting the help they need to become productive members of the work force.

In addition, an increasing audience of non-English speaking youths and adults, as well as single mothers, veterans, and physically handicapped individuals, will soon enjoy the discovery of their own self-fulfillment and society will receive new contributing taxpayers for our Nation's economic stability.

As Governor, I watched these programs evolve in Florida and take great pride in being an honorary member of the Florida Employment and Training Association.

On May 23, 1992, the Florida Employment and Training Association celebrates its 10th anniversary of training Florida's work force. It is this occasion that prompts me to bring to the Senate's attention and acknowledge the fine work and dedication of the members of the Florida Employment and Training Association.●

DIRECT STUDENT LOANS? YES

● Mr. SIMON. Mr. President, the Eugene Register-Guard recently had an editorial titled, "Direct student loans? Yes."

We clearly have to do better than we are doing in this country in providing assistance to students.

We have to make a decision whether we will put our money into consumption or investment.

The answer clearly has to be investment, and one of the fields is in the field of education.

Before very long, some form of student assistance offered by my colleagues, Senator KENNEDY, Senator BRADLEY, Senator DURENBERGER, and myself will come before this body.

I hope we will do the sensible thing and see that we make investments in the future that need to be made.

I ask unanimous consent that the article be printed in the RECORD at this point.

The article follows:

[From the Register-Guard, Feb. 14, 1992]

DIRECT STUDENT LOANS? YES

As the cost of attending college keeps rising, so, too, does the amount of money borrowed by college students. Once graduated, these debt-laden students face restricted job markets, forcing many into years of indebtedness, and in some cases delinquency or default on their student loans.

This has produced unwanted consequences. One is that, to stay debt-free in their early years in the work force, some young people forgo college altogether. Another is that upon graduation from college, many students seek jobs outside their career interests—ones in which they can immediately begin to pay down their college debt. The nation loses in both instances.

U.S. Sens. Paul Simon, D-Ill., and David Durenberger, R-Minn., have found a way to relieve the student debt burden. Their bill, now before Congress, would provide 1) increased Pell grants, 2) universal access to student loans regardless of income, 3) loans made directly by the federal government instead of through financial institutions, 4)

loan repayment schedules tied to postgraduation earnings and 5) loan collection through the Internal Revenue Service. University of Oregon President Myles Brand has endorsed the concept. He is right to do so.

The advantages of the Simon-Durenberger approach are many:

Bypassing financial institutions and loaning directly to students would save the government between \$620 million and \$1.5 billion a year in subsidies and interest payments while students are in college, according to the General Accounting Office. (It is also estimated that up to an additional \$1 billion a year could be saved in reduced administrative costs and defaults.)

Tying repayment schedules to postgraduate earnings would free graduates to seek careers of their choice.

Having the IRS act as the loan collection agency would drop defaults to virtually zero.

Channeling loans directly to students would make more money available for this purpose, simplify the loan system and reduce administrative headaches in campus financial aid offices all across the country.

Eliminating income standards for loan eligibility would allow more students from middle-income families to attend college.

Predictably, the Simon-Durenberger bill has its critics. Banks and other financial institutions involved with student loans ardently oppose the bill as government meddling in what should be a private sector function. The "meddling" is justified. The government has every right to set the rules for how the money it guarantees reaches the students it is intended to help and how that money is repaid.

Besides, as Brand has noted, student loans are gravy business for banks. Because the loans are guaranteed by the government, they are risk-free to the commercial lenders. If the loans are nothing more than "break-even" transactions and not moneymakers, as the banks claim, why have the lenders listed stopping the Simon-Durenberger bill as a "priority item" for their industry?

Paul Simon said it best during a visit to Eugene late last year. The winners of his bill would be students and colleges. The losers would be the lending institutions. The choice, he said, is between the government's subsidizing the banks or redirecting that subsidy to students. He and Myles Brand say that's an easy choice to make. We agree, Congress should pass the Simon-Durenberger bill.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

● Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35

for Charles Reimenschneider, a member of the staff of Senator LEAHY, to participate in a program in Belgium, sponsored by the European Community's Visitor Programme, from May 26 to June 5, 1991.

The committee determined that participation by Mr. Reimenschneider in this program, at the expense of the European Community's Visitor Programme, was in the interest of the Senate and the United States.●

TRIBUTE TO IAN CASIMIR WYGLENDOWSKI

● Mr. LAUTENBERG. Mr. President, I rise today in order to recognize the accomplishments of Ian Wyglendowski, a young New Jerseyite who has brought pride to his community. On March 26, Ian will be honored in an awards ceremony at his high school with an AAU/Mars Milky Way High School All-American Award.

Every year, the Amateur Athletic Union in conjunction with M&M Mars, a New Jersey-based corporation, recognizes four young men and four young women for their outstanding contributions in the fields of academics, athletics, and service to their community. Ian was one of 8 regional recipients selected from a pool of 13,000 high school seniors who were nominated nationwide. He will now be eligible to receive one of two national AAU/Mars Milky Way awards to be named in April.

A senior at Voorhees High School, Ian has a fine academic record and has distinguished himself by serving as president of the Latin American Society and captain of the Academic Team. He was also selected to attend New Jersey's prestigious Governor's School on the Environment.

Ian has also been active in sports. He is captain of his school's fencing, tennis, and cross-country teams and was named in fencing to the Second Team All-State and won a silver medal at the Junior Olympics in Little Rock, AR.

Ian's dedication to his community is evidenced in his commitment to preserving our environment. He is a member of CEASE, the Coalition of Environmentally Active Students for the Environment, and helped to organize a concert which raised money to help sponsor environmental education. Ian has also been a Special Olympics volunteer for the past 3 years.

Mr. President, at a time when many are losing faith in our young people, Ian does us all proud. If Ian is an indication of what the youth of this Nation are capable of, we have every reason to be optimistic about what the future holds.

And so, I congratulate Ian and encourage him to hold to his ideals. I hope he continues to strive toward personal achievement and, at the same time, remembers his obligations to his family, his community, and his Nation.●

THIRTY-FIFTH WEDDING ANNIVERSARY OF CLAIRE AND FREDERICK COLEMAN

● Mr. D'AMATO. Mr. President, I rise today to congratulate Claire and Frederick Coleman on the occasion of their 35th wedding anniversary. These lovely people, constituents of mine from New Rochelle, NY, are models of the commitment to family values that makes our Nation great. It is couples like this, hard-working, dedicated to family, and actively serving within their community, that are the backbone of our American society.

Claire and Fred met and were married in New York City in the years following World War II. Fred served heroically in the U.S. Army in the European theater, and received commendations for his activities in a number of engagements, while Claire later worked for the USO. Joining many of their generation, they sought a home and a better life in our great suburbs, where they settled and started a family.

I applaud the Colemans and the values they represent. They are truly an American success story. Congratulations and best wishes on this important milestone.●

TRIBUTE TO ADAM LYLE HICKENBOTHAM

● Mr. BRYAN. Mr. President, I rise today to congratulate Adam Lyle Hickenbotham, a student from Nevada, who is a regional recipient of the sixth annual Amateur Athletic Union/Mars Milky Way High School All-American Award. Adam was selected for the award based on his academic and athletic achievements, and his dedication to community service.

Adam, a senior at Eldorado High School in Las Vegas, ranks first in his class. He is a member of the National Honor Society, was chosen a National Merit Scholar semifinalist and is in the Academic Hall of Honor. Adam has received several awards for his academic accomplishments in a wide range of subjects. Along with his achievements in the classroom, Adam has also seen success in the field of athletics as a member of the track and cross-country varsity teams.

Adam has also devoted his many skills and efforts to community service. He has volunteered for the American Lung Society and the American Red Cross, and has raised funds for Opportunity Village and the Muscular Dystrophy Association. Adam is also an Eagle Scout.

I would like to commend Adam on his achievements and on receiving this award. It is a pleasure to see a student who has worked hard and served his community well be recognized for his efforts.●

TIBET NATIONAL DAY

● Mr. SIMON. Mr. President, March 10, 1992, marks the 33d Tibetan National Day, a day set aside by Tibetans the world over to commemorate the 1959 uprising against the Chinese occupation of their country. While we join other nations in celebrating the victories of pluralism and democracy over autocracy and totalitarianism, of freedom over tyranny, we cannot allow ourselves to neglect those who continue to endure repression, suffering routine violations of their basic human rights. It is time for China to let Tibetans decide for themselves whether they wish to remain under occupation by China's People's Liberation Army.

Tragically, Mr. President, these ideals on which our Nation stands are not only being violated by the Chinese Government, but are largely overlooked by our own administration as well. The Bush administration and Congress ought to be working together to encourage the new generation of Chinese leaders to peacefully initiate a new, democratic order. The Chinese people, the Tibetan people and other minorities under Chinese dominion cry out for an end to the repression.

Not only has the Chinese Government blocked reform in Tibet, but it has actively participated in the systematic destruction of Tibetan culture. Since the invasion of Tibet by Chinese forces in 1949, it is estimated that 1.2 million Tibetans, one-sixth of Tibet's total population, have died as a result of the Chinese occupation. Over 6,000 monasteries and other religious and cultural institutions have been destroyed. Educational opportunities are limited for Tibetans, with increasing limitations on the use of the Tibetan language. Large numbers of people have been imprisoned for political crimes, often without a fair trial. Conviction is a foregone conclusion for most of the accused. The gulags and re-education camps of the former Soviet Union, made infamous by Alexander Solzhenitsyn, are still commonplace in the vast Tibetan plateau.

Mr. President, nothing less than Tibet's cultural heritage is at stake.

The Tibetan environment has been pillaged as well. Wildlife and natural resources have been destroyed and exploited at a ruinous rate. Recklessly, China is using Tibet for a nuclear dumping ground. Under China's liberation, Tibet's environment has grown steadily worse since 1950.

Chinese leaders and academics often argue that their liberation of Tibet freed its people from serfdom, but look at the state of the Tibetan people today: Are they prospering? Do they have religious freedom? Is their water pure and their air clear? Do they control their own destiny? The answer, of course, is a resounding no.

Sadly, the Bush administration seems willing to sacrifice Tibet in the

pursuit of courting Chinese favor. Just recently the United States delegation to the annual U.N. Human Rights Commission worked to weaken the text of a resolution criticizing China for its abysmal human rights record in Tibet. The changes would have also legitimized China's occupation of Tibet. This is not standing up for human rights. This is not the policy the Government of the United States ought to have. It is not a policy that will move China to respect human rights to make them stop selling missiles and nuclear technology to Syria, Iran, or Pakistan. I urge the Bush administration to reconsider its failed policies on China and Tibet. ●

TRIBUTE TO VENCOR, INC.

● Mr. McCONNELL. I rise today to recognize an outstanding Kentucky company that has become one of the Nation's most successful small businesses since it was started in 1985. Louisville-based Vencor, Inc. has been dubbed one of America's 100 fastest growing companies by Fortune magazine and one of the country's 200 best small firms by Forbes.

Vencor, Inc. operates long-term care hospitals for the chronically ill. Many people have called Vencor the next Humana, a hospital giant also based in Louisville. However, Vencor officials say that is not their goal. Vencor chief executive officer and a company founder W. Bruce Lunsford says his company will be more niche-oriented, addressing a need that is not always met in mainstream health care facilities.

Vencor began with the work of a group of medical professionals at Rockcastle County Hospital in Mount Vernon, KY. The rural hospital began experiencing serious financial problems in the 1970's. Vencor co-founder Michael Barr, who worked at the Rockcastle hospital, helped develop a long-term care program to attract patients and business. Many acute-care hospitals responded by sending patients, and Barr was soon looking for investors interested in expanding the idea into other medical facilities.

With its focus on long-term care facilities, Vencor is offering a service which solves many problems faced by regular hospitals. Acute-care facilities are reimbursed in fixed amounts by Medicare regardless of how long patients stay. Long-term, chronic-care hospitals are reimbursed for all costs, creating a big incentive for hospitals to send patients to Vencor facilities. Vencor can also make more efficient use of equipment. The company stays on the leading edge of technology by leasing ventilators instead of making huge outlays to buy them.

Today, Vencor operates 19 hospitals in 11 States and employs 2,800 people nationwide. The company's stock has skyrocketed more than sevenfold in 2½

years. Vice president of finance and development W. Earl Reed III says he expects the company to build a network of 30 to 40 hospitals.

Mr. President, I congratulate Vencor, Inc. on finding a way to successfully fill one gap which exists in today's health care system.

I ask that a recent article from the Lexington Herald-Leader be printed in the RECORD.

The article follows:

[From the Lexington Herald Leader, March 2, 1992.]

SHORT-TERM GAINS IN LONG-TERM CARE—SMALL BUSINESS'S BIG GAMBLE ON HOSPITALS PAYS OFF

(By Kevin Osbourn)

LOUISVILLE—It seems unlikely a big business that began with three employees off Billy Goat Strut Alley could become one of the nation's best small companies.

Only a supreme optimist would have predicted that the value of each share of the company's stock would skyrocket more than sevenfold in 2½ years, that the company's stock would split twice, that Fortune magazine would name it one of America's 100 fastest growing companies and Forbes would call it one of the country's 200 best small firms.

It's implausible. But that is the story of Vencor Inc., which operates long-term care hospitals for the chronically ill.

Vencor now occupies downtown offices in the Brown & Williamson Tower. Wall Street analysts have strong buy recommendations on its stock. Its star is rising so quickly that some have called Vencor the next Humana, a hospital giant also based in Louisville. Vencor downplays the comparison.

"We'll be a company that is more niche-oriented than Humana," said W. Bruce Lunsford, president, chief executive officer and a company founder. "We will never employ as many people as Humana. We won't do the kind of revenues they do. But we will be very successful."

THE IDEA THAT BLOSSOMED

But for the work of a group of medical professionals at Rockcastle County Hospital, Vencor might never have begun. In the 1970s, the rural hospital in Mount Vernon was in financial trouble.

"To survive we had to be innovative," said Michael Barr, a physical and respiratory therapist who worked at Rockcastle County Hospital and is one of Vencor's founders. "I knew I would be successful taking care of the most difficult patients."

To attract patients and business, Barr helped develop a program for patients requiring long-term care.

Acute-care hospitals in larger cities, which normally provide treatment for a few weeks, responded by sending patients to Rockcastle County. Some were so sick they needed ventilators, which cost \$30,000 each and enable a person to breathe.

Now, ventilator care is the backbone of Vencor and one of its keys to success.

Unlike acute-care hospitals, which are reimbursed in fixed amounts by Medicare regardless of how long patients stay, long-term, chronic-care hospitals such as Vencor's can be reimbursed for all their costs. Medicare is a federal health insurance program for the elderly.

"We figured out we could get paid for taking care of ventilator patients," Barr said.

Barr began looking for investors interested in expanding the idea to other medical facili-

ties. He said he turned to former Gov. John Y. Brown Jr., who had coronary bypass surgery in 1983 and had used a ventilator.

Brown did not become directly involved. But the former governor referred Barr to Lunsford, a lawyer and certified public accountant who had been Brown's secretary of commerce.

As commerce secretary, Lunsford had been inspired by the businessmen he met, including Humana founder David Jones, W.T. Young of W.T. Young Storage Co. in Lexington and others.

"I wanted to build a company," Lunsford said. "In Butch Cassidy and the Sundance Kid, they kept asking, 'Who are those guys?' I wanted to be one of those guys, a John Brown, a W.T. Young, a David Jones."

"I liked the idea of health care, thought it would be a dramatic growth industry. But I thought the hospital area would be more of an opportunity than the nursing home area. We changed it to be more of a hospital company."

To launch the firm, Lunsford raised \$750,000 from investors in \$25,000 and \$50,000 increments.

In 1985, Barr, Lunsford and Maria Levering, who runs the corporate office, started the company. At that time, it was called Vencare.

To buy the company's first hospital in LaGrange, Ind., Lunsford co-signed a \$3.5 million bank note with R. Gene Smith, a Kentucky entrepreneur who is chairman of Taco Tico Inc. and involved with several other businesses.

Vencor started to perfect its formula for success in LaGrange.

"I learned what was going on in managing a hospital," Lunsford said. "We learned what kind of volume we needed, how many beds to fill, how much closer to the medical market we needed to be, how many people to have on staff."

Vencor went public in 1989, selling 3 million shares at \$4.53 each.

Vencor operates 19 hospitals from Florida to California, each with an average daily census of 50 patients.

"The original guys who put in \$50,000, that stock today is worth somewhere in the neighborhood of \$5 million," Lunsford said.

Net income has jumped rapidly, rising to \$10.1 million last year, up from \$3.3 million in 1990.

"I have a strong buy recommendation on the company," said Neal Bradsher, a senior analyst with Alex Brown & Sons in New York City. "In the near term it won't move up as rapidly as it has in the last year, but longer term, this stock has the ability to do a lot better than the market. Vencor is the best positioned alternate site health-care company."

BUILDING FOR THE FUTURE

Lunsford leaned back in his chair at Vencor headquarters, surveying the view of downtown Louisville.

Behind his desk, books with titles such as *The Entrepreneur*, *In Search of Excellence* and *Going Public* were stacked neatly.

Lunsford looked out the window, watching construction workers climb the steel structure of a building Vencor will move to in about a year.

It will be the tallest office tower in the state: the Capital Holding Center, headquarters of Capital Holding Corp.

Like the predictions for Vencor's stock, Lunsford and about 60 of the company's Louisville employees will be moving up, occupying the top two floors.

Payroll might not increase as quickly as it has in the last year. The company probably

will add about four hospitals a year, said W. Earl Reed III, Vencor's vice president of finance and development and former senior Humana executive.

But Vencor officials and stock analysts said there is room for much more growth. The goal is to seize market share.

"We feel we can build a company of 30 to 40 hospitals," Reed said.

Still, the future holds risks for Vencor and its investors.

In a lengthy report, Bradsher, the analyst with Alex Brown, identified several potential land mines: Changes in Medicare rules could hurt the way Vencor is reimbursed, and the company's financial condition would be very sensitive to any decline in census or revenue.

But Bradsher is expecting the opposite: rapid growth in census and revenue.

"They have a level of aggressiveness you rarely see," Bradsher said. "I want to own companies that want to dominate the market and have a strategic perception. There are several years of rapid growth ahead for this company."●

PROFESSOR MORGENTHAU WRITES ON U.N. PEACEKEEPING

● Mr. PELL. Mr. President, I would like to call my colleagues' attention to two op-ed pieces published recently in the Providence Journal. The pieces were written by Prof. Ruth Morgenthau, a prominent academician from my home State of Rhode Island, whose work I respect and admire.

In one piece, entitled "Back in Business," Professor Morgenthau writes about a resurgent United Nations and argues that the breakup of communism in the former Soviet Union and Eastern Europe has effectively freed the U.N. Security Council from the strictures of the Cold War. Consequently, with the Security Council operating in an atmosphere of consensus, the United Nations is able to take a much more activist role in mediating regional conflicts.

The U.N. peacekeeping successes in such areas as Namibia and Angola provide solid evidence of how a revitalized United Nations is beginning to realize its potential to promote collective security. Professor Morgenthau predicts that the United Nations' track record of success will continue in Cambodia and El Salvador, and perhaps in other areas as well and she concludes with the important point that the international community—and the United States in particular—should recognize the new global realities and take a long hard look at whether it should continue to rely on Cold War institutions such as NATO.

In a second piece, entitled "Ready for Change," Professor Morgenthau expands upon her observations on the United Nations, focusing on the need for internal reform. Without trivializing the U.N. successes that she characterized in her first piece, Professor Morgenthau does level some constructive criticisms of the U.N. budget, decisionmaking, and administrative procedures.

I commend both of these pieces to my colleagues, and I ask that they be printed in the RECORD.

The material follows:

[From the Providence Journal, Feb. 23, 1992]

BACK IN BUSINESS

(By Ruth S. Morgenthau)

The American public now looks on the United Nations with more favor than at any time since 1945.

Founded to realize the victors' post-World War II new world order, during the four decades of the Cold War the UN was not able to function as intended on peace and security. Now that the use of force can increasingly be internationalized, we can hope to see unilateral interventions (Grenada, Panama) become obsolescent.

The Cold War divided the victors and paralyzed the Security Council. So they generated an alternative security order—NATO, the Warsaw Pact, nuclear deterrence—to keep the peace in a bipolar world. Then with the collapse of communism, the permanent members of the Security Council recovered consensus, and are finally using the UN as originally intended. It is now back in the business of keeping the peace. Mopping up after the Cold War, the UN has played a significant role resolving conflict in the Third World, as in Namibia and Angola.

The UN turned a fresh page to collective security when Iraq invaded Kuwait. After adopting an economic embargo, the Security Council blessed the military action by US-led allied forces, and gave it international legality. However, the pattern set in the Gulf may not be typical of the growing number of collective security and peacekeeping problems.

Oil made Kuwait a global concern. Although eventually the "coalition" contributed heavily in financial resources and some personnel, the forces were preponderantly Americans under US command. These forces, coming largely from Europe, were mostly slated for demobilization. Returning via the Gulf meant they could return home as heroes, and while using up an increasingly redundant supply inventory. Such special circumstances are unlikely to recur.

The United States, with 5 percent of the world's population, is unlikely to want again the role of providing the soldiers, even if a UN-blessed action is paid for by others—such as Saudi Arabia, Kuwait, Japan, and Germany.

More likely are smaller international interventions, regional and even national in scope, that will test and reshape the battery of enforcement and peacekeeping instruments available under the UN charter. If the post-Cold War political consensus in the Security Council holds, a more balanced way to collective security is in the offing.

It is encouraging that a whole battery of forceful peacekeeping techniques is evolving, now that the collapse of the Soviet Union has liberated creativity. The UN recently did unprecedented work on regional conflicts, disarming belligerents, as in El Salvador and Cambodia. Peacekeeping, for which international law requires that all parties in a dispute invite a UN military presence, is expanding rapidly into gray areas of international law, into ones of chaos, like Yugoslavia.

The UN can also lead the way in general disarmament. A recent General Assembly resolution called for "transparency" on conventional arms sales, through public registration of sales. Leaders in some non-industrial countries are also calling for trans-

parency of conventional arms production. Many say inspection for chemical and nuclear arms should be but a first step towards a goal of multilateralization of the use of force.

Reaching towards this goal could free up massive resources for much-needed domestic development.

As the UN mutual security capacity becomes stronger there is, of course, good reason also to strengthen regional peacekeeping arrangements. When domestic conflicts or local wars arise, the first attempt to restore peace should properly take place in the region. For example, in Africa, ECOMOG (West African regional military organization) was able to end civil war in Liberia. The OAS (Organization of American States) is trying to reverse the military coup in Haiti.

In Europe, however, relics of the old order still persist in the instrument of collective security. At US insistence, Europe has no regional force, outside of NATO, since the Western European Union remains a shell, unable to act on Yugoslavia. Therefore, Cyrus Vance, at the request of the secretary general, has the job of coordinating an end to the violence.

The United States should clean up its act in Europe, to take account of the new strategic realities.

[From the Providence Journal, Feb. 24, 1992]

READY FOR CHANGE

(By Ruth S. Morgenthau)

While its work in collective security and peacekeeping expands, the United Nations as a whole is ripe for reform.

Many aspects of the current decision-making system are outdated, at times over-centralized, and require democratization. The situation demands that UN members unfreeze the political deals among the victors of 1945 and make more room for a changed world into which 125 or so more nations have been born. As the current General Assembly recognizes the States breaking out of the former Soviet Union, its membership rises to almost 180. The Security Council took 21 years to transfer the veto from Taiwan by seating representatives of the People's Republic of China.

Change has now so quickened that in one month Russia simply glided into the old Soviet Security Council seat!

Other voting reforms are under discussion. There is the anomaly of France and England's continuing to have a veto while the far richer Germany and Japan do not. Can a European union of some 400 million find a place in a reformed Security Council? Pressures mount for a permanent Security Council presence from Africa, Asia and Latin America, perhaps for Nigeria, India and Brazil.

Needed changes will not take place immediately, but they are on the agenda, as every nation's foreign policy adapts to fresh global circumstances. The victors of 1945 want to hang on to the veto, even though their proportion of the world's population is shrinking.

The richer states, paying most of the bills, reject UN reforms based on the idea of one person/one vote. As long as there are more authoritarian and military regimes than democratic ones, democracies will hardly be tempted by the idea of dropping the veto and adopting a simple one country/one vote principle. Meanwhile, India is unhappy to count no more than Liechtenstein; Germany and Japan are sidelined while the debate is on.

Reforms are also needed to prune the agenda and set priorities so that discussion in the

General Assembly ceases to be repetitive and empty. The Economic and Social Council is useless, yet no other UN organ exists to deal effectively with transnational macro-economic issues such as debt, trade and commodity prices. This seriously limits the coordination of economic and social actions of national governments, and of the Bretton Woods institutions (the World Bank and International Monetary Fund).

Meanwhile, at the international level, the new secretary general has much to do. No effective coordination exists of the decentralized, specialized agencies. The secretariat, rigid, wasteful and ridden by factions and patronage, needs radical pruning and reform.

There are many other unfinished UN housekeeping tasks, and many unpaid bills. Just as the tasks expand, the budget is shrinking. Out of the \$988 million still in arrears, the United States (paying 25 percent of the budget) owes almost half; the former Soviet Union owes about a fifth.

Beyond peacekeeping, collective security and development, pressure mounts to place on the UN agenda ways to make government more representative of the will of the people. Eleanor Roosevelt would be delighted to find human rights so important now, in a UN where talking about domestic affairs no longer leads to massive protest and interference.

The UN played a pivotal role in ending apartheid in South Africa. Ways for representative governments to control the police and military are under open discussion. Speakers for Eastern European and ex-Soviet states are among the most aggressive in pushing for a UN role monitoring democratization—though leaders of a tiny minority of nations, including Kenya, Saudi Arabia and Libya, insist civil and human rights are strictly domestic issues.

Monitoring elections, as in Namibia, Angola and Cambodia, has become part of the regular work of the UN. Additional agenda items may include easing towards legitimacy Haiti, Myanmar (Burma) and Algeria as national leaders grapple with the possibility of military coups against fledgling democracies. Proliferating remarkably in Latin America, Africa, Eurasia and beyond, democracies emerging according to domestic political dynamics remain susceptible to outside pressures.

A supportive UN can help improve their chances at survival.

In this transcendent period of history, states dissolve and unify, as in Europe, or divide as ethnic conflicts and border disputes revive, as in Yugoslavia and Ethiopia. The list expands of issues that no single national government can handle alone: Recession, unemployment, damage to the environment, bank fraud, illegal drug trade, AIDS, poverty, debts, refugee resettlement and migration.

These issues are within the scope of the specialized agencies of the UN, which even during the cold war were somewhat effective in dealing with social, economic and technical issues, such as development, health, food security and refugees. These agencies are now candidates for reform, and could improve national capacity for work in such fields. The UN's Human Development Report points up how much must still be done to bring better health, more prosperity, opportunity and democracy to the world of our children.

That is what national politics is all about. Now that the ignoble Zionism-is-racism resolution is expunged, and most of the hostages are home, the UN has a lot more work to do. If it did not already exist, we would

have to reinvent it with its universal membership (except Switzerland), its agreed methods and rules, its specialized institutions and its corridors inviting dialogue.

The end of the third world war, the Cold War, mandates changes in basic global arrangements among governments and people. Today, the United Nations is pregnant with possibilities if we seize the moment. Her 50th anniversary, in San Francisco in 1995, could mark a rebirth of a global vision of peace and progress. •

COSPONSORING SENATE RESOLUTION 266 CONDEMNING THE NORTH KOREAN SHIPMENT OF SCUD MISSILES TO SYRIA

• Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of Senate Resolution 266 to express my outrage at the recent activities of the Syrian regime of Hafez al-Assad. Syria, with the assistance of its fellow members of the world dictator's club, is now embarking on a destabilizing arms buildup that threatens the security of the entire Middle East and especially our primary ally in the region, Israel.

Presently, the Korean merchant ship *Dae Hung Ho* is enroute from North Korea to Syria transporting a shipment of 100 million dollars' worth of Scud-C missiles and missile-related technology. These advanced weapons systems can be used to threaten Israel's security, and it adds another reason for that tiny nation to fear an attack by its powerful and aggressive neighbors.

The State Department has ignored the weapons buildup by the bloody regime in Syria. Although Syria has, since December 1979, been determined to be a country supporting international terrorism under section 6(j) of the Export Administration Act of 1979, the State Department has turned a blind eye to Assad's buildup. Between 1987 and 1990, Syria ordered 5.6 billion dollars' worth of new arms and received delivery on \$14.5 billion in armaments. Since the Persian Gulf war, Syria has continued its shopping spree by stocking up on Scud missiles and gathering Chinese missile technology.

We cannot sit idly by and allow Hafez al-Assad to become another overgrown monster like Saddam Hussein. This man's idea of political dialog is to surround innocent civilians with tanks and artillery, as he did in the city of Hama in 1982, and raze the city, reportedly killing over 20,000 people.

In 1981, I warned that our courtship of Saddam Hussein would lead to disaster. From the reaction I received, you would have thought that I was attacking Mother Theresa. This time I am warning of Syria's threat to not only the region, but also to American interests and American allies.

Nevertheless, we constantly hear from the State Department that Syria must be allowed to buy those weapons because Syria was our ally in the Per-

sian Gulf war. Moreover, arms sales, the argument goes will facilitate the Middle East peace process. This is absolutely absurd. We cannot coddle Syria because they were gracious enough to allow us to wage war against their sworn enemy, Saddam Hussein. We did them a great favor by attacking Iraq.

While we force Israel into concessions for loan guarantees, we look the other way when Syria arms itself to the teeth. There is a definite inconsistency here. We should reward our friends and punish our enemies. We are doing the opposite right now.

The United States and its democratic allies are signatories of the 1987 missile technology control regime. This treaty is designed to restrict sensitive missile-relevant transfers to Third World countries. It is imperative that we take the lead in enforcing our international agreements and condemn this weapons sale.

I urge my colleagues to support this resolution. We must send a message from this body to Syria, to North Korea, and to all the nations of the world, that we will oppose the proliferation of these weapons by despotic regimes like Syria and Iran. If peace is our goal in the Middle East, we must play evenly and fairly. We will never achieve peace by allowing weapons like this into the region. We must never again allow another monster to rise that our young men and women will have to fight in some future war. •

SMALL BUSINESS IS BIG BUSINESS

• Mr. KASTEN. Mr. President, as we begin debate on tax and economic growth legislation, I think it is important to recognize the vital role of America's small business sector in driving our economic engine.

I believe that the best way to restore economic growth and create jobs is to spark investment in entrepreneurial small businesses. In the 8-year economic boom of the 1980's, 19 million new jobs were created. Over 90 percent of these new jobs were created by entrepreneurial small businesses.

Unfortunately, in the last 3 years, the entrepreneurial economy has gotten on the wrong track. Rising tax and regulatory burdens have put the brakes on small business growth. If we really want to spark the economy and create new jobs, we have to focus on getting the small business sector moving again.

A significant cut in the capital gains tax is a sure-fire recipe for small business expansion and job creation. Every time Congress has cut the capital gains tax, investment in new small business ventures increased dramatically. In 1986, Congress increased the capital gains tax by a stunning 65 percent, and as a result, the rate of new business

startups fell 12 percent since the 1986-88 period.

An effective economic growth package must provide dramatic incentives for people to invest in small businesses, or to start one themselves. Unfortunately, the Senate Finance Committee tax bill does little to get the small business sector growing again; in fact, it raises income tax rates on sole proprietors, a driving force in our small business sector.

Nine out of ten businesses pay taxes on the individual rather than the corporate tax rate schedule. The Finance Committee bill would raise the top individual tax rate paid by sole proprietors to over 40 percent. In addition, the bill would destroy individual entrepreneurship by actually increasing the top capital gains tax rate to over 30 percent for some investors.

Mr. President, instead of raising taxes on small businesses, we need to re-incentivize this important sector of our economy. As the ranking member of the Senate Committee on Small Business, I highly recommend to the Senate a recent article by economist Larry Kudlow entitled "Small Business is Big Business," in which he examines the current state of small businesses, and outlines economic proposals to strengthen America's entrepreneurial economy.

I ask that Mr. Kudlow's article be printed in the RECORD.

The article follows:

[From the Global Spectator, Feb. 28, 1992]

SMALL BUSINESS IS BIG BUSINESS

(By Lawrence A. Kudlow)

The most recent round of layoffs announced by GM has once again focused attention on job creation in the United States. But while these restructurings are painful, large companies like GM, IBM, and Citicorp are not the engines for domestic job creation and economic growth. In fact, between 1982 and 1989, U.S. multinational corporations accounted for less than one-tenth of 1 percent of the increase in total nonfarm payrolls and contributed only 15 percent of the growth in GNP.

Rather, it is small businesses which drive the American economy. Between 1982 and 1986, 14.2 million jobs were created by new businesses and another 4.5 million jobs were added by existing smaller companies. Today, two out of every three new jobs in the United States are created by small- and medium-sized businesses. Since the majority of Americans work in small enterprises, the importance of this sector for employment and real economic growth can not be overstated.

A respectable economic recovery will not take hold as long as this sector stays weak. The latest data show that new business starts are still 12 percent below their peak of December 1986, when 66,000 new businesses were incorporated. Another survey shows that, after rebounding in early 1991, small business optimism has fallen for three consecutive quarters. Unless this important sector is reincentivized, weak job creation, income and consumer confidence will dampen prospects for near-term economic recovery.

NEW BUSINESS FORMATION

Since early 1990, the rise in business failures has dramatically outpaced the rate of

new business incorporation. According to Dun & Bradstreet, between October 1990 and October 1991, new business incorporations increased 2.2 percent, but business failures rose 39.6 percent. Over the entire year, business bankruptcies grew by more than 25 percent in nearly every major industry group. Putting business starts and failures together, the 12-month change in the Bureau of Economic Analysis index of net business formation remains negative, down by 1.4 percent in November 1991. Given the strong correlation between net business formation and real GDP growth, this suggests prospects for recovery in early 1992 remain poor.

THE STATE OF SMALL BUSINESS

The National Federation of Independent Business (NFIB) reports that small business optimism is fading and in January was 3½% below its year-ago level. And low confidence has led to layoffs. Small businesses have on balance laid off more workers than they've hired for six consecutive quarters. For example, in the fourth quarter of 1991, while 10 percent of the small firms surveyed added an average of 3 workers to payrolls, 19 percent cut an average of 3.9 workers.

For this sector, the near-term employment outlook remains rather dim. In a sample of nearly 2,300 small firms of the type the NFIB estimates employ about half of the private nonfarm work force, only 13 percent plan to increase employment in the next 6 months. This suggests it may be some time before nonfarm payrolls post the sizeable gains necessary to confirm recovery. As long as job creation is weak and unemployment claims are high, consumer confidence will be subdued, incomes will remain flat and the recent strength in retail sales is unlikely to be sustained.

THE WAY FORWARD

Though 44 percent of small firms expect business conditions to improve, only 10 percent feel now is a good time to expand. What, then, is holding back the small business sector? The main constraints to small business expansion are poor fiscal and regulatory policies. In each year since 1988, small firms have cited rising tax and regulatory costs as their two biggest problems. Over that same period, the Fed succeeded in lowering inflation from 5 percent to 2 percent, and interest rates from over 9 percent to 7½% and as a result, fewer than 10 percent of the firms surveyed indicated interest rates or financing were a main concern. Less than 5 percent cited inflation as their biggest problem.

Tax and regulatory relief, not easier money, are needed to rejuvenate the small business sector. The Fed has done its job. By reducing inflation, inflation expectations and interest rates, the Fed has delivered the monetary equivalent of a tax cut to the small business sector and the economy as a whole. Now Congress and the administration must do the same. To reignite the small business sector and net new business startups, aftertax rewards to capital and labor must be raised, so that it pays to work and invest. A decisive capital gains tax cut, accelerated depreciation, lower payroll tax rates and reduced regulatory burdens are needed to get the small business sector growing again. For as goes small business, so goes the economy.●

TRIBUTE TO ALICE STOKES PAUL (1885-1977)

● Mr. LAUTENBERG. Mr. President, on March 1, 1992, the Alice Paul Cen-

tennial Foundation organized an official ceremony designating Paulsdale, the birthplace of Alice Stokes Paul as a national landmark. Alice Paul was a nationally and internationally renowned suffragist and women's rights leader. I was honored to join in paying tribute to this woman who played a key role in putting women's rights on the Nation's agenda and keeping it there.

Alice Paul was a remarkable woman whose achievements touched many people, ordinary people and famous people. When she died nearly 15 years ago, former First Lady Betty Ford sent a telegram praising her for her efforts on behalf of women. President Carter made sure he was represented at her eulogy service. That is the kind of respect and stature she attained.

Alice Paul fought tirelessly for the right to vote for women and played a key role in creating the equal rights amendment. She forced us to keep our focus on equality through many decades. Those are some of Alice Paul's best known accomplishments.

But Alice Paul was more than a list of accomplishments for women's rights. She was a visionary. When she achieved a goal, she reached for a higher goal. We have a lot to learn from Alice Paul.

One of the best tributes we can offer Alice Paul is to continue her vision by redoubling our fight for equality. We must dare to dream of a better world, not just for women but for men and women of all ages and races.

Alice Paul was a remarkable woman. But more importantly, she was a remarkable person. We need to follow in her footsteps.●

SOVIET SCIENTISTS AND ENGINEERS

● Mr. D'AMATO. Mr. President, the disintegration of the Soviet Union presents the West with the greatest scientific bonanza since the collapse of Nazi Germany. The second largest military-industrial complex in human history is now desperate for customers. The Soviets are actively seeking business, and early contacts indicate that Soviet scientists and engineers have little concern over security when their personal survival is in jeopardy.

Tragically, United States exploitation of Soviet technology has taken a backseat to proliferation concerns. Administration policy is focusing on two issues: preventing Soviet brain drain to undesirable countries, and redirecting Soviet research toward commercial goals that do not preserve Soviet military capability. Proposals to date focus on funding talent in place.

While hammering swords into plowshares is noble and desirable, the assumptions underlying this policy are misguided. Conversion, as hundreds of thousands of unemployed American

shipyard and aerospace workers know, is easier said than done. The defense industry in the former Soviet Union is no more going to wither away under the CIS than the State did under Marxist-Leninism. Workers will be kept busy churning out arms, while managers embrace "Let's Make a Deal" as the guiding principle of the new world order. Factories, research facilities, and arsenals will compete amongst themselves in the arms bazaars of the world, and the only criteria for sale will be cash on the barrelhead.

Our misery attempts to subsidize Soviet researchers in place in some Siberian garden spot seem pitiful when a nuclear weapons designer can take Ludmilla and the kids and move to sunny Baghdad where his services will earn \$10,000 a month. The Soviet equivalent of Cape Canaveral was just rocked by a food riot. These people are desperate. The grim reality of today is that many of the countries most able to offer exorbitant salaries to Soviet scientists and engineers are the very countries most of the world would least like to see acquire enhanced military power.

This country needs to be prepared to purchase or hire as much Soviet technology and talent as quickly as possible to reduce its availability to political, military, and business competitors. Instead, the administration has avoided deep and broad discussions or relationships out of a fear of perpetuating the former Soviet defense infrastructure. We know that the Soviets are willing to share research, prototypes, and production methods. We also know that there are no lack of customers. The question is: Who hires the Wernher von Braun's of the 1990's? If we do not, then the next question may well be, "Upon whose heads will the products of the next Wernher von Braun fall?"

TRIBUTE TO CAWOOD LEDFORD— VOICE OF THE WILDCATS

• Mr. McCONNELL. Mr. President, I rise today to pay tribute to Cawood Ledford, a true living legend. After 39 wonderful years as the voice of University of Kentucky athletics, Cawood is stepping down from the mike.

It is hard to describe what Cawood Ledford has meant to Kentucky. He has called over 400 Kentucky football games and 1,100 basketball contests. He has become a member of millions of people's families. Mr. President, it isn't just Kentuckians who will miss Cawood, fans all across the Nation have come to know and love his calm delivery.

Cawood Ledford has become Kentucky basketball for many fans. In fact, the overnight ratings of his radio broadcasts actually increase when the game is also shown on television. This is unheard of Mr. President. Thousands

of Wildcat faithful tune in the game on television but turn down the volume so they can hear Cawood over radio.

What sets Cawood Ledford apart from others in his profession is his objectivity and professionalism. The listener always knows exactly what is going on when Cawood does the game. He is not afraid to criticize his beloved Wildcats nor is he shy about giving deserved praise. The listener is not burdened with flowery prose when Cawood is on the job, that's just not his style Mr. President.

Perhaps Cawood's greatest attributes—what makes him a true Kentucky hero—are the kindness and humility he brings to all he does. As Kentucky sports writer Oscar Combs put it, "There's not a classier person in the world. If you can't get along with Cawood Ledford, then you belong in prison." He is a true southern gentleman.

This past Saturday Cawood called his last game before 24,000 screaming Wildcat faithful in Lexington's Rupp Arena. He has decided to retire and return, with his beautiful wife, Frances, to his native eastern Kentucky. He will live in Cawood, KY, named for his ancestors. But as he slowly moves out of the public spotlight which has burned so brightly, I wouldn't be a bit surprised if Kentucky folklore soon has it that the small mountain town was actually named for the man we all knew as the voice of the Wildcats.

I know my colleagues will join me wishing him a long and happy life. As someone who has weathered the good and bad times at Kentucky, Cawood Ledford has always risen to the top of his profession as well as proven to be a shining example for all to follow.

Mr. President, I ask that an article from the Courier Journal be printed in the RECORD.

The article follows:

NICE GUY FINISHES, AT LAST—AFTER 39 YEARS OF UK BROADCASTS, CAWOOD LEDFORD PREPARES TO SIGN OFF
(By C. Ray Hall)

If you, like so many others, have frittered away 39 years of Saturday afternoons listening to Cawood Ledford broadcast University of Kentucky basketball and football games, perhaps you have wondered: "Would I have been better off—would I be a more cultured person today—if I had spent my Saturdays listening to the Texaco Metropolitan Opera?"

If you've heard Cawood, you've heard culture.

Ledford's on-the-air pronouncements are ostensibly about basketball, but they cover many of the themes of grand opera: love, hate, betrayal, jealousy, treachery, family feuds and the animus of animals, especially zebras.

Here's a sampling of Cawood on * * *

The Capriciousness of the Gods Who Look the Other Way While Violence and Anarchy Reign: "Oh-ho-ho, come on! Bodies ALL OVER the floor and the refs don't call a thing!"

Order Amid Chaos: "Macy dries his hands on his socks * * *"

The Deadly Sins of Sloth and Arrogance: "No rebounding at all! The Cats are just standing around Ralph. They're not ready to play."

Virtue Defiled: "What? They called that a block? * * * Boy, Feldhaus got a bad call there!"

Virtue Avenged: "Ooooh, I don't know, Mashburn might have got away with a push."

And, of course, Man's Eternal Quest to Locate and Define Himself in a Random Universe "Kentucky will be moving to the left side of your radio dial."

As Dick Motta, the pro basketball coach and culture critic, noted, "The opera ain't over till the Fat Lady sings." The Fat Lady isn't quite ready to sing for Cawood Ledford. But she will bustle onto stage—clutching gifts to her goldplated bosom, no doubt—after Ledford calls his last home game today. For 24,000 fans in Lexington's Rupp Arena, the opponents will be Tennessee and tears.

The first and last thing you need to know about Cawood Ledford is this: He has called more UK games (1,115) than Adolph Rupp coached (1,065). And 40 years before UK coach Rick Pitino was a gleam in Armani's eye, Cawood Ledford was the fashion plate of Centre College.

Ledford, the thread that runs so blue, may be the closest thing Kentuckians have to royalty. Players come and go, Coaches are like prime ministers, subject to the slings and arrows of second-guessers, grumpy trustees, NCAA investigators and uppity analysis by East Coast media snipers.

But the 65-year-old Ledford sort of stands above it all, ceremonial and serene like a member of the royal family. Even Terry Meiners, the Louisville disc jockey, who lampoons the high and mighty, can find no fault with Ledford.

"Cawood Ledford is a patron saint to all announcers and Kentucky fans," Meiners says, "We do him, but it's always in the most revered terms; I mean, it has to be. * * * He is absolutely untouchable, and besides that, I think he lives up to the reputation. He's never given me any indication he's anything other than the gentleman that you think he is. And his wife, Frances, is the most charming person. They're the Cleavers of reality. * * * Of all the people I meet, I'm just in awe of him. He remembers things you told him two years ago, little, nit-picky details He just has a Southern gentlemanly way."

Not to mention a kind of royalty that doesn't have to be asserted, but is just sort of assumed by those around him.

Dick Gabriel, a broadcasting mate for 13 years, says: "There's a routine on the road. * * * It's very simple. Everybody knows what time we're supposed to be in the van or the car to leave. But when Cawood gets there, that's when we leave. It's not like he's going to show up a half-hour early, but we don't keep the man waiting. When Cawood's ready to go, we go."

"And you don't sit in the front seat. I learned that on one of the first road trips. I'm tall, I have long legs. I sat in the front seat, Cawood kind of looked at me funny. I went, 'Whooops' and got in the back seat."

Nobody seems quite sure what makes Ledford run, except for black coffee and Benson & Hedges cigarettes.

"He's real sensitive about his cigarettes," Gabriel says. "He truly enjoys his coffee. The first year I worked on the network was 1979. * * * (Ralph) Hacker turned to me and said, 'Go get Cawood a cup of coffee, Black, no sugar.'"

"I sort of drew myself up and thought—here I'm just out of college—I thought, 'I'm

no coffee boy.' But I thought, 'I'm new to this, so I'll go get him his coffee.' Then I learned everybody gets Cawood coffee. I mean, Dr. Wethington, if he's close to the coffee pot, brings Cawood coffee."

If Charles Wethington, the president of the university, can fetch coffee for a sports announcer, does this not say something about our priorities as a commonwealth? No. But perhaps it says something about the lengths to which people feel compelled to want to do something nice for Cawood. For some reason, he attracts niceness.

This is no mystery to Davis Baker, another broadcasting partner, who says: "As great as he is in my mind as a professional, the real benchmark—and the real legacy that he'll leave behind for me—is that you should treat people the way you want to be treated. I think that's why people have such a love affair with him."

"I've been surprised through the years at how many people have asked me if Cawood is sort of a jerk," Gabriel says. "They just assume that a guy who has been that popular, for that long, and that good, and respected, may have developed somewhat of the attitude. * * * It's almost like they think he has the right to be a jerk."

"What I tell people is that when I was in college—when I worked for the Kernel (the UK student newspaper) and the campus radio station—Cawood was one of the only people on press now who treated us students as professionals. Most of them treated us like kids, Cawood did not. He treated us with a great deal of respect."

A few weeks back a lawyer sent a fan letter to Ledford. The writer told of his childhood, when he sat on his grandfather's lap listening to basketball games. Every once in a while the boy would wander off to play, but he always crawled back into his grandfather's lap. Ledford's voice poured out of some warm amber fog, like the crackling of logs in a fireplace. It filled the room, the imagination, and now the memory.

Ledford's voice is a lot like a grandpa's lap: study-soft and familiar, capable of stirring memories that are rich and ripe, and, once it's gone, irreplaceable.

At least two generations of Kentuckians have probably heard more words from Cawood Ledford than from their own fathers. He is a touchstone and a talisman. Before games, UK basketball player Richie Farmer sidles over to the broadcast table to shake Ledford's hand for luck. Ledford's hand shook Adolph Rupp's. Which shook Phog Allen's. Which shook James Naismith's. Which held the first basketball, when Naismith invented the game a century ago. This is the kind of stuff that used to inspire paintings on the ceilings of cathedrals.

Through the years Ledford has been internalized by so many people that he seems to be a presumptive member of the family, if not an actual alter ego of each fan. On the radio call-in shows, it's almost as if fans feel a sense of betrayal when Ledford mildly disagrees with them on vital issues such as John Pelphrey's three-point stroke or Deron Feldhaus' ego strokes.

"They think they know you," Ledford says of the listeners. "If they've never met you, they think they know you."

Ralph Hacker, Ledford's broadcasting partner for 20 years, and his replacement in the No. 1 chair next year, suggests that people who know Ledford only from the radio do not really know him.

"He is without question the funniest person I have ever known," Hacker says, "Listening to him on the air, you would never

know that. In the 30 years I've known him, I may have heard him tell two jokes. But he is as quick a wit as any human I have ever known. And what he says absolutely will break you up. He'll say something and, absolutely, you can't say a word, you're laughing so hard at him.

"When people see him, here's a guy who looks like he walked out of GQ, and a guy who could be the governor of the state. He has that kind of presence. * * * But he may turn around and say some of the funniest lines, where only I can hear. 'It (his humor) is more like Jack Benny. Never a dirty word. Just always tongue-in-cheek stuff.

"Ralph Emery always said if he could just take Cawood out and put him on stage that he'd be a millionaire in about a year."

Here is UK athletics director C.M. Newton, on the difference between the Ledford that listeners imagine and the one he knows: "The qualities that come across (on the radio) are the basic lack of ego, the humility that he has, the real touch with the quote, common man. Those are characteristics that have endeared him. I think the thing that doesn't come across is the private nature of Cawood Ledford—almost an embarrassment of the limelight. I think he genuinely gets embarrassed by a lot of the attention."

Ledford can be expansive, engaging and entertaining on practically every subject—except himself. "I am sort of a private person," he says.

"He's a very, very private person and very seldom lets his hair down," says Jim Host, the Lexington broadcasting and publishing executive who heads Host Creative. "In fact, I can't say that I ever have seen him let his hair down."

The two met in 1955, when Host was broadcasting games on the UK station. "I knew him then to be a friend to everyone, but not a close friend to very man," Host says. "Today he doesn't have many, quote, close friends. He just has thousands of and thousands of friends."

Baker considers the private Cawood Ledford: "I don't think it's a mysterious side or anything. I think there is that side that he certainly does like to keep to himself. He's such a public figure. * * * How many times have we heard the players talk about how very difficult it was to be in that limelight for four years? My God, this guy's been in it for four decades."

If you wonder why Ledford is so careful of his privacy, consider the time last November when he agreed to speak to Bill Curry's football team before the season finale against Tennessee. Host Creative was engaged in a project to produce a video of Ledford's final year. (Curry and Ledford presumed the raw tape of that pep talk would be edited at seasons end, with Ledford's counsel.)

"So I got up," Ledford says, "and I used the word ass' four times. I thank God I didn't use anything worse. Well, it pops up on a local TV station that night, and I don't mind telling you, I was really PO'd at that. Because that was private; I didn't want that done. Not only the language—I thought it was a very private thing. * * * I guess the video's still in limbo, because I stopped everything. So we haven't had any more secret shoots."

The video may be in limbo, but the book isn't. Ledford's autobiography (written with Sports Illustrated staffer Billy Reed) is due out this spring. It's titled "Hello, Everybody * * * This is Cawood Ledford."

The title is perilously close to "Hello, Everybody, I'm Lindsey Nelson," the autobiography of another sports announcer who went

off to do big things and returned home to the mountains (in Nelson's case, the mountains around Knoxville, Tenn.).

Ledford's story ends like Nelson's: After making his fame and fortune, the boy returns home to the mountains. This is not a misprint: Cawood Ledford is retiring to his native Harlan County, to the town of Cawood, named for ancestors of Ledford who were among the pioneer settlers there.

This, even more than his retirement, may surprise and bewilder the legions of listeners who thought they knew Ledford.

Fervent UK fans who never see a game used Ledford's eyes and voice to nuzzle up against the Big Blue legend, hoping a little stardust would fall on them. And here is Cawood Ledford, the prince of the city, leaving Lexington and heading for the hills.

Oscar Combs, publisher of the fan magazine *The Cats' Pause*, recalls a UK basketball trip of about a dozen years ago. He and Ledford ended up at the same table with assistant coach Dick Parsons. An acquaintance noted that the trio was from deep in Eastern Kentucky.

"The fellow was kidding us about finally getting out of the hills," Combs recalls. "Cawood said, 'I don't know about you two, but once I ever found the road out, I'll never find the road back.'"

After 39 years, he has found the road back to Harlan County. This does not surprise the people who know him.

"He's very close to his family," says Dick Gabriel. "It would surprise me if he didn't go back to Harlan."

"I think everyone goes back to their roots someday," Host says. "He has strong roots in Harlan. He and Frances have spent a lot of time going down to check on his father, and his brother, who had a serious automobile accident a few years ago. * * * I think he just wants to be closer to his family, and I think he wants to have an area to raise his miniature horses, which he loves."

"I also suspect," Host says, "he wants to get out of the glare of scrutiny."

Ledford's 94-year-old father, "Wash," still lives there. Cawood's wife of 18 years, Frances, is also from Harlan County. Though he is still nearly four months from retirement, Ledford does not say, "We're moving to Cawood. He says, 'We live in Cawood.'"

"The fact that Cawood is going back home, I think, speaks so well of him as a person," Combs says. "There's not a classier person in the world. If you can't get along with Cawood Ledford, then you belong in prison."

The Ledfords will live in a valley with mountains on four sides. Will he find his way out of the mountains, back to the things that have defined him for four decades—the UK games?

"I don't know," he says, "See, for 39 years I've never seen a Kentucky game, basketball or football, from the stands. I've talked to (former coach) Joe B. Hall about this. Joe B. comes to games. I asked him how much he missed it when he first retired. * * * Joe said the first day of practice, Oct. 15, he really had withdrawal pains, but that passed. * * *

"I don't know what it would be like watching Kentucky play somebody. I don't know if it would be too emotional I don't know, but I'm going to find out. * * * I don't want to be on press row, I want to be up there with Joe Six-Pack."

What pray tell, will he do in that four-walled valley without a satellite dish?

"I used to play golf," he says. "I may take it back up. * * * I've fished but twice in my life, so I don't know if I like fishing or not. Hunting, I know I wouldn't like. I did hunt

when I was in high school. I just got to where I didn't like to pull the trigger. * * * It just wasn't right for me. I just didn't enjoy shooting things."

There'll be more time for reading, maybe even rereading Louis L'Amour, The Western author. (Ledford had never heard of L'Amour until University of Louisville basketball coach Denny Crum mentioned him. Crum sent Ledford one of L'Amour's paperbacks. "I was captivated," he says. "I guess I've read everything Louis L'Amour ever wrote. I sure hated to see old Louis cash it in.")

"I don't want to relax too much," Ledford says. "I have no hobbies. But I'm going to be active in some other things. Right now it's something my wife and I are still looking at. I'm in a couple of other businesses—with good partners fortunately—that I know next to nothing about."

"I don't say much about them. I'd just as soon not. And I may not get in either one because I don't want to screw it up. I own 50 percent of each, but I might get in there and screw em up."

The idea of Ledford actually screwing something up would be novel. He hasn't managed to do that often since he entered the world in 1926. He was the oldest of three children of mine foreman Washington "Wash" Ledford and his wife, Sudie Cawood Ledford. They named their son for her brother, Oscar Cawood, a Harlan doctor. (Hence the OCL monogram on the French cuffs of his shirts.)

Young Cawood tried his hand at football with disastrous results; broken nose, broken arm. He also played basketball, where the result was not injury but insult. He became the incarnate version of Red Auerbach's victory cigar. When Cawood appeared on the court, it was a sure sign the game was over.

He hated to get up early. Sleeping late was such a pleasure that he asked his mother to wake him up on Saturday mornings just so he could have the satisfaction of saying, "It's Saturday. I can go back to sleep." Nowadays he rises early for the satisfaction of staying up. "I love the mornings," he says.

His education at Centre College was interrupted by World War II service with the Marines. After the war, he returned to Centre to finish his degree in business administration. He was accepted for law school at U.K. ("Even sent them a deposit, which, to this day, I've never gotten back.") He passed up law school, though, figuring he would be poor for years.

Back in Harlan, he settled into an accounting job and began looking for more pleasing prospects. He took a job teaching English for a semester. ("I worked harder than any of my students did.") Charlie Ward, the sports announcer on station WHLN, was also looking for better prospects. He quit his job to coach basketball and recommended Ledford as a replacement. After making his audition tape, Ledford was so dismayed at the sound of his own voice, he says, "I could have cried."

It was weaker than he thought and freighted with a mountain accent he has subdued through the years. Only a few exceptions survive, such as the use of the word "fal" instead of "foul."

He called everything for WHLN, including minor-league baseball. He got an audition with WLEX in Lexington, which seemed, he says, "like the peak of the mountain." It was there that he announced his first UK games. "We were fourth—and a distant fourth," he says. The station's signal was so weak, it didn't reach into neighboring Madison County, where young Ralph Hacker listened to the UK games broadcast by the big

network announcers, Claude Sullivan and J.B. Faulconer.

After three years in Lexington, Ledford moved on to Louisville and WHAS, where he stayed 22 years. There were many temptations to leave, including appealing offers from Chicago and San Francisco. "I always found something wrong with the job," he says, "I always found a reason not to go."

Besides, he liked Louisville and the station, where he had met another Harlan County native, Frances Johnson. (They courted 18 years before marrying in 1974.)

"I really enjoyed being there doing what I was doing," he says of the days at WHAS. "Felt comfortable, I had acceptance. That's another thing, I've seen so many other people in broadcasting who were just dynamite, say, in Louisville, go to New York and bomb, so I guess a little insecurity had something to do with it."

He thought of moving to Indiana, a shorter commute to the station in downtown Louisville. "But I thought, 'I don't know anything about Indiana politics. I wouldn't know how to vote over there, I'll just stay here.'"

On UK road trips and at the NCAA Final Four, Ledford would often find that there were only two customers in the coffee shop before dawn: he and the early-rising Jim Host. The broadcasting entrepreneur kept trying to get Ledford to move to Lexington and start a production company in partnership with Host. He saw something in Ledford that perhaps the announcer did not see himself.

"I think as any great talent, they sometimes don't realize they have talents other than those that can be considered artistic," Host says, "I know one thing about him: that he's very conservative, and he has always been very careful with how he spent other people's money."

So in the late 1970s Ledford moved to Lexington to set up Cawood Ledford Productions. Its projects include his broadcasting work, his newspaper ("Cawood on Kentucky") and coaches' calendars. On June 30 Ledford will leave it behind, selling his interest to Host Creative.

In the meantime, he will wrap up the basketball season and work his final Kentucky Derby. He will also be the guest of honor at an April 14 tribute in Rupp Arena. The \$250-a-seat dinner will raise money to endow a scholarship in his name. The Cawood Ledford Scholarship will go to UK athletes who have used up their eligibility but want to return to school to finish their degrees. (For ticket information, call Ann Hill at 606-253-3230. Joe Six-Packs who are disinclined to spend \$250 a pop can send donations to the Cawood Ledford Scholarship, University of Kentucky, Lexington, Ky. 40506.)

For the past few months, UK fans have speculated about the timing of his decision. It's morning in Kentucky, the thinking goes, and there goes Cawood, acting like it's twilight time. (In the movie version, Richie Farmer will be chasing after him, yelling, "Come back, Cawood! Come back!")

As Ledford told C.M. Newton when he broke the news: "There's never any good time for something like this." But there could have been worse times. He almost packed it in three years ago, after the UK basketball team played in the shadow of an NCAA investigation, had its only losing season of his tenure and inspired a Sports Illustrated cover titled "Kentucky's Shams."

"That year they were undergoing the NCAA investigation was the most miserable—the only bad—year I've ever spent in 39 years," he says, "Miserable. It was just atro-

cius. Everybody was trying to protect themselves and trying to survive. . . . The players didn't want to play. The coaches didn't want to coach. They just wanted to get it over with. It was horrible for the fans. They were embarrassed and really didn't care much.

"I really gave it (retirement) serious consideration. I had thought about it. I knew it had to come sometime. And then I thought, well, really, that would be a chicken thing to do, just tuck your tail and run right when, no question, it was the lowest ebb ever, in my time here.

"And then I thought, well, I'm going to tough it out one year. I really thought that I'd go and tough it out one year after whoever they brought in. It happened to be Rick Pitino, and he brought so much fun to it, I thought, 'Hey, I might go on with this a long time, because, really, it's never been this much fun.'"

A long time turned out to be a couple of years. Now little horses and big memories await Ledford in a Harlan County valley. Doubtless some UK fans will feel a sense of abandonment—perhaps because they understand Ledford less than he understands them.

"If there's any such thing as caring too much about a sport," he says, "I think Kentucky basketball fans may care too much. It may be too important in their lives, I don't know."

"Of course, that's been good for me. I think they're unrealistic sometimes, but they've been good to me for 39 years. . . . So one thing I won't do is criticize them for that."

And, of course, they have tended to make Ledford in their own image, foisting on him an identity that doesn't exist, as if somehow Ledford and UK had grown together into something like UK-wood or Catucky. It hasn't hurt him at all, he says, and it's a small price to pay for happiness.

"There are so few of us in life who are going to leave some big impact, and I certainly don't think you're going to leave it as a sports broadcaster. Nor did I ever think that. I remember Red Smith—he'd won a Pulitzer Prize—was on '60 Minutes' with Morley Safer. Safer asked him, with this great talent you have—and certainly he did, probably the greatest sportswriter of my time—if he hadn't thought about writing, about something other than little boys' games played by grown men.

"And he had a great line. He said, 'The only thing left of ancient Rome is the ballpark.' I thought, 'Red, you've saved all of us again.'"

"I'm not a bit embarrassed about it, or feel like I've shortchanged myself. * * *

"If you can make a living doing something that is truly enjoyable to you, you're very fortunate. There are so few people in history that were able to find a Salk vaccine, write a great novel, compose a great score—or be happy. And I've been very happy doing what I've done. So that's why I've stayed in and I'm going to miss it dreadfully."

THE HEATHER REPORT: A YOUNG FRIEND RECALLS HER TIMES WITH CAWOOD

Veteran Lexington broadcaster Ralph Hacker will succeed Cawood Ledford next fall as the lead announcer on University of Kentucky football and basketball games. This has caused some soul-searching, even in the Hacker family.

Hacker's daughter, Heather, a 16-year-old sophomore at Lexington's Sayre School, was assigned to write an essay about an interest-

ing experience or person. Her father recalls their conversation: "I said, 'Do you want to write about one of the governors you've met—or one of the basketball players?'"

"She said, 'No, Dad. You know, the most famous person I know is Cawood, and I know more about him than anybody. And I'm going to write about Cawood if it won't hurt your feelings.'"

"I thought that was sweet. Here's a 16-year-old girl who feels like the most important person in the world for her to write about is Cawood Leford. No matter that she has met so many other famous people. Dick Vitale would die! Dick Vitale sends her stuff all the time."

Excerpts from Heather's essay:

"The first day I met Cawood was in the hospital the day I was born. Though I do not remember this very well, I still have the ring that he and his wife gave me. Through the years the most special gifts which I have received have been from the Lefords. * * *

"I have many fond memories of traveling with Cawood and my family. We have ventured to many exciting places such as Alaska, Hawaii and to the SEC and NCAA Tournaments. It is amazing how everywhere we go people know who Cawood is. Even here in Kentucky, where fans anxiously crowd around him, he happily signs autographs and takes the time to speak with the people who admire him.

"One of the qualities I admire most about Cawood is his strong work ethic. He is always prepared to announce a game. * * * To Cawood, a game is not just a social event, it is a job which he has done quite well.

"This year marks Cawood's 39th year of announcing University of Kentucky sporting events; it also marks his last. To many, this is a sad time. It will be painful to see him end his career, but the memories he has given every University of Kentucky fan will be unforgettable."*

AUTHORIZING TESTIMONY BY A SENATE EMPLOYEE

Mr. MITCHELL. Mr. President, on behalf of myself and the distinguished Republican leader, Senator DOLE, I send to the desk a resolution on authorization for testimony by a Senate employee and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 269) to authorize testimony by an employee of the Senate in Standard Federal Savings Bank v. Roger B. Taber, et al.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, the plaintiff in an eviction action pending in Idaho State court has subpoenaed Tom Andreason, A Senate employee on the staff of Senator CRAIG, to testify as a witness concerning constituent casework he performed. The following resolution would authorize Mr. Andreason to testify in this matter.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 269) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 269

Whereas, in the case of Standard Federal Savings Bank v. Roger B. Taber, No. 3L-78853, pending in Idaho State Court, the plaintiff has caused to be issued a subpoena for the testimony of Tom Andreason, an employee of the Senate on the Staff of Senator Larry Craig;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Tom Andreason is authorized to testify in Standard Federal Savings Bank v. Roger B. Taber, et al., except concerning matters for which a privilege should be asserted.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXPRESSING SYMPATHY REGARDING THE DEATH OF FORMER PRIME MINISTER MENACHEM BEGIN

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 268 regarding the death of former Prime Minister Menachem Begin submitted earlier today by Senators MCCONNELL, MCCAIN, SANFORD, ROBB, and others.

Mr. SPECTER. Mr. President, I ask unanimous consent that I be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 268) expressing to the people of the State of Israel the sympathy of the United States Senate regarding the death of former Prime Minister Menachem Begin.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, today Israel mourns the loss of a dedicated patriot and statesman. A heart attack suffered last week sadly ended the life of former Prime Minister Menachem Begin.

Menachem Begin was born in Russia, and lived in Poland until Nazi forces

invaded that country in 1939. Fleeing to Vilnius, Begin was arrested by Soviet authorities for his Zionist and anti-Communist activities, and was sentenced and served in a Siberian labor camp. During that time, his parents and brother perished at the hands of Hitler's forces. These hardships shaped a man driven by the conviction his people needed a safe haven, a land to call their own.

Once in the Middle East, Menachem Begin translated his beliefs into actions. He rose to the head of the Irgun Zvai Leumi, and challenged the British mandate in Palestine. In 1948, he founded the Herut—Freedom—Movement and embarked on a long career in Israeli politics.

While Begin's achievements are many—including Prime Minister from 1977 to 1983 and Minister of Defense from 1980 to 1981—none compare to his leadership and courage during the Camp David accords in 1978. In an atmosphere charged by violence, suspicion and historical hostility, Prime Minister Begin and Egyptian President Anwar el-Sadat reconciled their differences and found a common ground in peace. For this monumental achievement, Begin received the Nobel Prize for Peace.

In 1983, former Prime Minister Begin's life was forever altered by the loss of his beloved wife. No longer feeling the call to public office, he retired to his home in Jerusalem. It seems fair to say that his broken heart would never fully mend.

The resolution I submit today with Senators MCCAIN, BOND, SANFORD, ROBB, and MOYNIHAN express the Senate's sympathy to the people of Israel on the passing of Menachem Begin. I strongly urge all my colleagues to join me in this endeavor.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 268) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 268

Whereas Menachem Begin founded the Herut (Freedom) Movement in Israel in 1948; Whereas, throughout his lifetime, Menachem Begin served to protect and defend Israel as Prime Minister and Minister of Defense;

Whereas, for his leadership and courage in the Camp David Accords in 1978, Menachem Begin received the Nobel Prize for Peace; and

Whereas the people of Israel are mourning the passing of this dedicated patriot: Now, therefore, be it

Resolved, That the Senate expresses its sympathy to the people of the State of Israel regarding the death of former Prime Minister Menachem Begin.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MINTING OF COMMEMORATIVE COINS

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3337.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 3337) entitled "An act to require the Secretary of the Treasury to mint coins in commemoration of the 200th anniversary of the White House, and for other purposes," and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Torres, Mr. Hubbard, Mr. Barnard, Mr. Wylie, and Mr. McCandless be the managers of the conference on the part of the House.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate insist on its amendment, agree to the conference requested by the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

There being no objection, the Presiding Officer [Mr. AKAKA] appointed Mr. RIEGLE, Mr. CRANSTON, and Mr. D'AMATO conferees on the part of the Senate.

UNANIMOUS-CONSENT AGREEMENT—VETO MESSAGE ON H.R. 2212

Mr. MITCHELL. Mr. President, I ask unanimous consent that if the Senate receives from the House the veto message on H.R. 2212, the bill dealing with the most-favored-nation status of China, it be considered read and spread upon the Journal and immediately laid aside and that the majority leader, after consultation with the Republican leader, may turn to its consideration at any time prior to the close of business on Thursday, March 19, but not before Tuesday, March 17.

Further, that when the Senate considers the veto message, it be considered under the following time limitation: That there be 4 hours for debate, equally divided between the two leaders, or their designees, and that when all time is used or yielded back, the Senate vote without any intervening action or debate on passage of the bill, the President's objection notwithstanding.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it

stand in recess until 9:30 a.m. on Wednesday, March 11; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 10 o'clock, with Senators permitted to speak therein for up to 5 minutes each, with Senator GRASSLEY recognized for up to 20 minutes, and Senators LIEBERMAN and HATFIELD for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator SPECTER be recognized to address the Senate, and that at the conclusion of his remarks the Senate stand in recess as previously ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I thank my colleague for his courtesy, and I thank the Chair.

TAX FAIRNESS AND ECONOMIC GROWTH ACT

The Senate continued with the consideration of the bill.

Mr. SPECTER. Mr. President, I have sought recognition to familiarize my colleagues with three amendments which I intend to offer to the pending tax bill. Each requires some explanation beyond having them printed in the RECORD, which I will do following my remarks.

One amendment relates to the substance of S. 1984, a bill introduced by Senator DOMENICI and myself, which seeks to stimulate consumer purchasing power by making available to middle-income Americans a portion of their IRA's, 401(k)'s, and Keogh plans for the purchase of certain major items.

Last fall, I took a look at the economy, saw the trouble spots, noted the recession, and thought about what could be done to help move America out of the recession.

We are under a budget agreement which prevents increased Federal spending. We cannot prime the pump, so to speak, because there are limited funds available. It goes without saying that additional Federal spending is unwarranted if it is going to result in increasing the deficit, which is a very serious problem in and of itself.

I noted that there was pending legislation to create super IRA's which had been sponsored by more than 70 Senators. The proposal would bring back the IRA's, discontinued by the 1986 tax bill, for certain classes of taxpayers. The super IRA had a new provision which would allow those funds to be spent for home purchases, for school tuition, or for major medical expenses.

The thought crossed my mind, since there had been such widespread acceptance by the Senate of a new IRA proposal, why not use existing IRA funds in order to stimulate consumer purchasing power. Upon my inquiry, I found there was a pool of approximately \$800 billion in IRA's, 401(k)'s, and Keogh plans. This is in addition to the some \$3 trillion which was set aside otherwise for retirement programs.

Senator DOMENICI and I then introduced S. 1984 and made a significant addition—new cars—to the three items that had been listed in the so-called super IRA legislation.

We have refined this bill somewhat. It would allow for a penalty-free withdrawal for those who are 59 or under with no taxes paid in the year 1992, the taxes on the withdrawal of up to \$10,000 would be payable over the next 4 years—1993, 1994, 1995, and 1996. In the alternative, the taxpayer could replace \$2,500 each year to replenish the total of \$10,000, or instead of replenishing the IRA with one-fourth of what had been withdrawn, the taxpayer could pay the income tax on \$2,500.

The proposal would make available to middle-income Americans, an individual taxpayer earning \$75,000, or a couple filing jointly earning up to \$100,000, a withdrawal of up to \$10,000 for the purchase of a major item—a first-time home purchase, school tuition, medical expenses, or a new car.

There is drawback to the proposal, obviously, in that we are using a small portion of savings. Let it be said I firmly believe it is in our national interests to encourage savings. But these savings are in fact set aside for a rainy day, and we really have a cloudburst out there now in terms of the need to stimulate the economy. A good way to stimulate the economy is to stimulate consumer purchasing power by making a limited amount of these funds available. I suspect that only a small portion of the available \$800 billion would be used.

Notwithstanding the fact the statistics reflecting our current economic situation are not nearly as bad as 1982, there is a feeling in America that a recession has hit the country very hard, which has significantly affected consumer confidence. I noted a recent poll that some 70 percent of Americans have heard their neighbors talk about losing their job in the course of the next year and some 41 percent of Americans are fearful of losing their own job in the next year. So there is a sense of keeping whatever funds they have without expending them.

An individual would be reluctant to spend \$10,000 without some overall national effort. But the individual would be less reluctant if there is a cohesive, coordinated plan where it is announced that this undertaking will be made with the sanction of the Government, where others would be expected to spend their money as well.

I paraphrase Franklin Delano Roosevelt, who said at one perilous juncture in our Nation's history during World War II: "All we have to fear is fear itself." If there were to be more consumer confidence and we were to prime the pump and restore consumer confidence, we might well be able to pull ourselves out of the recession with this proposal.

As I will shortly specify, it has been estimated that this legislation would stimulate consumer purchasing power somewhere between \$40 billion and \$120 billion. It has been stated by economists that that might well be just the amount of stimulus to take us out of the recession.

Now, in expending \$40 billion to \$120 billion of savings, there is the tradeoff. Any time you talk about an economic proposition, there is always a tradeoff. But I suggest to my colleagues, in consideration of this legislation, that it is a relatively small sum of money when contrasted with the \$800 billion available in these funds or the collateral \$3 trillion set aside in savings generally.

The issue was put to the Federal Reserve. I asked the question of the distinguished Chairman, Alan Greenspan. Chairman Greenspan had an analysis made by the Board of Governors of the Federal Reserve System. That analysis came to the conclusion that the likely consumption from this proposal would be in the range of \$40 billion.

I ask unanimous consent, Mr. President, that the analysis, the subject matter captioned here—"Analysis of Senator SPECTER'S Proposal Regarding Penalty-Free Withdrawals From Retirement Accounts—dated February 12, 1992, from the Board of Governors of the Federal Reserve System, Division of Research and Statistics, be printed in the RECORD in full at the conclusion of my statement as if read in full on the Senate floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. There was another analysis made of this proposal by the Interpublic Group of Companies, Inc. That organization noted the proposal in the CONGRESSIONAL RECORD. I had always thought that the CONGRESSIONAL RECORD was a nice document, but hardly one for reading.

In any event, I was pleasantly surprised to receive a copy of a letter to Secretary of the Treasury Nicholas Brady, dated December 24, 1991, written by Philip H. Geier, Jr., chairman and chief executive officer of the Interpublic Group of Companies, Inc. Mr. Geier noted that he had recently reviewed the Specter-Domenici bill, Senate bill 1984, and had his company conduct a survey of 1,000 consumers regarding the bill.

The conclusion was that the impact of the legislation would be over \$121 billion in incremental expenditures

coming into the two industries at this critical time, home building and automobiles.

I ask unanimous consent, Mr. President, that the full text of Mr. Geier's letter to Secretary of the Treasury Brady appear at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. There was published this past Friday, on March 6, 1992, a full-page ad in USA Today by Interpublic Group of Companies, Inc., which called America's attention to Senate bill 1984. The ad said this: "In the next 6 months, Congress can help Detroit sell more than a million more new cars, help builders sell more than 500,000 more new homes, American tradesmen improve millions of old homes without costing the taxpayers a penny and without waiting for a new tax bill."

In fact, this proposal could be separate legislation but the current tax bill is an ideal legislative vehicle for putting. The ad goes on to say this:

It is remarkable, it is immediate, and it is a conservative estimation on an independent market research response to an amended version of the Specter-Domenici bill, S. 1984.

When asked whether they would use up to \$10,000 of their money currently in IRA's and/or 401(k)'s, if there were no penalty, to purchase a new home, improve their current home, or buy an automobile or truck, Americans overwhelmingly answered yes. Indeed, 38 percent more people than are currently in the auto market said this would turn them from being bystanders into buyers. That is 4.8 million more people spending 65 million new dollars, out of a projected total of over \$200 billion in purchasing power, that this suggested amended bill could unleash. And this does not include additional mortgage money generated either.

Additionally, they understood the only time qualification was that they do this in the next 6 months and return the money to their accounts within 5 years to reinstate tax-free benefits without a taxable event taking place. And because people had not planned on withdrawing the money anyway, there would be no lost revenue to the Government from the loss of withdrawal penalty.

The advertisement goes on to say:

It is a provocative idea, a practical idea and affordable idea. Judging from the response to the market research, it is an idea for jump starting the economy, whose time has come.

In big black, bold letters:

Congress should support an amended Senate bill, S. 1984, Americans using their own money to invest in themselves as a nation.

This message paid for by Philip H. Geier, Chairman of a Public Group of Companies, Inc.

Mr. President, it is hard to find a way to inject substantial money into the economy without adding to the deficit, or without creating some considerable problem with respect to the reallocation of resources. But this is a pool of money which is available for a

rainy day or available for an emergency, and I suggest that day is present today.

Mr. President, I was pleased to note that in the pending legislation there is a provision which would go some distance toward what Senator DOMENICI and I had sought to accomplish. The bill before us provides that old IRA's may be rolled over into the new IRA's, and the new IRA's may be used to purchase new homes, or tuition, or medical expenses.

I think that our legislation, the Specter-Domenici bill, is a significant addition because it adds new cars, and it has the provisions for the deferral of the taxes to further stimulate consumer purchasing power. Prior to the introduction of S. 1984 by Senator DOMENICI and I, there had not been a proposal which would have used the old IRA's for the purchase of these three particular items.

The second proposed amendment would provide home equity conversion for the elderly. It would permit people 55 years or older, who are house-rich but cash-poor to use a sale-leaseback transaction to pull their equity out of their homes without having to move out.

That essentially is my proposal. If a person has a home and they are 55 years of age a computation could be made as to what the value of that house would be actuarially at the time of their death, and they would be permitted to sell the remainder interest but continue to live in their home. That is, the life estate would be retained by the homeowner, but the remainder interest would be sold, and cash would be obtained.

People obviously do not want to move out of their homes. While an individual might like to leave his or her house to a relative as a bequest, my proposal would certainly be an option worth considering.

There is currently a deduction of up to \$125,000 where no taxes would be payable in this type of transaction. So this would enable someone 55 years or older to have the dual advantage of living in his house for the balance of his life, but selling today the value of the house at the time of his death, actuarially computed, and put that money in his pocket for living expenses. In legal parlance, it is called retaining a life estate and selling the remaining interest, which would have a very significant cash value.

The third amendment which I propose to file relates to employer provided transportation. This is a provision which I had included in legislation which I had introduced earlier, Senate bill 326, and had proposed as an amendment to the energy bill. It could not be considered at that time because it is a tax measure, it is appropriate for consideration on the pending legislation.

This provides that anyone who receives free parking from an employer,

which is nontaxable, could not receive that free parking on a nontaxable basis unless the employer offered an equal amount in cash or for public transit. The purpose of this legislation is really to take more cars off the road. It has been found that where employees do not have the availability of free parking that a substantial number will take public transit.

A survey found that where employees pay \$40 or more per month for parking, 20 to 25 percent fewer drive. It is really an unfair tax advantage to give someone a parking place which may be worth \$200 a month, which is nontaxable. I would suggest that this arrangement could be continued only if the employer gave the option of getting cash or a public transit fare.

This amendment was noted favorably in the New York Times on June 17, 1991, where the following statement occurs. After discussing a number of subsidy plans under an editorial captioned "A Screwed Subsidy For Drivers" in the New York Times on June 17, 1991: "The best idea comes from 2 Republicans, Senator ARLEN SPECTER of Pennsylvania and Representative JAN MEYERS of Kansas. They would equalize the transit and parking subsidies by canceling the exemption for parking unless employees were also offered an equivalent amount for travel by mass transit and car or van pools."

Mr. President, the current bill does have a provision which proposes an increase in the transit exclusion from \$21 to \$60 per month, which means that now an employer can make a transit allowance of \$21 without having a tax to the employee. That goes up \$60 and it puts a cap of \$160 per month on currently nontaxable employee-provided parking spaces. That is an improvement. But if your parking cost \$160—and in few cities will you find parking that cheaply—I would say that there is no reason why the disparity should exist. There ought to be equality on the amount of money involved, cash received by an employee or a transit allowance.

This amendment, Mr. President, would have a revenue gain which might be of some help in an offset as to the IRA proposal, although that is virtually revenue neutral in its present form, and I just mention that in passing, Mr. President.

At this time, Mr. President, I ask unanimous consent that the full text of these amendments be printed in the RECORD.

There being no objection, the amendments are ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 1705

At the appropriate place, insert:

SEC. . DEDUCTIBILITY OF EMPLOYER-PROVIDED PARKING SPACE.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended—

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (1) the following new subsection:

"(m) NO DEDUCTION FOR PARKING EXPENSES UNLESS EMPLOYER PROVIDES CASH ALTERNATIVE.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter for any amount paid or incurred by an employer in connection with the providing of a parking subsidy to any employee unless the employer provides the parking subsidy pursuant to an arrangement under which the employee may elect, in lieu of a parking subsidy, to receive cash or a mass transit, car pool, or van pool subsidy in an amount equal to the fair market value of such parking subsidy.

"(2) CASH IN LIEU OF BENEFIT.—For purposes of this subsection (m), cash received by an employee in lieu of a parking subsidy shall be taxable income.

"(3) NO PREEMPTION OF STATE AND LOCAL LAWS.—The provisions of this subsection (m) shall not preempt any state or local laws, ordinances, or regulations promulgated pursuant to the Clean Air Act Amendments of 1990.

"(4) DEFINITION.—For purposes of this subsection (m), the term "parking subsidy" includes the direct and indirect cost to an employer of providing qualified parking to an employee, not including any amount paid by the employee."

(b) MASS TRANSIT, CAR POOL, OR VAN POOL SUBSIDY IN LIEU OF PARKING.—For purposes of subsection (a) of this section a mass transit, car pool, or van pool subsidy in lieu of a parking subsidy shall be taxable in accordance with section 2513 of this Act.

(c) QUALIFIED PARKING.—For the purposes of subsection (a) of this section, the term "qualified parking" shall have the meaning set forth in section 2513 of this Act and shall be taxable in accordance with section 2513 of this Act.

(d) EFFECTIVE DATE.—The amendment made by this subsection (a) shall apply to taxable years beginning after December 31, 1992.

(e) PARKING SUBSIDY FORMULA.—By December 31, 1992, the Internal Revenue Service shall in conjunction with the Department of Transportation develop a formula for estimating the value of parking places provided in employer owned parking facilities.

AMENDMENT NO. 1706

On page 1421, after line 17, insert the following new title:

TITLE VI—HOME EQUITY CONVERSIONS

SEC. 601. SHORT TITLE.

That this Act may be cited as the "Home Equity Conversions Act of 1992".

SEC. 602. DEPRECIATION IN SALE-LEASEBACK TRANSACTIONS.

Section 167 of the Internal Revenue Code of 1986 (relating to depreciation) is amended by adding at the end thereof the following new subsection:

"(g) SALE-LEASEBACK TRANSACTIONS.—

"(1) IN GENERAL.—In the case of property involved in a sale-leaseback transaction, the purchaser-lessee shall be recognized as the absolute owner of the property, and the deduction shall be allowed to the purchaser-lessee.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) SALE-LEASEBACK.—The term 'sale-leaseback' shall include a transaction in which—

"(i) the seller-lessee—

"(I) has attained the age of 55 before the date of such transaction,

"(II) sells property which during the 5-year period ending on the date of the transaction has been owned and used as a principal residence by such seller-lessee for periods aggregating 3 years or more,

"(III) obtains occupancy rights in such property pursuant to a written lease requiring a fair rental, and

"(IV) receives no option to repurchase the property at a price less than the fair market price of the property unencumbered by any leaseback at the time such option is exercised, and

"(i) the purchaser-lessee—

"(I) is a person,

"(II) is contractually responsible for the risks and burdens of ownership and receives the benefits of ownership (other than the seller-lessee's occupancy rights) after the date of such transaction, and

"(III) pays a purchase price for the property that is not less than the fair market price of such property encumbered by a leaseback, and taking into account the terms of the lease.

"(B) OCCUPANCY RIGHTS.—The term 'occupancy rights' means the right to occupy the property for any period of time, including a period of time measured by the life of the seller-lessee on the date of the sale-leaseback transaction (or the life of the surviving seller-lessee, in the case of jointly-held occupancy rights), or a periodic term subject to a continuing right of renewal by the seller-lessee (or by the surviving seller-lessee, in the case of jointly-held occupancy rights).

"(C) FAIR RENTAL.—For purposes of paragraph (2)(A)(i)(III), the term 'fair rental' shall include a rental for any subsequent year which equals or exceeds the rental for the first year of a sale-leaseback transaction.

SEC. 603. CAPITAL GAINS EXCLUSION IN SALE-LEASEBACK TRANSACTIONS.

Subsection (d) of section 121 of the Internal Revenue Code of 1986 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended by adding at the end thereof the following new paragraph:

"(10) SALE OR EXCHANGE DEFINED.—For purposes of this section, the term 'sale or exchange' shall include a sale-leaseback transaction (as defined in section 167(g))."

SEC. 604. INCOME IN SALE-LEASEBACK TRANSACTION.

(a) GROSS INCOME.—Part III of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by inserting after section 121 the following new section:

SEC. 121A. INCOME IN SALE-LEASEBACK TRANSACTIONS.

"Gross income to the seller-lessee or the purchaser-lessee in a sale-leaseback transaction (as defined in section 167(g)) does not include any value of occupancy rights or discount from the fair market price of the property unencumbered by any leaseback, which is attributable to any leaseback."

(b) GAIN OR LOSS.—Subsection (b) of section 1001 of such Code is amended—

(1) by striking "and" at the end of paragraph (1),

(2) by striking the period at the end of paragraph (2) and inserting ", and", and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) in the case of a sale-leaseback transaction (as defined in section 167(g))—

"(A) there shall not be taken into account any value of occupancy rights or discount

from the fair market price of the property unencumbered by any leaseback, which is attributable to any leaseback, and

"(B) there shall be taken into account the cost of any annuity purchased for a seller-lessee by a purchaser-lessor."

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of subtitle A of such Code is amended by inserting after the item relating to section 121 the following new item:

"Sec. 121A. Income in sale-leaseback transactions."

SEC. 605. INSTALLMENT SALES IN SALE-LEASEBACK TRANSACTIONS.

Section 453 of the Internal Revenue Code of 1986 (relating to installment method) is amended by adding at the end thereof the following new subsection:

"(m) APPLICATION WITH SECTION 167(I).—
 "(1) IN GENERAL.—In the case of an installment sale in a sale-leaseback transaction (as defined in section 167(g)), subsection (a) shall apply.

"(2) SPECIAL RULE FOR ANNUITIES.—In the case of an annuity purchased for the seller-lessee by the purchaser-lessor in a sale-leaseback transaction, the purchase cost of such annuity shall constitute the amount of consideration received by such seller-lessee attributable to such annuity and shall be deemed received in the year of disposition."

SECTION 606. BASIS OF ANNUITY RECEIVED IN SALE-LEASEBACK TRANSACTION.

Subparagraph (A) of section 72(c)(1) of the Internal Revenue Code of 1986 (relating to annuities) is amended by inserting before the comma "(including such amount paid by a purchaser-lessor in a sale-leaseback transaction as defined in section 167(g))".

SEC. 607. SALE-LEASEBACK TRANSACTION ENGAGED IN FOR PROFIT.

(a) FOR PROFIT PRESUMPTION.—Section 183 of the Internal Revenue Code of 1986 (relating to activities not engaged in for profit) is amended—

(1) by striking "IF" in subsection (d) and inserting "(1) IN GENERAL.—IF",

(2) by inserting after paragraph (1) of subsection (d) (as designated by paragraph (1)) the following new paragraph:

"(2) SALE-LEASEBACK TRANSACTION.—Any sale-leaseback transaction (as defined in section 167(g)), unless the Secretary establishes to the contrary, shall be presumed for purposes of this chapter to be an activity engaged in for profit.", and

"(3) by inserting "(1)" after "subsection (d)" each place it appears in subsection (e)."

(b) USE OF DWELLING UNIT.—Paragraph (3) of section 280A(d) of such Code (relating to disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.) is amended by adding at the end thereof the following new subparagraph:

"(E) FAIR RENTAL IN A SALE-LEASEBACK TRANSACTION.—Any rental that constitutes a fair rental in a sale-leaseback transaction pursuant to section 167(g)(2)(C) shall be treated as a fair rental for purposes of subparagraph (A)."

SEC. 608. ACCELERATED COST RECOVERY SYSTEM IN SALE-LEASEBACK TRANSACTIONS.

Subparagraph (A) of section 168(f)(5) of the Internal Revenue Code of 1986 (relating to certain property placed in service in churning transactions) is amended by inserting "(except property acquired by the taxpayer in a sale-leaseback transaction as defined in section 167(g))" after "Property".

SEC. 609. EFFECTIVE DATE.

The amendments made by this title shall apply to sales after the date of the enact-

ment of this Act, in taxable years ending after such date. Enactment of this title shall not raise any presumption that sales occurring prior to such enactment should not be treated as valid sale-lease-back transactions.

AMENDMENT NO. 1707

At the appropriate place, insert:
SEC. . PENALTY-FREE WITHDRAWALS FROM PENSION PLANS THROUGH 1992.

(a) IN GENERAL.—In the case of any qualified withdrawal—

(1) no additional tax shall be imposed under section 72(t)(1) of the Internal Revenue Code of 1986 with respect to such qualified withdrawal, and

(2) except as provided in subsection (b), any amount includable in gross income by reason of such qualified withdrawal (determined without regard to this section) shall be includable ratably over the 4-taxable year period beginning with the taxable year in which such qualified withdrawal occurs.

(b) ELECTION TO RECONTRIBUTE TO PLAN.—

(1) IN GENERAL.—The amount required to be included in gross income for any taxable year under subsection (a)(2) shall be reduced by any designated retribution.

(2) DESIGNATED RECONTRIBUTION.—For purposes of paragraph (1), a designated retribution is any contribution to any plan described in subsection (c)(1)(B)—

(A) which the taxpayer designates (in such manner as the Secretary of the Treasury may prescribe) as in lieu of all (or any portion of) any amount required to be included in gross income under subsection (a)(2) for a taxable year, and

(B) which is made not later than the due date (without extensions) for such taxable year.

(3) NO DEDUCTION ALLOWED FOR RECONTRIBUTION, ETC.—For purposes of the Internal Revenue Code of 1986, a designated retribution shall not be treated as a contribution for any taxable year.

(c) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

(1) IN GENERAL.—Subsection (a) shall not apply to any taxpayer if the adjusted gross income of the taxpayer for the taxpayer's first taxable year beginning in 1991 exceeds—

(A) \$100,000 in the case of married individuals filing a joint return,

(B) \$50,000 in the case of married individuals filing a separate return, and

(C) \$75,000 in the case of any other taxpayer.

(2) SPECIAL RULE FOR GRANDPARENTS AND PARENTS.—If a withdrawal is used to pay qualified acquisition costs of a first-time homebuyer who is the child or grandchild of a taxpayer, paragraph (1) shall be applied by reference to the adjusted gross income of the child or grandchild (and, if applicable, their spouse).

(d) QUALIFIED WITHDRAWAL.—For purposes of this section—

(1) IN GENERAL. The term "qualified withdrawal" means any payment or distribution—

(A) which is made to an individual during 1992,

(B) which is made from—

(i) an individual retirement plan (as defined in section 7701(a)(37) of the Internal Revenue Code of 1986) established for the benefit of the individual, or

(ii) amounts attributable to employer contributions made on behalf of the individual pursuant to elective deferrals described in section 402(g)(3)(A) or (C) or 501(c)(18)(D)(iii) of such Code, and

(C) which is used by the individual for a qualified acquisition not later than the earlier of—

(i) the date which is 6 months after the date of such payment or distribution, or

(ii) the date on which the individual files the individual's income tax return for the taxable year in which such payment or distribution occurs.

(2) QUALIFIED ACQUISITION.—The term "qualified acquisition" means—

(A) the payment of qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is the taxpayer or the child or grandchild of the taxpayer, or

(B) the purchase of a new passenger automobile.

(3) DOLLAR LIMITATION.—The aggregate amount which may be treated as qualified withdrawals under paragraph (1) with respect to all plans and amounts of an individual described in subsection (c)(1)(B) shall not exceed \$10,000.

(4) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) QUALIFIED ACQUISITION COSTS.—The term "qualified acquisition costs" means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs associated with such qualified acquisition costs.

(B) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—

(i) FIRST-TIME HOMEBUYER.—The term "first-time homebuyer" means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

(ii) PRINCIPAL RESIDENCE.—The term "principal residence" has the same meaning as when used in section 1034.

(iii) DATE OF ACQUISITION.—The term "date of acquisition" means the date—

(I) on which a binding contract to acquire the principal residence to which this subsection applies is entered into, or

(II) on which construction or reconstruction of such a principal residence is commenced.

(C) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

(i) any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in paragraph (1), and

(ii) by reason of a delay in the acquisition of the residence, the requirements of paragraph (1) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) of the Internal Revenue Code of 1986 without regard to section 408(d)(3)(B) of such Code, and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) of such Code applies to any other amount.

(D) DISTRIBUTION RULES.—Any qualified withdrawal shall not be treated as failing to meet the requirements of sections 401(k)(2)(B)(i) or 403(b)(11) of such Code.

(e) ORDERING RULES FOR INCOME TAX PURPOSES.—For purposes of the Internal Revenue Code of 1986—

(1) all plans and amounts described in subsection (c)(1)(B) with respect to an individual shall be treated as one plan, and

(2) qualified withdrawals from such plan shall be treated as made—

Mr. SPECTER. Mr. President, that concludes my statement, and I believe under the existing order that will conclude the business of the Senate this evening.

I thank the Chair, and I yield the floor.

EXHIBIT 1

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, DIVISION OF RESEARCH AND STATISTICS,

February 12, 1992.

ANALYSIS OF SENATOR SPECTER'S PROPOSAL REGARDING PENALTY-FREE WITHDRAWALS FROM RETIREMENT ACCOUNTS

This memorandum analyzes Senator Specter's proposal regarding penalty-free withdrawals from retirement accounts, focusing especially on the issue of how great an impact the action would have on household spending. Section I describes in greater detail the provisions of the proposal; Section II discusses some analytical considerations bearing on the spending issue; Section III presents some relevant estimates derived from the national Survey of Consumer Finance; Section IV offers some conjectures on the likely spending effects.

I. THE PROPOSAL

The proposed legislation would allow certain taxpayers to make penalty-free withdrawals from retirement-type accounts, provided the withdrawals are applied toward one or more qualified purchases. Specifically:

The proposal would allow withdrawals from IRAs, Keoghs, and 401(k)s.

Eligibility would be restricted to those earning less than \$100,000 (if married and filing jointly), \$50,000 (if married and filing separately), or \$75,000 (all others).

According to the legislation in its current form, qualified expenditures would include the purchase or improvement of real property, and the purchase of durable goods. In his floor speech and in other communications, Senator Specter has also mentioned medical expenses and college tuition.

Each taxpayer would be allowed to withdraw no more than \$10,000.

Withdrawals would have to be made on or before December 31, 1992; associated expenditures would have to be made either (a) within six months of the withdrawal, or (b) by the time the taxpayer files his/her return for the relevant tax year (in most cases, no later than April 15, 1993). The more restrictive of (a) or (b) would be the binding rule.

Regular tax liability on the withdrawn funds would still be owed; however, the liability could be spread over a period of four years following the withdrawal.

In the floor speech and written communications, Senator Specter also mentions the possibility of allowing those who take advantage of his proposals to replenish the funds in their IRA or 401(k) over the five years following the withdrawal. The existing legislation does not contain this provision.

II. ANALYTICAL CONSIDERATIONS

Several analytical points are worth making about the likely impact of the proposal on household spending:

It is useful to think of qualifying households as falling in one of three categories: not liquidity-constrained, extremely liquidity-constrained, and somewhat liquidity-constrained.

Households that are not liquidity-constrained will probably not be interested in tapping their retirement savings, because doing so would remove those savings from their current tax-sheltered status.

Households that are extremely pressed for the funds will be tapping their funds in any event, and would choose to pay the 10 percent penalty in the absence of Senator Specter's proposal. The extra spending generated

by the Senator's proposal via these households would be only \$1,000—smaller by an order of magnitude than the overall amount of \$10,000.

Therefore, the proposal likely would have its greatest impact on the spending of the intermediate group: those households that are somewhat liquidity constrained, but not too much so. These households will be induced to make a withdrawal that they otherwise would not have made.

About two-thirds of 401(k)s have borrowing provisions. Therefore, owners of these accounts have access to the wealth they hold in 401(k)s even in the absence of Senator Specter's proposal. Evidence suggests that many households take advantage of these loan provisions. For example, one recent survey found that 9 percent of account-holders initiated a new loan during 1990, while 21 percent had a loan outstanding at the end of 1990.¹ Roughly 90 percent of such plans allow general-purpose loans (and therefore cover a wider range of expenditures than would Senator Specter's plan).

The tax amortization feature probably will make relatively little difference to the proposal's influence on spending: Standard theories of consumer behavior predict that taxpayers who know that a liability is outstanding will be inclined to set aside most, if not all, of the tax liability upon receipt of the withdrawal. This prediction is supported by available evidence concerning the relationship between ordinary income tax refunds and consumer spending.^{2,3}

III. EMPIRICAL EVIDENCE

The following estimates from the 1989 Survey of Consumer Finance shed further light on the likely impact of the proposal on household spending:

According to the SCF, qualified accounts (including IRAs, 401(k)s, Keoghs, thrift, and saving plans) amounted to \$1.239 trillion in 1989.⁴

Of this amount, \$893 billion was held by families headed by someone aged less than 59 years old. Older people already can withdraw funds from retirement accounts without penalty.

Next, \$736 billion was held by families meeting both the income constraints specified under the Specter proposal and the above-mentioned age cutoff.

Ownership of that \$736 billion was highly concentrated, however. If we count only the first \$10,000 in retirement funds per family, then the qualified pool of funds shrinks to only \$136 billion.

Median liquid assets held by all families meeting the proposed age and income criteria were \$1,950.⁵ Among families reporting ownership of some retirement funds, median liquid asset holdings were \$6,180. Among families holding at least \$5,000 in retirement funds, median liquid asset holdings were \$9,800. This result conforms with the common finding that those who save via IRAs and Keoghs also tend to save by other means. Families that are holding substantial amounts outside their retirement accounts will be less interested in tapping their retirement funds if given the opportunity to do so penalty-free.

Transaction costs could be sufficiently great to persuade some families who otherwise would take advantage of Senator Specter's proposal not to liquidate their IRAs or 401(k)s. These costs would include, for example, early withdrawal penalties on time deposits and broker commissions.

Footnotes at end of article.

IV. SPENDING EFFECTS

A fundamental fact should be kept in mind while assessing the likely influence of the proposed program on household spending: The proposal would do nothing to raise the wealth of households, other than of those who anticipated incurring a withdrawal penalty. Therefore, the proposal would influence household spending mainly by relaxing liquidity constraints currently binding on some households. The above data from the SCF suggests that this impact probably would not be very great, given that a considerable portion of the available retirement-related wealth is owned by families holding substantial amounts of other liquid assets.

Some withdrawals undoubtedly would occur if the proposal were to be adopted, but the incremental effect of the proposal on expenditure will be less than the total amount withdrawn for two reasons: First, some withdrawals would have been taken, even in the absence of the program, by families extremely pressed for liquidity. Second, some withdrawals from 401(k)s will represent, in effect, a substitution of outright withdrawal for borrowing that would have taken place in the absence of the program.

There is no way of predicting with any confidence the amount of additional expenditure that would be forthcoming in response to implementation of the proposal. It seems reasonable to guess, on the basis of the evidence presented here, that the increment to spending would amount to less than one percent of personal consumption expenditure (or \$40 billion)—and it quite possibly would be substantially less. If the permissible penalty-free withdrawal were to be raised to \$20,000, it would raise the amount released on the estimates above from \$136 billion to \$206 billion. However, while the spending effect probably would be greater, it would likely be only modestly so, because the additional balances affected would, on average, be held by individuals who are less liquidity-constrained.

FOOTNOTES

¹Hewitt Associates, Lincolnshire, IL, News and Information Release, January 23, 1992.

²See "Income Tax Refunds and the Timing of Consumer Expenditure," David W. Wilcox, mimeo, Federal Reserve Board.

³Low-income taxpayers will experience some benefit from being allowed to smooth some of the liability into lower tax brackets. However, evidence from the Survey of Consumer Finance suggests that eligible families would have higher-than-normal incomes, and so would not benefit from this aspect of the proposal to any great degree.

⁴Respondents to the 1989 SCF reported total holdings in IRAs and Keoghs of \$598 billion. For comparison, the Employee Benefit Research Institute puts the total for IRAs and Keoghs in 1989 at \$494 billion. SCF respondents reported an additional \$295 billion in 401(k)s, quite close to the estimate for 1988 of \$277 billion based on data from the Department of Labor's Form 5500. Finally, SCF respondents reported \$346 billion in thrift or saving plans, or other defined-contribution plans with borrowing provisions.

⁵Liquid assets were defined as the sum of checking accounts, money market accounts, CDs, other bank accounts, mutual fund holdings, savings bonds, other government and private bonds, direct stock holdings, and accounts held at brokers.

EXHIBIT 2

THE INTERPUBLIC GROUP OF COMPANIES, INC.,

New York, NY, December 24, 1991.

Mr. NICHOLAS F. BRADY,
Secretary of the Treasury, Department of the Treasury, Washington, DC.

DEAR NICK: I recently reviewed the Specter/Domenici Bill (S/1984) which has the possibility of stimulating the economy in two key sectors—housing and automobiles—

major indicators of economic vitality both with the so-called experts on the economy, but more importantly, with the consumer (not to mention the impact this would have on unemployment).

We amend some of the aspects of the Bill (see attachment) and put it into national consumer research; I found the results more than interesting, and I believe you and the White House should review the data and the approach as a possible major element in a package of measures for stimulating an economic recovery.

With due respect, I point out that the consumer confidence level, which is a major problem and has been so for many months, was not addressed. The past is the past but if scenarios had been worked out in advance (what if the economy did not respond, etc.), the Administration might be in a better position to be on the attack with Congress. Of course, the media has not helped the situation at all. If you consider that the 1981-82 recession which had almost 10 percent unemployment and interest rates in the high teens (but a solid banking system and reasonable ability to lend), versus what we have today where the primary problems of the lending institutions require not only larger down payments but a stronger consumer credit-worthiness as well, we can understand one of the major problems we face.

Because I share this concern and was intrigued by the Specter/Domenici approach, my company commissioned a study through a lending research company to estimate the number of American families who would make use of their IRA and 401K savings for housing and automobiles on a one-time basis, and to estimate the amount of money these families would invest above the levels they would spend without the use of these funds. Please note that the proposal provides that the IRA and 401K monies used would be tax free for five years, whereupon the consumer could put this money back into those retirement funds on a tax free basis (see attachment). Therefore, the program would be revenue neutral.

We have amended the Specter/Domenici Bill as follows:

A. We limited the use of IRA and 401K funds to housing and autos. These industries are the key industries for economic resurgence, and new vigor here would have a huge effect on the overall economy.

B. We suggested that autos purchased have at least 75% of content made in the USA. I recognize the GATT issue, but I believe our trading partners could be persuaded that a non-deficit 6 month domestic program that lifts the US economy would be to their own benefit over time as well. Additionally, this provision certainly would shake up the Japanese which the President politically must consider.

The research, a national probability sample of 1,000 households, was conducted in the middle of December, and is representative of U.S.A. demographics by age, sex, religion and race. Let me summarize the findings on this basis:

1. This proposed use of IRA and 401K funds would increase intentions to buy or improve a home or to buy a car from 26 to 44 million families—a gain of 18 million families.

2. One in three (33.5%) American families claim they would use some of their IRA and/or 401K funds to buy a new home, improve their home or buy a car under this proposal. Of these, over 10,300,000 families say they are "very" likely to take positive action.

3. Another 20,700,000 households say they are "somewhat" likely to act per this proposal.

4. Of these 31,000,000 households, fully 65% say they would use the maximum \$10,000. Another 18% report they would use more than \$5,000 but less than \$10,000. This proposed legislation would motivate 26,000,000 American families to spend more than \$5,000 on housing and autos, with another 5,000,000 families spending less than \$5,000.

5. If they do as they say, these 31 million families would theoretically transfer over \$224 billion dollars from existing IRA and 401K funds to the housing and auto industries. According to the BEA, American families spent \$647 billion in these two sectors in 1990—not including maintenance and operations. At a very minimum, the proposed action would produce impactful double-digit gains in both industries.

6. Over half (55%) of the 31 million families who say they would make use of IRA and/or 401K funds for housing and autos, report they do not intend to invest at this time in new or improved housing or buy a new car without this proposal. In other words, the Specter/Domenici proposal motivates many more people to act now. Using just this 55% figure, the impact would be over \$120 billion in incremental spending coming into these two industries at this critical time.

I am very enthused about these findings. Although the sample size is not large, the responses are statistically reliable within 3%. Even if one applies a conservative adjustment to these stated consumer actions, the numbers are still very impressive.

I have heard a lot of qualitative research recently which suggests the President should adopt a more pro-American business stance. While we are all believers in free trade, there is a deep seated popular concern that the Japanese are receiving special treatment with respect to their markets versus ours. This viewpoint is being strengthened by the current U.S. auto industry problems and the attendant negative publicity. I believe this proposal is an appropriate response.

I do hope this study might be of help to you and the President. We would be happy to have our research analyst come to Washington to go over the detailed results with your staff or whomever you wish.

On a related note, a lot of us believe that a cut in the capital gains tax rate would be revenue positive and is the right thing to do. However, I believe the average American family is much more concerned with holding onto or getting jobs, and unless this tax change can be explained simply and succinctly and backed up with facts on how it creates jobs, we really should let it pass. Our indications are that this will be a detriment with the average person in getting a tax stimulus approved.

In my view, the direction proposed in the Specter/Domenici Bill is exactly right for this time and these conditions.

I hope you and your family have a very happy holiday, and I look forward to seeing you soon in the New Year.

Sincerely,

PHIL.

RECESS UNTIL TOMORROW AT 9:30 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9:30 a.m., Wednesday, March 11.

Thereupon, the Senate, at 7:53 p.m., recessed until Wednesday, March 11, 1992, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 10, 1992:

THE JUDICIARY

FEDERICO A. MORENO, OF FLORIDA, TO BE U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT VICE PAUL H. RONEY, RETIRED.

SUSAN H. BLACK, OF FLORIDA, TO BE U.S. CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT VICE THOMAS A. CLARK, RETIRED.

DEPARTMENT OF DEFENSE

I. LEWIS LIBBY, JR., OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY. (NEW POSITION)

DEPARTMENT OF AGRICULTURE

JAMES B. HUFF SR., OF MISSISSIPPI, TO BE ADMINISTRATOR OF THE RURAL ELECTRIFICATION ADMINISTRATION FOR A TERM OF 10 YEARS, VICE GARY C. BYRNE, RESIGNED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. LEO W. SMITH, II, xxx-xx-xx, U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. ROBERT D. HAMMOND, xxx-xx-x, U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. HENRY J. HATCH, xxx-xx-xx, U.S. ARMY.

THE FOLLOWING NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JACK D. WOODALL, xxx-xx-x, U.S. ARMY.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. JEROME H. GRANRUD, xxx-xx-xx, U.S. ARMY.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. (LOWER HALF) JOHN M. MCCONNELL, xxx-xx, U.S. NAVY.

THE FOLLOWING NAMED REAR ADMIRALS (LOWER HALF) OF THE RESERVE OF THE U.S. NAVY FOR PROMOTION TO THE GRADE OF REAR ADMIRAL IN THE STAFF CORPS, AS INDICATED, PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5912:

MEDICAL CORPS OFFICER

To be rear admiral

REAR ADM. (LOWER HALF) DONALD EUGENE ROY, xxx-xx, U.S. NAVAL RESERVE.

SUPPLY CORPS OFFICER

REAR ADM. (LOWER HALF) FRANCIS WILLIAM KEANE, xxx-xx-xxxx, U.S. NAVAL RESERVE.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR PROMOTION IN THE UNITED STATES AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE, AND THOSE OFFICERS IDENTIFIED BY AN ASTERISK FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER THE PROVISIONS OF SECTION 531, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 907, TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES INDICATED PROVIDED THAT IN NO CASE SHALL THE FOLLOWING OFFICERS BE APPOINTED IN A GRADE HIGHER THAN INDICATED.

DENTAL CORPS
To be colonel

GARY A. ANDERSON xxx-xx-x
RICHARD R. BALZER xxx-xx-x
BARRY D. BARRUS xxx-xx-x
DAVID E. BULLARD xxx-xx-x
HAROLD B. CANNING xxx-xx-x
LARRY J. CASEY xxx-xx-x
JAMES D. CORNELIUS xxx-xx-x
JOE B. DRANE, III xxx-xx-x
FRANK S. DRONGOWSKI xxx-xx-x
LARRY J. ELLISON xxx-xx-x
CHARLES W. ELWELL, JR. xxx-xx-x
QUENTIN M. FUHS xxx-xx-x
EDWARD D. GALL, III xxx-xx-x
ALLAN F. HANCOCK xxx-xx-x
PAUL A. HANSEN xxx-xx-x
CHARLES B. HERMESCH xxx-xx-x
CHARLES J. JORDAN xxx-xx-x
HERSCHEL B. KAUFMAN xxx-xx-x
RODNEY C. KNUDSON xxx-xx-x
DEAN M. KYRIOS xxx-xx-x
DAVID J. LASHO xxx-xx-x
CHARLES M. MALLOY xxx-xx-x
EDWARD B. MANDEL xxx-xx-x
MICHAEL A. MANSUETO xxx-xx-x
JAMES E. MARR xxx-xx-x
JAMES G. MCCARTNEY xxx-xx-x
DAVID T. MOHS xxx-xx-x
RICHARD A. MORGAN xxx-xx-x
DAVID G. NARBELI xxx-xx-x
FREDERICK F. NOLAN, JR. xxx-xx-x
ROBERT M. PETERZEN xxx-xx-x
JOHN D. SHURTZ xxx-xx-x
LELAND J. SLATOFF xxx-xx-x
WILLIAM H. SMART xxx-xx-x
ROGER K. SMITH xxx-xx-x
RICHARD H. STEELE xxx-xx-x
WAYNE K. TANAKA xxx-xx-x
ROBERT C. TOLLEFSON xxx-xx-x
RICHARD D. TUTTLE xxx-xx-x
JAMES J. VAUGHAN xxx-xx-x
MICHAEL G. WILEY xxx-xx-x

MEDICAL CORPS
To be colonel

GORDON C. ABERNATHIE, JR. xxx-xx-x
BUENAVENTURA Q. ALDANA xxx-xx-x
ANTHONY L. ALFORD xxx-xx-x
H. JACK BAGHDASSARIAN xxx-xx-x
STEPHEN W. BALDWIN xxx-xx-x
THOMAS W. BALLARD xxx-xx-x
AARON V. BARSON, JR. xxx-xx-x
SAMAR K. BHOWMICK xxx-xx-x
KATHRYN L. BOEHNI xxx-xx-x
ROBERT F. BRICHTA xxx-xx-x
JOSEPH J. CONTIGUGLIA xxx-xx-x
HAYWOOD H. DAVIS, JR. xxx-xx-x
VINCENT W. DELAGARZA xxx-xx-x
DAVID A. DIORIO xxx-xx-x
JOHN E. DOYLE, III xxx-xx-x
DAVID W. GORTZ xxx-xx-x
JAMES M. GRELEBY xxx-xx-x
MICHAEL K. GREENBERG xxx-xx-x
GARY D. V. HANKINS xxx-xx-x
PETER F. HOLM xxx-xx-x
RICHARD E. IMM xxx-xx-x
STEPHEN ANTONIOLI JENNINGS xxx-xx-x
MALCOLM N. JOSEPH, III xxx-xx-x
JAMES M. KENNEY xxx-xx-x
RANDALL B. KING xxx-xx-x
CLARK J. KNUTSON xxx-xx-x
RIZALINA Y. LIMCO xxx-xx-x
KIMBERLY N. MCGRATH xxx-xx-x
MARK A. MCLAUGHLIN xxx-xx-x
JOHN J. MEEHAN xxx-xx-x
MIGUEL A. MONTALVO xxx-xx-x
NAMIR MREYOUOD xxx-xx-x
MICHAEL E. NEULAND xxx-xx-x
TERRENCE J. ONEILL xxx-xx-x
ROBERT C. PARKE xxx-xx-x
ALLEN J. PARMETI xxx-xx-x
CSAK G. POSTA xxx-xx-x
RAMASAHAYAM A. REDDY xxx-xx-x
JOHN A. REYBURN, JR. xxx-xx-x
CHARLES F. RIEDERER xxx-xx-x
MICHAEL L. ROSENBERG xxx-xx-x
TIMOTHY J. SCHRADER xxx-xx-x
ALFRED O. SELLERS xxx-xx-x
JOHN B. SLADE, JR. xxx-xx-x
MAXWELL W. STEBLER, III xxx-xx-x
ROBERT J. STEPP xxx-xx-x
WILLIAM B. TATE xxx-xx-x
RAYMOND P. TENNEY xxx-xx-x
WILLIAM F. WALSH xxx-xx-x
THOMAS O. WEBER xxx-xx-x
CHRISTOPHER T. WESTFALL xxx-xx-x
RANDALL C. WHITTON xxx-xx-x
DAVID C. WILLIAMS xxx-xx-x
JOHN E. WILSON xxx-xx-x
SALIMI A. WIRJOSEMITO xxx-xx-x
ERIC P. WOHLRAB xxx-xx-x
DAVID G. YOUNG, III xxx-xx-x
DONALD A. ZIMMERMAN xxx-xx-x

DENTAL CORPS
To be lieutenant colonel

JOSEPH A. BARTOLONI, JR. xxx-xx-x
STEVEN B. BLANCHARD xxx-xx-x

JAMES E. BLOOD xxx-xx-x
JOHN J. BOYLE, JR. xxx-xx-x
GERARD A. CARON xxx-xx-x
GEORGE W. CASTRO xxx-xx-x
GERALD M. CIMIS xxx-xx-x
ROBERT A. CRAIG xxx-xx-x
ROBERT W. DANIELS xxx-xx-x
CHARLES H. DEAN, JR. xxx-xx-x
RICK M. DOUGHERTY xxx-xx-x
E. MICHAEL DUCKWORTH xxx-xx-x
WENDELL A. EDGIN xxx-xx-x
WILLIAM R. ENGLISH xxx-xx-x
DOUGLAS B. EVANS xxx-xx-x
DONALD J. FEGLEY xxx-xx-x
WILLIAM C. FISHER xxx-xx-x
GREGORY R. GATES xxx-xx-x
RICHARD M. GREIFF xxx-xx-x
JOSE M. GUTIERREZ, III xxx-xx-x
RAYMOND H. HANCOCK xxx-xx-x
STEVEN R. HANSEN xxx-xx-x
MICHAEL S. HARPER xxx-xx-x
DOUGLAS L. HIMMELBERG xxx-xx-x
NEIL C. HUFFMAN xxx-xx-x
LYNN M. JOHNSON xxx-xx-x
WAYNE P. JORTNER xxx-xx-x
JAMES J. KANE xxx-xx-x
DANIEL M. KEIR xxx-xx-x
MURRAY KELLAR xxx-xx-x
EDWARD P. KISS xxx-xx-x
ERIC W. KRAMER xxx-xx-x
JAMES L. KRETZSCHMAN xxx-xx-x
DANIEL L. LEONARD xxx-xx-x
BERNARD A. LEWIS xxx-xx-x
JOHN F. LEWIS xxx-xx-x
THOMAS E. LONG xxx-xx-x
BARRY I. MACDONALD xxx-xx-x
CHRISTIAN L. MAEDER xxx-xx-x
JOHN W. MCCANN, JR. xxx-xx-x
WILLIAM D. MCCRACKEN xxx-xx-x
DENNIS R. MILLER xxx-xx-x
CHRISTOPHER M. MINKE xxx-xx-x
EDWARD F. MITNITSKY xxx-xx-x
EARL T. MURAKAMI xxx-xx-x
DAVID F. MURCHISON xxx-xx-x
CHARLES PANFELY xxx-xx-x
MARK C. PAXTON xxx-xx-x
CHARLES B. PETERS, III xxx-xx-x
DEAN A. PEIRMAN xxx-xx-x
JOHN P. RAMER xxx-xx-x
BRUCE W. RICHARDSON xxx-xx-x
DOUGLAS P. ROCKWOOD xxx-xx-x
EDWARD H. RUGH xxx-xx-x
DAVID C. RUPP xxx-xx-x
RICHARD E. RUTLAND xxx-xx-x
EDWARD K. SAFFER xxx-xx-x
MAURICE R. SALAMANDER xxx-xx-x
RONALD K. SCOVILLE xxx-xx-x
SCOTT E. SEMBA xxx-xx-x
MICHAEL F. SHEDLOSKY xxx-xx-x
STEPHEN M. SILVERS xxx-xx-x
JOSEPH A. SNYDER xxx-xx-x
WILLIAM E. STRAMPE xxx-xx-x
DALE H. THOMPSON xxx-xx-x
PHILLIPS B. TRAUTMAN xxx-xx-x
RICHARD A. URBANEK, JR. xxx-xx-x
JONATHAN R. WEINBACH xxx-xx-x
CURTIS D. WEYRAUCH xxx-xx-x
MAURICE G. WOODARD xxx-xx-x
BENJAMIN W. YOUNG xxx-xx-x
ROBERT C. ZALME xxx-xx-x

MEDICAL CORPS
To be lieutenant colonel

RICHARD A. ALLNUTT, III xxx-xx-x
DAVID R. ARBUTINA xxx-xx-x
KERMIT B. ASHBY xxx-xx-x
ROBERT W. BABEL xxx-xx-x
BRUCE B. BANIAS xxx-xx-x
DENNIS W. BARTHOLMEW xxx-xx-x
JEFFREY H. BAYBICK xxx-xx-x
JOHN R. BILLINGSLEY xxx-xx-x
JAMES N. BLACK xxx-xx-x
ALLAN T. BOMBARD xxx-xx-x
RANDY K. BOTTNER xxx-xx-x
ANNE N. BOWEN xxx-xx-x
DAVID M. BOWERS xxx-xx-x
GARY J. BOWERS xxx-xx-x
ROBERT D. BRADSHAW xxx-xx-x
JOHN R. BROWNLEE xxx-xx-x
JAMES W. BUTLER xxx-xx-x
JAMES E. CAIN, JR. xxx-xx-x
CHARLES W. CAMPBELL, JR. xxx-xx-x
KAREN R. CARPENTER xxx-xx-x
DAVID A. CARRIER xxx-xx-x
JON M. CASBON xxx-xx-x
KIM C. CHRISTENSEN xxx-xx-x
JAMES D. COLLIER xxx-xx-x
GARY J. COLLINS xxx-xx-x
FREDERIC A. COOTE xxx-xx-x
TIMOTHY W. COOPER xxx-xx-x
STEPHEN DERDAK xxx-xx-x
KENNETH F. DESROSIER xxx-xx-x
RICHARD O. DOCKINS xxx-xx-x
PHILIP J. DUCHAMP xxx-xx-x
RICHARD R. ECKERT xxx-xx-x
MARK A. EDIGER xxx-xx-x
DWIGHT M. ELLERBER xxx-xx-x
PATRICK E. FEENAN xxx-xx-x
RANDALL E. FELLMAN xxx-xx-x
JERROLD N. FLYER xxx-xx-x

THEODORE M. FREEMAN xxx-xx-x
RICHARD FRIEDERICH xxx-xx-x
DONALD S. GEEZE xxx-xx-x
WILLIAM J. GERMANN xxx-xx-x
DENNIS N. GRAHAM xxx-xx-x
ROOSEVELT GREEN xxx-xx-x
MOLLY J. HALL xxx-xx-x
LEO M. HATTRUP xxx-xx-x
JAY B. HIGGS xxx-xx-x
DANIEL T. HINKIN xxx-xx-x
DOUGLAS K. HOLMES xxx-xx-x
DAVID C. HOUGLUM xxx-xx-x
KENT P. HYMEL xxx-xx-x
CHARLES S. JOHNSON, JR. xxx-xx-x
LOREN M. JOHNSON xxx-xx-x
ANDREW L. JUERGENS xxx-xx-x
CHRISTOPHER R. KLEINSMITH xxx-xx-x
DIETER KRECKEL xxx-xx-x
AUGUSTINE F. LI xxx-xx-x
CARL M. LINDQUIST xxx-xx-x
MICHAEL W. LISCHAK xxx-xx-x
MARK F. LUPINO xxx-xx-x
JAMES MALENKOS, III xxx-xx-x
FRANCIS G. MAPPING xxx-xx-x
MAURICIO MASFERRE xxx-xx-x
STEPHEN T. MCDAVID xxx-xx-x
DAVID K. MCKENAS xxx-xx-x
JOHN E. MCMANIGLE xxx-xx-x
ROBERT R. MERWICK xxx-xx-x
JOHN M. MOREHEAD xxx-xx-x
CHARLES T. MORTON xxx-xx-x
CHARLES R. NOLAN, III xxx-xx-x
PYAR A. NOORANI xxx-xx-x
JOHN R. OSBORNE xxx-xx-x
JERRY B. OWEN xxx-xx-x
CALVI E. PABONNADAL xxx-xx-x
ARTHUR J. PATEFIELD xxx-xx-x
VICTOR M. PINEIROCARREO xxx-xx-x
WILLIAM R. PROTZER xxx-xx-x
THOMAS J. REED xxx-xx-x
JOHN C. RIGILANO xxx-xx-x
MELISSA ROSADODECHRISTENSON xxx-xx-x
KEITH J. ROSI xxx-xx-x
RUDOLF B. ROTH xxx-xx-x
ROBERT M. ROYSTER xxx-xx-x
FREDERICK W. RUDGE xxx-xx-x
KEVIN P. RYAN xxx-xx-x
JACK T. SAKAI xxx-xx-x
KATHERINE E. SCHEIRMAN xxx-xx-x
PAUL D. SHERRY xxx-xx-x
SCOTT M. SMITH xxx-xx-x
WILLIAM A. SMITH, JR. xxx-xx-x
WILLIAM C. SMITH xxx-xx-x
QUAY C. SNYDER, JR. xxx-xx-x
GARY L. STERN xxx-xx-x
PATRICK J. STROM xxx-xx-x
HARRY G. TEAFORD, III xxx-xx-x
MIGUEL V. TELLADOFFEN xxx-xx-x
WILLIAM P. THORNTON xxx-xx-x
WILLARD M. TOWLE xxx-xx-x
RICHARD D. TRIFILO xxx-xx-x
DANIEL L. VANSYOC xxx-xx-x
KEVIN B. WEST xxx-xx-x
JAMES E. WIEDEMAN xxx-xx-x
CHARLES D. WILLIAMS xxx-xx-x
GREGORY P. WITTPENN xxx-xx-x
RHONDA A. WYATT xxx-xx-x
BENTON P. ZWART xxx-xx-x

DENTAL CORPS
To be major

ROOSEVELT ALLEN, JR. xxx-xx-x
KIMSEY K. ANDERSON xxx-xx-x
JEFFREY C. BANKER xxx-xx-x
FERNANDO BARRERA xxx-xx-x
RICHARD C. BATZER xxx-xx-x
MARK J. BENTELE xxx-xx-x
MICHAEL H. BETO xxx-xx-x
BARBARA G. BISANG xxx-xx-x
DOUGLAS A. BOYCE xxx-xx-x
RICHARD P. BOYLE, III xxx-xx-x
WILLIAM R. BUHLER xxx-xx-x
STEVEN A. CHILDRESS xxx-xx-x
MICHAEL P. CUNNINGHAM xxx-xx-x
DANIEL S. DEBUSK xxx-xx-x
DAVID P. DEWITT xxx-xx-x
WILLIAM J. DUNN xxx-xx-x
BLAKE J. EDINGER xxx-xx-x
CRAIG A. FLICKINGER xxx-xx-x
DIANE J. FLINT xxx-xx-x
GARY S. FRIES xxx-xx-x
LOUIS M. FUOCO xxx-xx-x
ROBERT F. GAMBLE xxx-xx-x
RIDGE M. GILLEY xxx-xx-x
MIKE H. HACKMANN xxx-xx-x
TIMOTHY J. HALLIGAN xxx-xx-x
OREST M. HARKACZ xxx-xx-x
LYNN C. HARRIS xxx-xx-x
PETER J. HEATH xxx-xx-x
JUDY L. HUSEN xxx-xx-x
JOSE E. IBANEZ-PABON xxx-xx-x
DANIEL P. JOHNSON xxx-xx-x
KENNETH W. JOHNSON xxx-xx-x
GREGORY A. KASTEN xxx-xx-x
BEVERLY J. LEDDY xxx-xx-x
JACK H. LINCKS xxx-xx-x
RUSSELL M. LINMAN xxx-xx-x
MARK D. MADISON xxx-xx-x
RALPH A. MATACALE xxx-xx-x
JAMES R. MIEARS, JR. xxx-xx-x
ANTHONY L. MOLINA xxx-xx-x

SUSAN W. MONGEAU xxx-xx-x
 JERRY W. MOODY xxx-xx-x
 ALAN J. MORITZ xxx-xx-x
 MICHAEL A. MOSUR xxx-xx-x
 PAUL J. NAWIESNIAK xxx-xx-x
 TIMOTHY L. NIBERT xxx-xx-x
 JAMES R. NITSCHKE xxx-xx-x
 GUILLERMO E. ORRACA xxx-xx-x
 BRIAN A. PARKER xxx-xx-x
 LARRY P. PARWORTH xxx-xx-x
 MARK E. POTOCKI xxx-xx-x
 MARK E. SCHNEIDER xxx-xx-x
 JEFFREY M. SWARTZ xxx-xx-x
 RICHARD I. VANCE xxx-xx-x
 RICHARD P. VIDUNAS, JR. xxx-xx-x

MEDICAL CORPS

To be major

NIKKI L. ADAMS xxx-xx-x
 PATRICK D. AIELLO xxx-xx-x
 GEORGE J. ALEXANDER xxx-xx-x
 NAPHTHALI R. M. ALINSON xxx-xx-x
 SUSAN D. ALLEN xxx-xx-x
 JEFFREY P. ALLESTON xxx-xx-x
 GILBERT R. ALLIGOOD xxx-xx-x
 JEFFREY A. ALLOWAY xxx-xx-x
 ANTHONY A. AMATO xxx-xx-x
 CAMERON D. ANDERSON xxx-xx-x
 JEROME D. ANDERSON xxx-xx-x
 SCOTT T. ANDERSON xxx-xx-x
 THOMAS E. APPLLEGATE xxx-xx-x
 ALVARO U. ARANDARODRIGUEZ xxx-xx-x
 ANTHONY M. ARMADA xxx-xx-x
 CYNTHIA CONIGLIO ARNETTI xxx-xx-x
 WILLIAM N. ARNOLD xxx-xx-x
 DIAZ RICHARD ARROYO xxx-xx-x
 LORI L. ATKINS xxx-xx-x
 TOMMY J. ATTAWAY xxx-xx-x
 LYNN M. BAATZ xxx-xx-x
 GEORGE M. BACA xxx-xx-x
 GREGORY BACHUBERT xxx-xx-x
 DUANE C. BAKER xxx-xx-x
 MARGARET M. BAKER xxx-xx-x
 GEORGE A. BALELLA, JR. xxx-xx-x
 CHARLES D. BANTLE xxx-xx-x
 MICHAEL W. BARBER xxx-xx-x
 WILLIAM J. BARKLEY xxx-xx-x
 JANE P. BARLOW xxx-xx-x
 MARGARET L. BARRERIVERA xxx-xx-x
 MICHAEL S. BARR xxx-xx-x
 FREDERICK S. BARTON xxx-xx-x
 TIMOTHY H. BEGER xxx-xx-x
 CHRISTIAN R. BENJAMIN xxx-xx-x
 GERIANNE R. BLISS xxx-xx-x
 JENNETTE L. BOAKES xxx-xx-x
 JAMES A. BOFILL xxx-xx-x
 WILLIAM E. BOLGER xxx-xx-x
 CHARLES F. BOTTI xxx-xx-x
 ANDREW R. BRADBURY xxx-xx-x
 MARK F. BRADBURY xxx-xx-x
 GEORGE T. BRANDT xxx-xx-x
 MICHELE A. BREWER xxx-xx-x
 GERRY L. BROWER xxx-xx-x
 BRUCE D. BULLOCK xxx-xx-x
 GREG A. BURNETT xxx-xx-x
 BONNIE L. BURNQUIST xxx-xx-x
 PATRICK I. BURNS xxx-xx-x
 GUY T. BURROWS xxx-xx-x
 MARK A. BUSTAMANTE xxx-xx-x
 YVONNE D. CAGLE xxx-xx-x
 DANIEL P. CALLAGHAN xxx-xx-x
 RUSSELL E. CAMERON xxx-xx-x
 JOHN B. CAMPBELL xxx-xx-x
 LOUIS S. CARSON xxx-xx-x
 STEPHEN J. CARMICHAEL xxx-xx-x
 ANDREA J. CARPENTER xxx-xx-x
 LISA A. CASANOVA xxx-xx-x
 DANIEL E. CATALAN xxx-xx-x
 JOHN A. CAVACECE xxx-xx-x
 EDWARD D. CHAN xxx-xx-x
 CINDY C. CHANG xxx-xx-x
 DENNIS C. CHANNELL, JR. xxx-xx-x
 STANLEY E. CHARTOFF xxx-xx-x
 DANIEL W. CHASE xxx-xx-x
 DIANE D. CLARKE xxx-xx-x
 JOHN M. COCUGLI xxx-xx-x
 KENT I. COHEN xxx-xx-x
 MICHAEL P. COLLINS xxx-xx-x
 POLANCO JAVIER COLON xxx-xx-x
 CARL G. COLTON xxx-xx-x
 RONALD W. CORNWELL xxx-xx-x
 RALPH F. COSTA xxx-xx-x
 BRENT R. COYLE xxx-xx-x
 THOMAS J. CRANE xxx-xx-x
 ANTON J. CREPINSEK, JR. xxx-xx-x
 JEFFREY P. CRITTENDEN xxx-xx-x
 GARY D. CROUCH xxx-xx-x
 RITA E. CUEVAS xxx-xx-x
 BRYAN G. CUNNINGHAM xxx-xx-x
 ALAN E. CURLE xxx-xx-x
 JOHN J. DAMORE xxx-xx-x
 JEFFREY C. DAVIS xxx-xx-x
 MATTHEW G. DAVIS xxx-xx-x
 CHARLES R. DAY xxx-xx-x
 JOHN T. DEJONG xxx-xx-x
 CINDY L. DELLINGER xxx-xx-x
 ROY B. DELROSARIO xxx-xx-x
 JAMES D. DEMALIO xxx-xx-x
 CHARLES A. DENN xxx-xx-x
 WALTER L. DILLARD xxx-xx-x
 MARY L. DIZER xxx-xx-x

ROBERT W. DODSON xxx-xx-x
 JAMES F. DORAN xxx-xx-x
 KAREN P. G. DREXLER xxx-xx-x
 RODRIGO A. DURALDE xxx-xx-x
 DAVID A. DYCAICO xxx-xx-x
 JOHN P. EITZEN xxx-xx-x
 DAVID G. ELLIOTT xxx-xx-x
 GREGORY C. ELLIS xxx-xx-x
 DONALD P. ELLSWORTH, JR. xxx-xx-x
 BENJAMIN F. EMANUEL, JR. xxx-xx-x
 ERIC A. EVANS xxx-xx-x
 MARYANN EVANS xxx-xx-x
 KATHERINE G. FAGLEBROGHAPMAN xxx-xx-x
 JAMES W. FANT, JR. xxx-xx-x
 LYNNE L. FENTON xxx-xx-x
 PATRICK A. FINNegan xxx-xx-x
 MICHAEL W. FRALEY xxx-xx-x
 LUIS A. FRANCO xxx-xx-x
 TIMOTHY J. FRIEDEL xxx-xx-x
 ELIZABETH T. GALFO xxx-xx-x
 FRANK L. GAY, JR. xxx-xx-x
 WILLIAM A. GIBSON xxx-xx-x
 EDWARD J. GILL, JR. xxx-xx-x
 SCOTT A. GLESMAN xxx-xx-x
 JAMES M. GLOVER xxx-xx-x
 RICHARD M. GODDARD xxx-xx-x
 STEVEN P. GOHLSER xxx-xx-x
 RUSSELL L. GOMBOSI xxx-xx-x
 HERBERT F. GONZALEZ xxx-xx-x
 MICHAEL C. GORDON xxx-xx-x
 ROBERT A. GORDON xxx-xx-x
 CHARLES B. GOVER xxx-xx-x
 THOMAS C. GRAU xxx-xx-x
 ROBERT B. GRAVELINS xxx-xx-x
 WILLIAM D. GREEN xxx-xx-x
 MARY G. GREENE xxx-xx-x
 TIMOTHY P. GREYDANUS xxx-xx-x
 JOYCE R. GRISSOM xxx-xx-x
 THOMAS E. GRISSOM xxx-xx-x
 SUBRATA GUHA xxx-xx-x
 DIANE M. GULBAS xxx-xx-x
 NELS C. GUNNARSEN xxx-xx-x
 PHILLIP W. HALCUM xxx-xx-x
 DAVID C. HALL xxx-xx-x
 JOHN LANE HALL xxx-xx-x
 GEORGE C. HAMMETH xxx-xx-x
 GILBERT R. HANSEN xxx-xx-x
 GWEN S. HANSON xxx-xx-x
 SCOTT W. HARBERG xxx-xx-x
 REED J. HARRIS xxx-xx-x
 PAUL G. HARVILL xxx-xx-x
 RICKARD S. HAWKINS, JR. xxx-xx-x
 ROBERT M. HAWS xxx-xx-x
 DON B. HEADLEY xxx-xx-x
 BRYAN H. HEATH xxx-xx-x
 DARREN P. HEE xxx-xx-x
 LORI J. HEIM xxx-xx-x
 DWIGHT E. HELMIRICH xxx-xx-x
 KRISTINE H. HENDERSON xxx-xx-x
 WILLIAM J. HENDRICKS xxx-xx-x
 KENNETH D. HILLNER xxx-xx-x
 MARK W. HINMAN xxx-xx-x
 KATHRYN F. HOBBS xxx-xx-x
 CRAIG W. HOLLAND xxx-xx-x
 SVEIN MATTI HOLSÆTER xxx-xx-x
 DWIGHT E. HOOPER xxx-xx-x
 LINDA P. HRICZ xxx-xx-x
 EUGENE HUANG xxx-xx-x
 CURTIS R. HUDSON xxx-xx-x
 BRUCE R. HYDE xxx-xx-x
 ERIC T. IFUNE xxx-xx-x
 JON D. IGELEMAN xxx-xx-x
 JOHN V. INGART xxx-xx-x
 ERIC D. JACOBSON xxx-xx-x
 CHARLES W. JACOBS xxx-xx-x
 MICHAEL R. JARRARD xxx-xx-x
 WALTER R. JAUSS xxx-xx-x
 PATRICIA R. JODER xxx-xx-x
 JAMES R. JOHNSEN xxx-xx-x
 GREGORY W. JOHNSON xxx-xx-x
 MARTIN L. JOHNSON xxx-xx-x
 JOHN W. JONES xxx-xx-x
 MICHAEL P. JONES xxx-xx-x
 JAMES D. JORDAN xxx-xx-x
 THEODORE F. JORDAN, III xxx-xx-x
 CARLOS J. JURADO xxx-xx-x
 KIERAN G. KAMMERER xxx-xx-x
 JEFFREY J. KAUFHOLZ xxx-xx-x
 WILFRED S. KEARSE, JR. xxx-xx-x
 KAREN M. KEEFER xxx-xx-x
 KENNETH G. KHATAIN xxx-xx-x
 ROGER P. KIERCE xxx-xx-x
 WILLIAM B. KLEIN xxx-xx-x
 DAVID A. KLOSS xxx-xx-x
 STEPHEN A. KNYCH xxx-xx-x
 MICHAEL R. D. KOCH xxx-xx-x
 JEFFERY R. KONTAN xxx-xx-x
 LARY R. KORN xxx-xx-x
 BRIAN P. KRIER xxx-xx-x
 RANDAL C. KUMM xxx-xx-x
 KATHLEEN KUROWSKI xxx-xx-x
 THOMAS J. LANGASTER xxx-xx-x
 STEVEN M. LANGRISH xxx-xx-x
 SHARON T. LANGROSE xxx-xx-x
 JOHN A. LARSEN xxx-xx-x
 KENNETH S. LARSON xxx-xx-x
 KERRY K. LARSON xxx-xx-x
 DENNIS P. LAWLOR xxx-xx-x
 CHRISTOPHER LEWIS xxx-xx-x
 EUGENE P. LIBBY xxx-xx-x
 KEITH G. LIMBIRD xxx-xx-x
 CLAUDIO E. LINARES xxx-xx-x

MARK S. LINK xxx-xx-x
 KATHLEEN M. LIQU xxx-xx-x
 MARK L. LOBAUGH xxx-xx-x
 JORGE J. LOPEZFERRE xxx-xx-x
 MATTHEW A. LOVITT xxx-xx-x
 RICHARD W. LUCIO, II xxx-xx-x
 JEFFREY C. LUKAS xxx-xx-x
 KEVIN C. LUNDE xxx-xx-x
 ROBERT D. LYNCH xxx-xx-x
 STEVEN C. LYNCH xxx-xx-x
 GARY A. MAASSEN xxx-xx-x
 ERIC A. MAIR xxx-xx-x
 MICHAEL J. MALOTTI xxx-xx-x
 FELIX MAMANI xxx-xx-x
 RITA A. MANKUS xxx-xx-x
 WILLIAM R. MARCHAND, JR. xxx-xx-x
 KURT W. MARTINUZZI xxx-xx-x
 KEITH L. MAUSNER xxx-xx-x
 STEVEN S. MAVES xxx-xx-x
 MICHAEL W. MCCLELLAN xxx-xx-x
 JOHN L. MCCORMICK xxx-xx-x
 DAVID H. MCCULLOUGH xxx-xx-x
 DAVID B. MCDERMOTT xxx-xx-x
 TIMOTHY R. MCKEE xxx-xx-x
 LAIRD QUENTIN R. MCMULLEN xxx-xx-x
 EUGENE J. MCTIERNAN, JR. xxx-xx-x
 SUSAN N. MELTON xxx-xx-x
 PAMELA M. MERRITT xxx-xx-x
 MICHAEL W. METHOD xxx-xx-x
 KEITH A. METZLER xxx-xx-x
 DOUGLAS M. MIDDLETON xxx-xx-x
 MARK G. MILES xxx-xx-x
 PATRICK P. MILES xxx-xx-x
 CHARLES J. MILLER xxx-xx-x
 CURTIS D. MILLER xxx-xx-x
 MICHAEL S. MILLER xxx-xx-x
 DAVID J. MONTAG xxx-xx-x
 RACHEL Y. MOON xxx-xx-x
 GREGORY K. MORROW xxx-xx-x
 JEFFREY MORSE xxx-xx-x
 GREGORY A. MORTER xxx-xx-x
 KIMBERLY S. MOSS xxx-xx-x
 JAMES E. MULAC xxx-xx-x
 THOMAS L. MULCAHEY xxx-xx-x
 MARK G. MULDER xxx-xx-x
 JOHN R. MULVEY xxx-xx-x
 NIKOLCHE J. NAUMANN xxx-xx-x
 HILBERT H. NEASE xxx-xx-x
 ADAM P. NELSON xxx-xx-x
 DOUGLAS J. NICHOLSON xxx-xx-x
 JODY L. NIELSEN xxx-xx-x
 WILLIAM A. NISH xxx-xx-x
 FRANCIS G. NOLL xxx-xx-x
 GREGORY A. NUTTALL xxx-xx-x
 JOSEPH D. OGORMAN xxx-xx-x
 KELLY P. OKEEFE xxx-xx-x
 HERNANDO J. ORTEGA, JR. xxx-xx-x
 ROBELTO A. OSBORNE xxx-xx-x
 VABIAN L. PADEN xxx-xx-x
 BRUCE P. PAGE xxx-xx-x
 MICHAEL W. PALUZZI xxx-xx-x
 MICHAEL S. PANOSIAN xxx-xx-x
 KENNETH S. PAPIER xxx-xx-x
 PAUL E. PAPIERSKI xxx-xx-x
 KEVIN L. PARK xxx-xx-x
 BRIAN B. PARSIA xxx-xx-x
 MATTHEW R. PARSONS xxx-xx-x
 THEODORE W. PARSONS, III xxx-xx-x
 DAVID R. PATER xxx-xx-x
 PHYLLIDA M. PATERSON xxx-xx-x
 MARK K. PATTERSON xxx-xx-x
 MICHAEL L. PECH xxx-xx-x
 ANTHONY PELLEGRINI xxx-xx-x
 MARY M. PELSZYNSKI xxx-xx-x
 MARCUS L. PETERSON xxx-xx-x
 TIMOTHY O. PFEIFFER xxx-xx-x
 DOYLE C. PHILLIPS xxx-xx-x
 BURTON C. PLASTER xxx-xx-x
 STEPHEN D. PLICHTA xxx-xx-x
 JOHN M. POHL xxx-xx-x
 RONALD POLLACK xxx-xx-x
 DANIEL R. POUND xxx-xx-x
 TIMOTHY S. PRINCE xxx-xx-x
 ADIN T. PUTNAM, II xxx-xx-x
 DANIEL J. QUENNEVILLE xxx-xx-x
 BRIAN D. QUINN xxx-xx-x
 ROBERT D. RAKOV xxx-xx-x
 LINDA K. RAZSI xxx-xx-x
 STEVEN T. REDMOND xxx-xx-x
 MARTIN REICHMAN xxx-xx-x
 JAMES J. REUTER, JR. xxx-xx-x
 HARRY L. REYNOLDS, JR. xxx-xx-x
 JAMES B. REYNOLDS xxx-xx-x
 TODD P. REYNOLDS xxx-xx-x
 PAUL D. REZNIKOV xxx-xx-x
 SCOTT B. RICHARDS xxx-xx-x
 LISA M. RING xxx-xx-x
 WARREN C. RIZZO xxx-xx-x
 PAUL E. ROBEY xxx-xx-x
 ARTHUR B. ROBINSON xxx-xx-x
 JAMES D. ROBA BAUGH xxx-xx-x
 WARREN W. ROSE xxx-xx-x
 SCOTT K. ROSS xxx-xx-x
 RICHARD D. ROSSIN xxx-xx-x
 JILL D. ROSSRUCKER xxx-xx-x
 RICHARD E. RUPP xxx-xx-x
 CHRISTOPHER SAHOO xxx-xx-x
 JANE E. SASAKI xxx-xx-x
 ANDREW J. SATIN xxx-xx-x
 PETER H. SCHAIBENBERG xxx-xx-x
 JEFFREY A. SCHIEVENIN xxx-xx-x
 JAMES M. SCHONENING xxx-xx-x

DENIS T. SCONZO
YVONNE L. SCOTT
ANDREW D. SCROEDER
TIMOTHY H. SELINE
TIMOTHY J. SHANNON
MARK D. SHEEHAN
MILES L. SHEFFER
FRANK J. SHELTON
MARK D. SHEPHERD
RONALD P. SKIPPER
JAMES ROSS SLEMMER
KIM L. SLIGHT
ALEXEY V. SLUCKY
THOMAS M. SLYTER
ANTHONY R. SMARTNICK
DOUGLAS C. SMITH
KEITH U. SMITH
ROBERT E. SMITH
KIMBERLY SMITHCUPANI
WILLIAM N. SNEARLY
JOHN A. SNELL
LAURA L. SPRAGUE
BRIDGID K. STEELE
JILL L. STERLING
STEVEN M. STOLZ
TERRELL L. STONE
RONALD W. STOUT
SCOTT A. STRELOW
PHILIP A. SWEET
KATHLEEN S. TAJIRI
KARL H. TALTS
VIVEK S. TAYAL
DEBORAH M. THOMAS
JOSEPH D. THOMAS
DONALD F. THOMPSON
JOHN W. THOMPSON
ALAN R. THURMAN
ALBERT C. TING
ERIC R. TOMPKINS
STEVEN M. TOMSKI
KEVIN T. TONG
STEVEN M. TOPFER
DAVID P. TREECE
JAMES L. TROUTMAN
DEBORAH D. VIOLIGNI
DIANE B. WAGNER
DAVID B. WALKER
GREGORY T. WALKER
RICKEY B. WALKER
ROBERT M. WARD
PHILLIP M. WATSON
PETER J. WEIGEL
MICHAEL H. WEISS
JEFFREY M. WEMPE
ELLEN M. WHITAKER
DENNIS D. WILES
MICHAEL J. WILKINSON
RICHARD F. WILKS
SHARON T. WILKS
FRED H. WILLIAMS
RONALD W. WILLIAMS, JR.
JUDITH S. WILLIAMSON
TED S. WILLIS
CALVIN T. WILSON, II
DWAYNE L. F. WILSON
WAYNE V. WILSON
LAURA A. WINKLE
PHILLIP A. WOLFE
JUDITH A. WOODS
RICKEY WRIGHT
JOSEPH J. WUJEN
PAUL H. WURST
PAUL L. WYMAN
JEROME YATSKO
MATHEW F. YETTER
ROBERT M. YOUNG
CHRISTOPHER M. ZAHN
CATHERINE R. ZELNER

IN THE NAVY

THE FOLLOWING NAMED COMMANDERS OF THE RESERVE OF THE U. S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF CAPTAIN IN THE LINE, IN THE COMPETITIVE CATEGORY AS INDICATED, PURSUANT TO PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5912:

UNRESTRICTED LINE OFFICERS

To be captain

LLOYD VERMILLION ABEL
DAVID EARL ADAMS, JR.
PARKS GLENN ADAMS, JR.
JOHN FELTON ADKISSON
JAMES WILLIAM AIRES, II
RICHARD THOMAS ALEKS
ELROY WAYNE ALESHIRE
JAMES ROBERT ANDRUS
WILLIAM EDWARD ANINOWSKY
DON LOUIS ARNOLD
CHARLES ALTON AUBREY, JR.
STEPHEN P. AXTELL
JAMES ROBERT AYERS
WILLIAM CHESTER BACHMAN, II
WILLIAM CHARLES BAILEY
WILLIE B. BANKS, JR.
DAVID HUGHES BARBER
FREDERICK B. BEACHAM, JR.
JOHN CHARLES BEASON
DANIEL ANTHONY BEATTY
SCOTT ARTHUR BECK
ROBERT DANA BENDER
ROBERT BRAND BENEFIELD
WEBSTER LANCE BENHAM, III
RAYMOND WILLIAM BERARD
LEONARD L. BERGERSEN
PAUL ROBERT BERNANDER
PAUL FREDERICK BLUNT
DAVID ROBERT BOWES
JAMES ALEXANDER BOYD
CARY SCOTT BRADFORD
EDWARD LEE BRANDT
GORDON DALE BRANNON
THOMAS ROBERT BRESE

MICHAEL FRANCIS BRENNAN
SHARON FILE BRIDWELL
RICHARD CHARLES BRILLA
BRADFORD ALAN BRISBIN
JEFFREY CHARLES BROWN
RICHARD WAYNE BROWN
CHARLES FRANK BURLINGAME
DOUGLAS RANDOLPH BURNETT
WILLIAM LOUIS P. CADWALLADER
ARTHUR DONALD CALABRO
DANIEL EUGENE CALDWELL, JR.
ROSS GOODWIN CAMPBELL
JACK HENRY CASSADA
DAVID LEWIS CASWELL
LOUIS ANGELO CAVALIERE, JR.
DAVID HUMBERTO CAZARES
MELVIN GLENN CHALOUKPA
DAVID MOHN CHAMBERS, JR.
WILLIAM RENE CHIQUELIN
THOMAS ROBERT CLARKIN, JR.
JOSEPH E. CLEMENTS
JOHN WILLIAM CLOSS
DAVID SCOTT COLEMAN
RICHARD EDWARD COLQUITT, JR.
GEORGE TIMLIN CONAWAY, JR.
JAMES LEE COOK
JESSE ALLEN CRACE
JAMES ROBERT CROSSEN
MICHAEL ALEXANDER CROWELL
STEPHEN KENT CUSICK
BRIAN SHEARER DALBY
MARY ANN DALTON
CHARLES RICHARD DAMATO, JR.
SAMUEL ALLAN DAVEY
ACIE WESLEY DAVIS, JR.
ROBERT MILHAME DAVIS, JR.
JEFFREY STUART DEAN
MARVIN EARL DEAN
WILLIAM DUFOUR DEGOLIAN
JOSE LUIS DELATORRE
NICHOLAS LEE DEMAI
RONALD LEE DIETRICH
NICHOLAS CHARLES DIPIAZZA
GERALD ARTHUR DIXON
TIMOTHY DOBBOVOLNY
WILLIAM HENRY DONGES
MICHAEL D. DONOVAN
MICHAEL THOMAS DOYLE
DONALD DAVID DRONE
ROLAND CHARLES DURAY
JAMES MARSHALL EDSON
WILBUR EVERETTE EDWARDS, JR.
DAVID ANDREW ELLERFSON
RUSSELL H. ERICKSON
JAMES ARTHUR ESGET
JEFFREY LEE EUTERMOSER
JOHN EVERETT EVERSON
THOMAS WALTER FARRAND
MEAD BOYKIN FERRIS, JR.
MICHAEL FREDERICK FITCH
JOHN BOYD FLEMING, JR.
BENJAMIN FRANKLIN J. FORREST
MICHAEL SEAN FOSTER
GARY LEE FOUST
GERALD WADE FRANKLIN
JOSEPH CLAUDE FRAZEE
RONALD LEROY FRAZEE
LANCE ANDREW FREDERICK
JAMES MICHAEL FREDRICKSON
BARRY DAVALL GABLER
JAMES ERNEST GARIPALOS, II
WILLIAM JOSEPH GARRY
JOHN ARTHUR GILLIES
CHARLES H. GILLILAND, JR.
WILLIAM SIMS GILLMOR, JR.
WILLIAM JOSEPH GLADWIN, JR.
ARNOLD MICHAEL GLASSBERG
WILLIAM JOSEPH GRACE
DAVID JOSEPH GRAHAM
WILLIAM LAMBERT GRAHAM
DAVID GEORGE GRAU
RICHARD HENRY GRAY

DORSEY WYCHERLY GRIFFIN, II
ROBERT DAVID GRIFFITH
HENRY CALHOUN GRISWOLD
EDMUND SAMUEL GROSS
DAVID RALPH GUBBERT
ROBERT KENT GUNDERSON
FRANK HENRY GURRY, JR.
ROBERT HAROLD GUTHRIE
BRIAN C. HAAGENSEN
THOMAS ANDREW AHN
HAROLD LEE HALL, JR.
WILLIAM LATIMER HALL
GREGORY RAYMOND HAMELIN
ROBERT LANE HAMILTON
MARSHALL ALAN HANSON
CHARLES GERALD HARDIN, JR.
JOSEPH COLEMAN HARE
MARK HALSEY HARRER
MICHAEL JOSEPH HARRINGTON
JOHN DAVID HARRIS, JR.
JAMES BERNDT HARSHFIELD
EDWARD ROBERT HEALY
CHRISTOPHER EUGENE HEATH
WILLIAM ALEXANDER HEBERT
DAVID MILLAR HEMING
WILLIAM BRUCE HEMPHILL
GEORGE E. HENDRICKS
CHARLES BARTON HENKE
RICHARD JAMES HENRY
FERNANDO ANTONIO HERNANDEZ
BRYAN LEE HERRING
JUDSON RICHARD HERTER
RICHARD ALBERT HINNENKAMP
LOUIS MEYER HIRSH
HENRY RICHARD HITPAS, II
WILLIAM EDWARD HOFFMAN
WAYNE ALLEN HOFFMANN
WAYNE DENNIS HOGUE
RICHARD NELSON HOLMES
LLOYD NELSON HOLZ
JAMES HUGH BENNY HOOKS
NICHOLAS FLETCHER HORNEY
WILLIAM GRADY HORTON
JAMES WHITCOMB HOWLETT
CHARLES JAMES HUBBARD
MICHAEL DAVID HUGHES
STEPHEN CULLEN HUTCHINS
STEPHEN DUFF HRIG
CRAIG ALAN JACOBSEN
JOHN WELLS JAMES, IV
DAVID HENRY JESSUP
CHARLES ANTHONY JINDRICH
ARTHUR GARY JOHNSON
LARRY CHARLES JOHNSON
JOHN JOHNSTON, JR.
LAWRENCE EUGENE JONES
JONATHAN DAVID KASKIN
JEFFERSON DANIEL KAYLOR, JR.
PATRICK JOHN KEAVENY
DOUGLAS ALLEN KEES
WILLIAM GEORGE KENNEDY
JAMES MICHAEL KESSLER
JEFFREY BRIAN KIDDER
WILLIAM BRUCE KIKER
MANTON AMBROSE KING
NEIL TILLMAN KINNEAR, III
JAMES JOSEPH KINSELLA, JR.
JAMES EDWARD KIRBY
STEPHEN COLBY KLINK
JOHN ROSS KNIGHT
FREDERICK MARSHALL KOOKER
KEVIN JAMES KRAMER
JOSEPH JOHN KRYGIEL
HENRY JOSEPH KUCINSKI, JR.
DWIGHT RICHARD KUMPF
KRISTEN DICK LANDKAMMER
JAY CLAIR LANGNESS
RAYMOND JOHN LAROSE, JR.
DAVID LAWHON LEE
PATRICK DOUGLAS LEE
JAMES RICHARD LEMON
MICHAEL NELSON LEWIS
TONEY JOE LISTER
TOMMY LYNN LONON
PAUL JEFFREY LOUSTAUNAU
JAMES ROGER LUNDQUIST

FREDERICK WILLIAM LYDIC, III
MARY ETHEL LYONS
JOSEPH CLAYTON MACIE
JEFFREY ALAN MACKEY
DEAN MORGAN MAKINGS
MERLIN ANDREW MALMROS
MICHAEL D. MARKS
KENNETH JAMES MARSALEK
LAURENCE PATRICK MARTIN
JOSEPH ANTHONY MARTUCCI, JR.
DENNIS FREDERICK MASCH
DANIEL STEPHEN MASTAGNI
DENNIS WAYNE MAXFIELD
STEPHEN MARTIN MAY
MICHAEL DOUGLAS MAZZEO
FRANCIS XAVIER MCBRIDE
STEPHEN VINCENT MCBRIEN
ROBERT WAYNE MCCONNELL
RUSSELL ALAN MCCURDY
CHARLES CLAUD MCDANIEL
JOHN EDWARD MCDONALD
WILLIAM LESTER MCDONOUGH, JR.
KEVIN JAMES MCELROY
MARY KAY MCMUNN
CHARLES LEE MEANS
THOMAS WILSON MELDRUM, JR.
MARTIN CHARLES MENEZ
JOHN WILLIAM MEURER
KIRK BURTON MICHAEL
JEFFREY CHARLES MILANETTE
ARTHUR GORDON MILBRATH, JR.
JAMES LESLIE BELLIST MILLER
PETER MILLER, JR.
ROBERT PAUL MITCHKE
MICHAEL W. MONKHOUSE
SAMUEL MONTOYA
CHRISTOPHER PAUL MORIARTY
RICHARD JOHNSON MORROW
ROBERT GARY MORTON
JAMES CLAYTON MULDER
ROBERT A. MULDOON
RICHARD WILLIAM MUNSELL
MICHAEL THOMAS MURPHY
PETER JOSEPH MURPHY
MICHAEL GILMOUR MURRAY
WARREN EUGENE MUSSELMAN
CHARLES RANDALL MYNARD
GEORGE FRANCIS NAFZIGER
JOHN FRANCIS NASH
FREDERICK DAN NELSON
RICHARD ALEXANDER NELSON
ALBERT JOSEPH NEUPAVER
JACK SVEND NIELSEN
WILLIAM NIETO, JR.
MICHAEL EUGENE NOCTON
LOUIS LIONEL NORMAND, JR.
JOHN TEOFIL NOSEK
PAUL ELLSWORTH I. OBERDORFER
TIMOTHY DENNIS O'CONNELL
JAMES KENNETH OPSAL
CHRISTOPHER OSIER
MARK THEODORE PACHUTA
WILLIAM WARE PALMER, III
THOMAS LEIGHTON PARKE
PHILLIP MORRIS PASCHEL
ROBERT ORIN PASSMORE
RONALD CHARLES PATHMAN
DANIEL J. PATTERSON
JAMES HUGH PATTERSON
THOMAS CHARLES PAULING
JOHN WAYNE PECIC
CHARLES EDWARD PEHL
WILLIAM CHAPMAN PENDELTON
MARK DENNIS PERREAULT
RICHARD MICHAEL PETERSON
JOHN S. PETREK
JEROME LEONARD PETYKOWSKI
KEITH JOHN PFLUG
JOHN LYNCH PHILLIPS

CLARENCE ALBERT PICKETT, III
MARK ALLAN PICKETT
ROBERT JOHN PICKETT
RALPH PIERNO
LARRY STEVEN PIPES
CRAIG RICHARD PLOSS
BRUCE ARNOLD PLYER
RAYMOND J. POTTKOTTER, II
WILLIAM HUGH POWERS
ROGER HOWARD PROBERT
LOUIS FREDERICK RABE
JOHN CHARLES RAINEY
BRUCE WILLIAM RANNEY
RUSSELL ALDEN REED
STEPHEN THOMAS REGISTER
ROBERT WILLIAM REICH
GLENN EMERSON RETINGER
PHILIP RAY RESCH, JR.
CHARLES MICHAEL RESS
DAVID EDWARD RETZKE
WILLIAM EUGENE RICE
ROBERT THOMAS RICH
DONALD WALTER ROBERTSON
STEVEN NOURSE ROBINSON
JOHN MARSH ROGERS
HENRY RENTON ROLPH, JR.
PETER SUTHERLAND ROTHWELL
TIMOTHY JOHN SAMMONS
GARY ALLEN SANDEN
WADE ROWLAND SANDERS
PAUL BAINBRIDGE SANWICK, JR.
GLENN MICHAEL SAUNDERS
STEVEN LYNN SCHLAKE
ROGER LOUIS SCHNEIDER
ERNEST LYNN SCHOOLFIELD
MARK STEPHEN SCHRAMM
CHARLES WESLEY SCHULTZ
RANDALL CRAIG SCHULTZ
ROBERT WARREN SCOTT, JR.
DOUGLAS LEE SEEGMILLER
RUSSELL SELTENRIGHT
REX WILLIAM SETTLEMOIR
JON SHELLER
MARKE ROBERT SHELLEY
CHRISTOPHER GERARD SHEPPARD
CLYDE YOSHIO SHIRAKI
JOHN ANTHONY SHUMLAS
TITUS SEVERN SIGLER
PHILIP WHITE SIGNOR, III
HENRY MAZYCK SIMONS, III
MARK RAYMOND SIVERS
ROBERT WALTER SKROTSKY
BARRY LEE SMITH
RICHARD FRANKLIN SMITH
ROBERT SPENCER KERR SMITH
THOMAS HUGH SMITH
URBAN EUGENE SMITH
PETER SHERMAN SNELL
WILLIAM DALE SOKEL
KENNETH CHARLES SOSNOWSKI
DOUGLAS JACKSON SOULE
JAMES J. SOUTHERLAND, III
RICHARD THOMAS STEFANIAK
ALEXANDER CRAIG STEPHEN
TIMOTHY FORREST STEVENS
SUSAN MALLICK STEVENSON
ROBERT EDWIN STEWART
MICHAEL GEORGE STRAND
WALTER LEONARD STRICKLAND
ROBERT JAMES STROBBE
MICHAEL LOUIS SUBIN
RAYMOND CHARLES SULLIVAN
MICHAEL BRUCE SUSIK
JOHN LESTER SUTTER
JOHN MICHAEL SVOBODA
JOHN HAMLIN SWALES
ROBERT EMERSON TAYLOR, JR.
MARK JACQUOT TEMPEST
NICHOLAS JON TENNYSON
JACK RICHARD THOMAS
JOHN RAWLS THOMAS
JOHN THOMAS THOMPSON
KENNETH EARL THOMPSON
ALAN MITCHELL TODD
JOSEPH FRANCIS TOWERS, JR.

STEPHEN BROWN
TROUTMAN
ARTHUR GIRARD
THROUVILLE
EUGENE FRANK TUCKER
ARTHUR WOODMAN TUPTS
JACKSON CORPENING
TUTTLE, II
VINTON KENNETH ULRICH,
JR.
THOMAS JOHN UTSCHIG
JON WILLIAM
VANDERBOUT
JOHN ORVIS VANNATTA
DAVID CLARK VICKERMAN
THOMAS EDWIN VICKERY
RAY KIRK WADDELL
THOMAS VINCENT
WAGATHA
CHARLES STEVEN WAGNER
ROBERT JOHN WALKER, JR.
WILLIAM BENJAMIN
WALKER, JR.
GREGORY EDWARD WALSH
ARTHUR JAY WARD
WILLIAM LOUIS
WASSERMAN

RAYMOND SPENCER
WATERS, JR.
WILLIAM HENRY WATERS
PATRICK ROGER WATTS
JAMES MICHAEL
WEATHERLY
MICHAEL JAMES WELLS
ROBERT JOHN WHALEN
THOMAS JAMES WHALEN
RICHARD YOUNG WHITE
JAMES WAYNE WILLIAMS
SCOTT K. WILLIAMS
WILLIAM EDWARD WINTER,
JR.
MICHAEL JOHN WOIWODE
JOHN PETER WOLFF
JOHN STEVEN WOOD
MARK ALAN WOOD
THOMAS EDWIN WRIGHT,
JR.
CHRISTOPHER BARRETT
YATES
ROBERT HAROLD YONKER
CHARLES EDWARD YOUNG
THOMAS CHARLES YOUNG
ROBERT LEE ZIEGLER
CHRISTOPHER DAVID
ZWINGLE

CHARLES DAVIS BURNHAM,
MATHUEWS MARTIN
JOHNSON, JR.
STEVEN RICHARD
KALITNECKAR
WILLIAM RALPH
KELBERLAU
RICHARD JAMES KIRWIN
NORMAN BOBBY KRIMBILL
CHARLES WARREN
LAMPLEY
HARVEY LAYMAN, JR.
JANIS LEANORE LIBUSE
JOHN OTTO LOHMEYER, JR.
JAMES MANZELMANN, JR.
LON DEVERE MARLOWE, III
GORDON K. MERIWETHER,
III
PATRICK HENRY MERRILL
SHARON ELAINE MILLER
THOMAS CLARK MITCHELL
CHARLES RUSSELL
NOLAND, JR.
JAMES CLINDON NORRIS
WAYNE ROGER PELAEZ
JOYCE RUTH SACCIO
PAUL LEWIS SIMPSON
ROBERT WILLIAM STUART
BRIAN DEAN WELCKER
JOHN CHRISTOPHER
WRIGHT

CHARLES DAVIS BURNHAM,
MATHUEWS MARTIN
JOHNSON, JR.
STEVEN RICHARD
KALITNECKAR
WILLIAM RALPH
KELBERLAU
RICHARD JAMES KIRWIN
NORMAN BOBBY KRIMBILL
CHARLES WARREN
LAMPLEY
HARVEY LAYMAN, JR.
JANIS LEANORE LIBUSE
JOHN OTTO LOHMEYER, JR.
JAMES MANZELMANN, JR.
LON DEVERE MARLOWE, III
GORDON K. MERIWETHER,
III
PATRICK HENRY MERRILL
SHARON ELAINE MILLER
THOMAS CLARK MITCHELL
CHARLES RUSSELL
NOLAND, JR.
JAMES CLINDON NORRIS
WAYNE ROGER PELAEZ
JOYCE RUTH SACCIO
PAUL LEWIS SIMPSON
ROBERT WILLIAM STUART
BRIAN DEAN WELCKER
JOHN CHRISTOPHER
WRIGHT

MARTINA P. CALLAGHAN
JANET M. DUMONT
HELEN D. DYMON
WILLIAM P. EMMERLING
IRMA E. GUERRA

MARY R. INGRAM
JEAN H. KAJIKAWA
MARILYN K. PIERCE-
BULGER

To be nurse officer

ROBIN E. ANDERSON
DEBBIE S. ARNAUD
KATHLEEN G. AUSTIN
FAY E. BAIER
MARY P. COUGI
JOANNE DERDAK
LESLIE D. DYE
ANDREW J. ESTES
DAVID P. FREETH
CLARICE GEE
MARJORIE L. GRIERSON
MARVIN A. HOLCOMB
ERNESTINE G. KEARTON

CAROL L. LINDSEY
SHERYL L. MEYERS
MICHAEL E. MOSSMAN
ROBINSON J. MYERS
KERRY P. NESSELER
MARY T. NOONAN
MARIA C. PADILLA
JAMES M. POBRISLO
DEBORAH C. ROMERO
BEVERLY J. SANDERS
NADINE M. SIMONS
KENDA J. WALLACE
HARLEN D. WHITLING

To be assistant nurse officer

MARCIA C. BLONDER
LENA S. FAWKES
JACINTO J. GARRIDO

JOAN M. HARDING
PAUL S. HUNSTIGER
BOBBY D. LOWERY

To be engineer officer

REID W. BOND

KENT A. JOHNSON

To be senior assistant engineer officer

RANDY J. CORRELL
KENNETH J. FISHER

CRAIG W. LARSON
GREGORY A. STEVENS

To be senior scientist

DEREK E. DUNN

SUSAN M. CONRATH

To be scientist

SUSAN M. CONRATH

MELODY Y. LIN

To be senior assistant scientist

WILLIAM CIBULAS, JR.
MICHELE R. EVANS

ANN M. HARDY

To be sanitarian

GARY P. NOONAN

MARSHA D. KENT
MATTHEW J. POWERS

To be senior assistant sanitarian

MARSH D. KENT
MARK H. MATTSON

CRAIG A. SHEPHERD

To be senior assistant veterinary officer

AXEL V. WOLFF

To be pharmacist

LOLA L. CAIN

LOLA L. CAIN

To be senior assistant pharmacist

CAROLYN DUNN
PAUL D. GAILLARD
CAROL E. GOODIN
LUISA V. GRAVLIN
ERIC D. GREGORY
LAWRENCE G. MASSIMILLA

JAMES C. MCCAIN
AMY L. MINNICK
SHELLEY F. PAULSON
RENEE J. RONCOE
BRIAN D. SCHAFFER
CHARLES C. WATSON

To be assistant pharmacist

STEPHANIE DONAHOE

MUHAMMAD A. MARWAN

To be senior assistant dietitian

ANN MAHONEY FARRAR
DIANE M. PRINCE

WYNONA A. WOOLF

To be senior assistant therapist

DOMINICK C. ARETINO
SUSANNE E. PICKERING

MICHAEL R. SMITH

To be senior health services officer

STEPHEN K. GORANSON

JAMES A. PICKARD

To be health services officer

ROLLAN J. GONGWER

ROLLAN J. GONGWER

To be senior assistant health services officer

CHARLES J. BRYANT
CLAYTON B. DOAK
ROBERT J. SLAYTON

RACHEL E. SOLOMON
SUSAN D. TELLER

To be assistant health services officer

LANARDO E. MOODY

IN THE PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL AC-
TION IN THE REGULAR CORPS OF THE PUBLIC HEALTH
SERVICE SUBJECT TO QUALIFICATIONS THEREFOR AS
PROVIDED BY LAW AND REGULATIONS:

I. FOR APPOINTMENT:

To be medical director

DAVID L. HEYMANN
JAMES M. HUGHES
SAMUEL LIN
J. MICHAEL MCGINNIS

KENNETH P. MORITSUGU
HERBERT C. MORSE, III
JOEL MOSS
ANIL B. MUKHERJEE

UNRESTRICTED LINE OFFICERS (TAR)

To be captain

CHARLES BENJAMIN
ASKEY
DENNIS THOMAS BEAVER
JOHN BRADLEY BELL
DOUGLAS JAMES BELLOWES
ROBERT PALMER BLICKLE
LEVI BREEDLOVE, JR.
SUSAN M. BROOKER
ROSS NEWTON BROOKS, JR.
MICHAEL BRADFORD
BRYANT
JAMES DENNIS CANNON
WILLIAM THOMAS
CHAMPION
BILLY JOE DEAN
ROBERT ALFRED DUETSCH
ROBERT STEWART FISHER,
JR.
CRAIG MICHAEL JANECEK
THOMAS LEVATTE JONES
MICHAEL REEDY KING
THOMAS LEE MCATEE

JOHN KINGSLEY MCGUIRE,
JR.
RAYBURN LLOYD MCKAY
JOHN P. MCLAUGHLIN
JAMES MICHAEL MORRELL
DANNY CHARLES NELMS
ULYSSES LOUIS NOLEN
PATRICK BRIAN PETERSON
WILLIAM MICHAEL
PIERSIG, JR.
DANIEL ISAAC PUZON
WILLIAM HENRY ROETING
WILLIAM H. ROUND
DONALD EDWARD SCHRADER
MICHAEL E. SCHUM
WILSON OTTO SHEALY
TERRY LEE SIMPSON
CATHERINE ELIZABETH
SPERRY
RANDAL LEE SURRATT
CHARLES W. WAGNER
JACK LEON WILDERSON
GEORGE ALLEN ZOLLA, JR.

ENGINEERING DUTY OFFICERS

To be captain

RODNEY L. COOK
MARK ALAN COOPER
RONALD EDWARD COUCHOT
DONALD KENNETH DRUMM
GREGON LEE GANT
LAWRENCE HIROSHI KUBO
WALTER FRANK MALEC
TERENCE WAYNE MAYHAN

JOHN HENRY RILEY
MICHAEL RALPH RILEY
THOMAS GEORGE TETLOW
KENNETH STRATTE
WATKINS, JR.
JACOB FRANK
WECHSELBERGER
STEPHEN PAUL WEISE

AEROSPACE ENGINEERING DUTY OFFICERS
(ENGINEERING)

To be captain

JOHN A. CONKEY
GLENN E. HESS
KELLY BRIAN MORGAN
ALAN RICHARD PAGNOTTA
ANTHONY JOHN PALAZZO,
JR.

GEORGE HUEY SANDERS
RODNEY KEITH WOMER
RAYMOND WAYNE WOODS
JOHN WILLIAM ZULICH

AEROSPACE ENGINEERING DUTY OFFICERS
(MAINTENANCE)

To be captain

JAMES EDWARD ERVIN, JR.
JOHN CARR KORNEGAY

BERNARD ALMOND
WUNDER

SPECIAL DUTY OFFICERS (MERCHANT MARINE)

To be captain

WILLIAM CLIFFORD BRITT
DAVID SUTTON FIELD
FRANK JOSEPH FLYNTZ
STEPHEN CHESTER
PACUSKA
LARRY NORMAN ROOD

ERNEST PAUL
SKOROPOWSKI
THOMAS MACPHERSON
STAPLETON
EDWARD E. STRIBLING
EDWARD BARNEY
WILLIAMS, JR.

SPECIAL DUTY OFFICERS (CRYPTOLOGY)

To be captain

JACK FRANK JACKSON
RONALD DALE JENSEN
THOMAS LEE MCCARRIAR,
JR.
GREGG F. MITCHELL

LORAN DEVER NAUGHER,
JR.
RONALD WILLIAM SERVIS
WILLIAM EDWARD
SKINNER

SPECIAL DUTY OFFICERS (INTELLIGENCE)

To be captain

ROBERT VREELAND ALLEN
WILLARD DAVID BOSTWICK

RONALD DEE BROGAN
BRUCE ELLIOT BROWNELL

SPECIAL DUTY OFFICERS (INTELLIGENCE) (TAR)

To be captain

BARRY VONBERG MORTON

SPECIAL DUTY OFFICERS (PUBLIC AFFAIRS)

To be captain

RONALD HENRY BAFETTI
RUFUS R. BARBER, JR.
TRACY DANIEL CONNORS
WELLINGTON EUGENE
ESTEY
ROBERT WILLIAM
FULLERBRIGHT
SHARON ALEXA HAMRIC

WILLIAM HENRY HEARD,
JR.
ROBERT MENAGH
HOUGHTON
RICHARD JOHN LYSER
SALLY CHIN MCELWREATH
DAVID MICHAEL SNYDER
WILLIAM JOSEPH WILSON

SPECIAL DUTY OFFICERS (OCEANOGRAPHY)

To be captain

MICHAEL JOSEPH CARRON
MICHELE HUGHES
LOCKWOOD

DUANE EDSON MOYER
RICHARD ALAN PAULUS

IN THE PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATES FOR PERSONNEL AC-
TION IN THE REGULAR CORPS OF THE PUBLIC HEALTH
SERVICE SUBJECT TO QUALIFICATIONS THEREFOR AS
PROVIDED BY LAW AND REGULATIONS:

To be medical director

ROBERT A. GUNN

VERNON N. HOUK

To be senior surgeon

WILLARD CATES, JR.
GENE D. COHEN
JAMES E. COX
CARL ELLISON
WILLIAM E. HALPERIN

STEVEN D. HELGERSON
THOMAS HOFFMAN
DAVID G. HOOPER
THOMAS E. NOVOTNY
ALEXANDER B. SMITH

To be surgeon

GREGORY P. ALEXANDER
MARK D. BONNELL
HAROLD DAVIS
GEORGES S. DUVAL, III
PETER J. GERGREN
GEORGE E. GRANING
HARRY W. HAVERKOS
MICHAEL J. HORAN
JANINE M. JASON

EDWIN M. KILBOURNE
NANCY C. LEE
GEORGE H. MAXTED
HAROLD J. PAULSEN
HERBERT B. PETERSON
PHILLIP L. SMITH
STEVEN L. SOLOMON
NATHANIEL STINSON, JR.
RONALD J. WALDMAN

To be senior assistant surgeon

KELLY J. ACTON
RICHARD J. CALVERT
STEVEN K. GALSON
SAMUEL L. HORTON
ADELINA V. MARINBERG
ELIZABETH ORTIZ-RIOS

MARK H. SCHIFFMAN
RICHARD M. SCHWEND
DANIEL M. SOSIN
PATRICK W. STENGER
TRAVIS W. WHITE

To be dental surgeon

MARK F. DELANEY
M. ANN DRUM

RICHARD M. VAUGHN

To be senior assistant dental surgeon

GEORGE M. ANGELOS
WILLIAM E. ATWOOD
ROBIN S. BERRIN
BILLY D. CARD, JR.
MICHAEL R. POUNTAIN
NORMAN W. JAMES
JAMES E. LEONARD
TIMOTHY L. LOZON

NICHOLAS S. MAKRIDES
RONNIE D. MCCUAN
MARIAN P. MEHEGAN
MICHAEL W. REMILLARD
LARRY D. SHAPIRO
SANDRA L. SHIRE
GEORGE A. SMITH
KENNETH R. WIEDENFELD

ANTONIA C. NOVELLO
PAUL A. NUTTING, JR.
FREDERICK R. PINTZ
DARREL A. REGIER

To be senior surgeon

LARRY J. ANDERSON
MARC E. BABITZ
ROY C. BARON
DAVID H. BARRETT
CLAIRE BROOME
D. PETER DROTMAN
MARY C. DUFOUR
LESLIE G. FORD

To be surgeon

ROBERT E. DAWSON
RICHARD C. DICKER
MARK B. HORTON

To be senior assistant surgeon

CHARLES H. BEYMER
KENNETH L. BROOKS
HERMAN A. DOBBS, III
DONALD A. DUBOIS
PAUL J. HEALEY, SR.

To be dental director

ROBERT J. COLLINS, JR.
JEFFREY W. HAGEN
ROBERT F. MARTIN

To be senior dental surgeon

THOMAS ARROWSMITH-
LOWE
JOHN G. DEVINE
ROBERT S. ENDERS
BYRON G. JASPER
JAY J. JONES
GILBERT KUNKEN

To be dental surgeon

WILLIAM D. BAILEY
ROBERT F. FELKER, JR.
SHAWNNEQUA M. HARRIS
DERRICK T. JOHNSTON

To be nurse director

SUZANNE DAHLMAN
DIXIE A. DEETER
KATHLEEN A. MORSE

To be senior nurse officer

MARGARET BRADY
TERRY L. GODFREY
CAROLYN B. LEE

To be nurse officer

ARLENE B. BARTH
LESLIE C. COOPER
REGAN L. CRUMP
MARGARET J. DICLEMENTE
JANICE A. DRASS
COLLEEN J. JOHNSON
DEBORAH S. MAYO

To be senior assistant nurse officer

FERN S. DETSOI
KIMBERLAE A. HOLLEY
LAURIE S. IRWIN-PINKLEY

To be engineer director

MARK A. BRUMBAUGH
PATRICK A. CROTTY
TED W. FOWLER
TERRENCE O. HAUSKEN
WAYNE E. MOHLER

To be senior engineer officer

WILLIAM M. BURCH
WILLARD D. DAELLENBACH
JOHN M. DEMENT
CURTIS F. FEIN
RICHARD M. GARWOOD
WALLACE HAMPTON
GARY J. HARTZ

To be engineer officer

MICHAEL S. CRANDALL
JAMES A. DINOVO
ROBERT W. FAALAND

WALTER REICH
ALAN M. STEINMAN
BRUCE D. WEINTRAUB

RICHARD A. GOODMAN
VAN S. HUBBARD
DOUGLAS N. KLAUCKE
JEFFREY J. SACKS
EDWARD TABOR
THEODORE F. TSAI
LOREN A. ZECH

SCOTT R. LILLIBRIDGE
THOMAS R. NAVIN
ARVO J. OOPK

VERNON A. MAAS
GREGG MCNEIL
DAVID NG
TAN T. NGUYEN
ANDREW L. OLNES

ROBERT J. PARTAK
DANIEL L. PINSON
DON C. ROBERTSON

KARL A. MEYER, II
STEVEN H. POSNER
ERIC D. REHORST
DONALD T. SAUTER
WILLIAM W. SAVAGE, JR.
JOHN W. STAHL
ALLAN D. VALENTINE

RAY M. MCCULLOUGH
RAUL A. ROMAQUERA
JEANINE R. TUCKER

MARIE A. MOSES
SUSAN SIMMONS

HAROLD I. REBUCK
ESTELLE T. THERIEN

JERRY D. METZLER
KOLYNN F. POWELL
MARY M. PRESTON
MERIBETH M. REED
MICHAEL A. SHEETS
ANDREW C. STEVERMER

BARBARA A. ISAACS
ROBERT W. MAYES
JOHN J. ROSENBERGER

JOHN M. MOORE
MELVIN L. MYERS
JAMES H. SOUTHERLAND
GARY D. YOUNG

ALAN J. HOFFMAN
STEPHEN C. JAMES
STEPHEN B. LEIGHTON
MARTIN D. MCCARTHY
DENNIS M. OBRIEN
LAURENCE D. REED
IRA J. SOMERSET

PAUL M. LAHR
ERNEST L. LEPORINI
SVEN E. RODENBECK

To be senior assistant engineer officer

JAMES W. COLLINS

TODD M. SCOFIELD

To be scientist director

ROBERT M. GAGNE
ROBERT H. HILL, JR.
DANIEL A. HOFFMAN

BRADFORD G. PERRY
DAVID G. TAYLOR
WILLIAM P. WOOD

To be senior scientist

MICHAEL C. ALAVANJA
MICHAEL J. COLLIGAN
WILBUR H. CYR

HUGH J. HANSEN
HOWARD W. KROLL
CHARLES H. NAUMAN

To be scientist

DAVID L. ASHLEY
JAMES A. MERCY

RANDY L. TUBBS

To be sanitarian director

DARRELL J. SCHWALM

To be senior sanitarian

PATRICK O. BOHAN
RICHARD M. BRYAN
TERRANCE B. GRATTON

DOUGLAS R. JACKSON
ROBERT J. KAPOLKA

To be sanitarian

LINDA A. CHANDLER
WILLIAM J. DANIELS

LARRY J. ELLIOTT
CHARLES D. STANLEY

To be senior assistant sanitarian

JAMES S. SPAHR

To be veterinary director

JOHN D. BACHER

To be veterinary officer

MARY L. MARTIN

To be pharmacist director

PAUL A. GOODSPEED
STEPHEN C. GROFT
KAY C. PEARSON

ROBERT J. TONELLI
JOSEPH C. WHITAKER

To be senior pharmacist

DAVID BARASH
JOHN A. BOREN
GARY A. ERICKSON
NICHOLAS M. FLEISCHER
STEVEN C. GARRETT
THOMAS H. HASSALL
GARY L. HENDERSON
ELIZABETH E. HINER
ALEXANDER P. JONES
JAMES E. KNOBEN

WILLIAM L. MATTHEWS, JR.
ROGER L. MCGHEE
STEVEN R. MOORE
DAVID J. MORGAN
BARRY W. NISHIKAWA
FRED G. PAAVOLA
STEVEN L. PETTITT
ROBERT W. POLLOCK
PATRICIA T. L. YEE-
SPENCER

To be pharmacist

ELAINE G. E. ABRAHAM
MICHAEL J. CLAIRMONT
BEVERLY J. FRIEDMONT
GEORGE R. GATEWOOD, III
DONALD G. GRILLEY
JANET M. MORGAN
DAVID L. ROSEN

CATHIE L. SCHUMAKER
ROBERT E. STALEY, JR.
LELAND R. STERN
GREGORY D. THOMAS
PAUL D. THOMAS
NORMAN J. TURNER

To be senior assistant pharmacist

REBECCA J. LIDEL

To be senior dietitian

PAMELA L. BRYE
CAROL L. JOHNSON

CATHY A. LEVINE

To be dietitian

KATHERINE W. DAVIS

JOYANNE P. MURPHY

To be therapist director

JUDITH A. BELL

To be senior therapist

WILLIAM M. BROWN
HAROLD W. EGBERT

FRANCIS W. LEVY, JR.

To be therapist

ELAINE D. CORRIGAN

THOMAS J. STOLUSKY

To be senior assistant therapist

KAREN L. SIEGEL

To be health services director

REBECCA S. ASHERY
ROBERT J. BATTJES
RICHARD C. BOHRER
ROBERT J. GARRISON
HENRY A. HAYES

JOHN R. HEINZ
RICHARD E. LIPPMAN
PAUL F. SCHULZE
DAVID R. SELBY
THOMAS C. VOSKUHIL

To be senior health services officer

MARTIN T. ABELL
ROBERT N. BURNS
WILLIAM M. CHAPIN, JR.
JAMES E. CLAIR
LAWRENCE ELDRIDGE
STEPHEN E. GARDNER
JAMES L. GRAY
RICHARD W. HORNUNG

GARY R. PABALIS
PHILIP J. PIASECKI
JAY A. RACHLIN
GORDON R. SEIDENBERG
JOHN D. WELLS
JOHN J. WHALEN
SIU G. WONG

To be health services officer

ANNA J. ALBERT
MARY B. COOPER
ROCHELLE E. CURTIS
KENNETH C. DIEPOLD
COLLEEN L. GOOD BEAR

GREG J. KULLMAN
RICHARD A. LEVY
JACOB L. RUEDA, III
PATRICIA A. RYE
RICHARD G. SCHULMAN

CONFIRMATIONS

Executive nominations confirmed by the Senate March 10, 1992:

U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

SCOTT M. SPANGLER, OF ARIZONA, TO BE ASSOCIATE ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT (OPERATIONS).

PEACE CORPS NATIONAL ADVISORY COUNCIL

EUGENE C. JOHNSON, OF MARYLAND, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1993.

TAHLMAN KRUMM, JR., OF OHIO, TO BE A MEMBER OF THE PEACE CORPS NATIONAL ADVISORY COUNCIL FOR A TERM EXPIRING OCTOBER 6, 1993.

EXECUTIVE OFFICE OF THE PRESIDENT

SALVADOR LEW, OF FLORIDA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM OF 2 YEARS.

AFRICAN DEVELOPMENT FOUNDATION

HERMAN JAY COHEN, AN ASSISTANT SECRETARY OF STATE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING SEPTEMBER 22, 1997.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD:

HERMAN J. COHEN.

FOREIGN SERVICE NOMINATIONS BEGINNING SALLY M. GROOMS-COWAL, AND ENDING LEONARDO M. WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JANUARY 22, 1992.

FOREIGN SERVICE NOMINATIONS BEGINNING SANDRA ANN CRUMPTON, AND ENDING TERENCE J. SHEA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF JANUARY 22, 1992.

FOREIGN SERVICE NOMINATIONS BEGINNING GEORGE J. POPE, AND ENDING CHRISTOPHER E. GOLDFHWAIT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 5, 1992.

FOREIGN SERVICE NOMINATIONS BEGINNING ROGER ALLEN MERCE, AND ENDING DAVID MEREDITH EVANS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF FEBRUARY 18, 1992.

EXTENSIONS OF REMARKS

A CAPITAL GAINS PRIMER

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. PEASE. Mr. Speaker, the New Republic recently printed an article by Michael Kinsley which outlines why a cut in the tax rate on capital gains is not needed. The piece dispels many of the myths regarding the taxation of capital gains.

I commend this article to my colleagues.

[From the New Republic, Feb. 10, 1992]

A CAPITAL GAINS PRIMER

(By Michael Kinsley)

My first signed article in this magazine, in 1977, was a plea to Congress not to cut the capital gains tax. But did they listen? No. The capital gains battle has continued for fifteen years. Both sides have won skirmishes. Our side's great moment was the 1986 tax reform, which eliminated the special break for capital gains, among other loopholes, in exchange for lower tax rates on all income. By coincidence the top tax rate on capital gains now stands at 28 percent—the same rate to which it was cut back in 1977. But President Bush has been trying for his entire presidency to enact a new capital gains tax cut. He says it is central to hopes for economic growth. And even many Democrats, on Capitol Hill and the presidential campaign trail, favor some kind of capital gains break—usually limited or "targeted" in some way.

This bad idea just won't go away. One reason is that debates over tax arcana tend to be dominated by those who understand them, who tend to be those who benefit from them. A new capital gains break will overwhelmingly benefit the well-to-do. According to the congressional Joint Tax Committee, Bush's proposal amounts to an average \$12,500 tax cut for people making over \$200,000 a year. That is not a fatal defect. If it spurred economic growth, the unfairness would be worth it and could be mitigated in other ways. But all honest logic says that a capital gains tax break is bad economics. Here's why.

The basic concept is called tax neutrality. Economies function best when taxes are designed to affect economic decisions as little as possible. Alternative forms of labor and alternative outlets for capital should be taxed the same. If you tax butchers more than bakers, you'll get fewer butchers and more bakers. If you tax one form of investment more than another, money will flow out of the first and into the second. If you tax capital a lot less than you tax labor, you are artificially encouraging the replacement of people by machine.

Of course this argument assumes that the free market allocation of labor and capital is the correct one. You are free to challenge that assumption. But if you do, you must explain why the government should be able to do the job better. And you are earning a label—"central planner" or even "social-

ist"—that most advocates of a capital gains break certainly don't want. A capital gains break is an "industrial policy." It replaces the invisible hand of the market with the heavy hand of government.

There is nothing metaphysically unique or morally superior about capital gains—profits on the sale of a capital asset (stock, real estate, gold coins, etc.)—compared with other forms of investment income. Giving special tax treatment to capital gains is doubly wasteful. First, it misdirects capital to places that capital otherwise wouldn't go. The currently empty office buildings thrown up in the 1980s are a testament to this phenomenon. Second, vast sums of money and reservoirs of human ingenuity are consumed in the effort to turn ordinary income into capital gains—the essence of tax shelters.

That is why all proposals for a capital gains break, the stupidest are those that would pay for it by raising the top tax rate on other income. The bigger the gap between artificially favored and disfavored activities, the more the inefficiency and waste. But all capital gains break proposals are foolish enough.

So that's the case against, in a nutshell. But the argument gets far more intricate. Here are some of the feathers and furbelows.

But what about inflation? It's true that the tax treatment of capital does not account for inflation. If you sell a share of stock you've held for many years, you pay tax on your entire nominal profit, even though the dollars you get back are worth less than the dollars you invested originally. But the same is true of all forms of investment profit. Interest, for example. If you're getting 8 percent interest at a time of 3 percent inflation, you're really only earning 5 percent but you pay taxes on all 8.

Capital gains already enjoy a tax advantage over interest: you only pay tax when the investment is liquidated, instead of every year. Meanwhile, the profit compounds tax-free. It makes a big difference. Compare two investments, both yielding 10 percent a year for twenty years: one in the form of interest, one in the form of capital gain. The after-tax profit on the capital gain will be 45 percent larger. This goes a long way toward cushioning the blow of inflation.

Furthermore, the tax treatment of borrowing costs is not indexed for inflation either. If you're paying 8 percent interest on a business loan, you get to deduct the whole 8 percent even if 3 percent of that represents erosion of the lender's principle through inflation. To account for inflation only in the tax treatment of capital gains, while ignoring these other matters, would create a nightmare of loopy incentives. People would choose 6 percent returns over 8 percent returns. People would even borrow at 8 percent to invest at 6 percent. The economy would be distorted, the Treasury would bleed, accountants would grow rich.

Perhaps the whole tax code should be indexed for inflation. But no one is suggesting that, because it would be viciously complex. The better solution is the one Fed Chairman Alan Greenspan has almost engineered: eliminate inflation. Then the tax problem goes away.

But what about these Democratic proposals for a "targeted" capital gains break? Aren't they OK? In two words, "fraid not. These schemes generally would limit a capital gains break to investments in new companies or long-term investments or investments in certain industries. The idea is to focus the tax benefit on particularly desirable forms of investment rather than scattering it to the winds. Give the break to the gal who founds a new company, not to the one whose shares of General Electric happen to go up. What's wrong with that?

One problem is definitional. What is a "new" business? Lawyers and accountants will manipulate any definition to defeat its intended limits. But, in tax policy as elsewhere, definitional problems indicate conceptual problems. Why should something important (like a lot of money) turn on a concept you have trouble defining?

There is nothing inherently creative or entrepreneurial about new businesses per se. Why favor a new McDonald's franchise over a promising initiative by an established company? Nor is there any reason to reward people who buy "new" issues of stock as opposed to those who buy stock that's been previously issued. The point is that whenever you use taxes to encourage investment in one thing, you're discouraging investment in something else.

And even if you believe there is something inherently meritorious about "long-term" business thinking that the market is somehow unable to appreciate, a tax break for long-term stock investments is a simple logical error. There is no connection between how long I hold a share of stock and the time horizon of the corporate manager. Even if I hold the stock for only two weeks, I will sell it to someone else who will sell it to someone else. How much I will pay depends on how much I think they will pay. The prospective value of the company ten years from now will have the same effect on the stock price today no matter how often the shares change hands in the interim. Artificially encouraging stockholders to trade less frequently will give managers no added incentive to think long-term.

But a capital gains tax cut won't cost anything. It will actually bring in more revenue. That's what the Bush administration claims. It proposes to use the "revenue" from a capital gains cut to pay for other cuts. The February 3 issue of *Forbes* has a chart showing that capital gains tax revenues have always gone up when the tax rate went down, and vice versa. There are a couple of sleights of hand going on here.

Of course a special tax break for capital gains increases capital gains tax revenues. If you enacted a special tax break for people named *Forbes*, people would change their name to *Forbes* and revenues from people named *Forbes* would go up. Revenues from people with other names would go down. So would total revenues. Ditto if you give a special break to something called "capital gains." Revenue from "capital gains" goes up, other revenue goes down (more), as people adjust their affairs to take advantage of the break.

There is one way a capital gains cut really would bring in additional revenues: the lower

* This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

rate would "unlock" investments people are holding onto because they don't want to pay the tax. To some extent this would increase government revenues by genuinely increasing the efficiency of the economy. Capital would move more quickly in response to market incentives. (Just the opposite, please note, of the "long-term" investing capital gains cut enthusiasts also claim to want.) But most of the additional revenue following a capital gains cut would simply reflect the fact that investors were cashing in sooner rather than later. For the Treasury, any extra revenue in the first couple of years would mean less revenue later on.

If the goal is to "unlock" capital gains, a better way to do that would be to eliminate yet another tax advantage this form of investment has over others: the so-called "angel of death" loophole. When you die, the capital gains tax on investments you still hold die with you. Heirs, when they sell inherited property, pay tax only on the gain since they inherited. Ending this anomaly would bring the Treasury some \$5 billion a year. It also would make flow of capital more efficient by relieving people of the incentive to hold onto investments into the grave.

But a capital gains tax cut will raise stock prices and real estate values. That would be nice. And it's probably true. The stock market does tend to rise and fall with the outlook for a new capital gains break. But that says nothing one way or the other about the merits of the tax break itself. If the government were to announce its intention to give \$10 a share to the owners of all listed stocks, stock prices would go up \$10. Does that make it a good idea? Any rise in market values due to a capital gains tax cut could well be—would be, in my view—just a reflection of the discounted present value of the future tax savings. Fiscally, it would be no different from the government simply borrowing the money and handing it out to stockholders—hardly a sensible formula for genuine growth.

But Alan Greenspan says that theoretically capital gains shouldn't be taxed at all. That does give one pause. The theoretical argument goes something like this. The fruits of a citizen's labor are already taxed once when she first earns them. If she chooses to spend the money, the government makes no more claim on it. But if she chooses to save and invest it, she is taxed again. This is both unfair and inefficient, discouraging saving and encouraging consumption.

Well, ideally, all taxes should be zero because all taxes discourage the activity being taxed. (The exception is a land tax, as Henry George famously noted, because land has nowhere to go.) Taxes on labor discourage work and encourage sloth; taxes on capital discourage thrift and encourage consumption. Work and thrift are both admirable habits that ought to be encouraged, but the government must also be paid for. For any given level of revenue, reducing the penalty on work or thrift means increasing the penalty on work. It is hard to see how placing 100 percent of the burden on labor and 0 percent on thrift is fairer or more efficient than sharing it between the two.

But didn't JFK cut the capital gains tax because he believed in economic growth? This myth is part of the larger myth that the Democratic Party, once-upon-a-time sensible and patriotic, became terminally obscurantist and un-American around 1972. In fact, Kennedy did propose a small cut in the top capital gains tax rate. But he combined it with an end to the "angel of death" loop-

hole and a longer "holding period" to qualify for the break. The net effect would have been an increase in the capital gains tax burden. When Congress wanted the larger tax break without the sterner stuff, the administration balked and treatment of capital gains remained unchanged. So the oft-heard notion that the boom of the 1960s had anything to do with "Kennedy's capital gains tax cut" is beyond myth and into the realm of fantasy.

But don't they have much lower capital gains taxes in Japan? Not at all. It's true that sellers of listed stocks have the option of paying a flat 1 percent of gross proceeds (not net profits) in lieu of a capital gains tax. But the tax on most other capital gains ranges up to 65 percent on investments held less than five years and 33 percent on investments held longer than that. The tax on real estate is even more onerous. If held less than ten years, the tax ranges from a minimum of 40 percent to a maximum of over 72 percent.

Japan's basic income tax rates also range up to 65 percent (at around \$140,000). Its inheritance tax is stiffer than ours. And there is no "angel of death" capital gains loophole. There's no indexing. But then, there's not much inflation either. In fact, the Japanese somehow don't do too badly economy-wise, despite tax burdens that apparently would destroy the incentives of any self-respecting American entrepreneur.

Who cares about long-term economic efficiency? What we need now is a short-term jolt. Even if you're willing to exacerbate our deficit dilemma for an immediate economic stimulus—a mistake—a capital gains giveaway would be a foolish way to go about this. There would be no impact for months. It would kick in just as a recovery was starting, when, by this logic, it ought to be repealed. Other forms of economic adrenaline—including direct government investment in infrastructure projects like roads and bridges—would give more and faster bang for the buck.

But what about capital losses? Here we get into real aficionado territory. The 1986 tax reform limited the annual tax deduction for capital losses to \$3,000 per person. What does this mean? It means you can subtract your capital losses from your capital gains each year. If your losses are more than your gains, you can subtract up to \$3,000 a year against other kinds of income. You can "carry forward" losses beyond \$3,000 and use them to reduce your income tax in future years. But you can't use unlimited amounts of capital losses to cancel out taxes owed on non-capital income. Critics of the capital gains tax—most notably *The Wall Street Journal* editorial page—can turn apoplectic about this seemingly obscure provision. Why? Solving the mystery offers insight into the true politics of capital gains.

Ask yourself: Who is affected by the capital loss limit? Only those who, year after year, lose more than \$3,000 on their investments. There are two such groups. First, genuine perennial losers. Such people are surely to be pitied, but our economic prosperity hardly depends on them. And perennial losers are hardly likely to have the political clout to make an issue of this capital loss business. So consider another group: people who arrange their affairs to have enormous paper losses year after year. What makes capital gains different from other forms of income is that you can choose when to liquidate an investment and take the tax consequences. A basic technique of tax planning is to move up losses and push back gains. More sophisticated techniques involve complex transactions that generate vast

"losses" right away and compensating "gains" that can be put off. Without the loss limitation, it would be possible to get richer and richer while never paying any tax at all. Mystery solved.

For the wealthy and the middle class alike, the 1986 tax reform deal was: give up your loopholes and you'll get lower rates. The philosophy was end all the complicated incentives for this and that, lower the basic rates, and let the market work unmolested. Proposals to restore the capital gains break amount to rattling on the deal, but more interesting is the way they betray the philosophy. Do these people believe in capitalism or not?

EPILEPSY FOUNDATION OF SOUTH FLORIDA HONORS ACTIVISTS

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to commend the Epilepsy Foundation of South Florida for its working in fighting epilepsy, especially through their Candlelight Ball and Auction. The money raised, approximately \$35,000, will be used for direct services for epileptics. This year, the major recipients of the proceeds are epileptic children.

On the evening of the event, epilepsy activists of the south Florida community were honored for their work. Remedios and Fausto Diaz-Olivier were recognized for their involvement in the foundation with the Robert Laidlaw Humanitarian Award. Bonnie Sepe received the Helping Heart Award, Valentina Diaz was the recipient of the Gladys Wyatt Shining Light Award, Michael Duchowny, M.D. was given the Medical Service Award, Ryder System, was recognized as the Employer of the Year, and Maria Conte was thanked for her work with the Employee of the Year Award. I commend the work of these individuals in the fight against epilepsy.

Also, the members of the Candlelight Ball and Auction Committee are to be commended for their hard work and dedication. They are: Eddi-Ann Freeman and Leanne Lucas, chairpersons; Muriel Kaye, life chairperson; Judy Adler, Dominique Aristondo, Linda Cahan, Victoria Champion, Sandy Enfield, Sharon Ferguson, Doris Gold, Adriana Goldemberg, Althea Jacobs, Sandy Levy, Sheila Logue, Pauline Merl, Martha Mishcon, Hildene Potashnick, Kathy Simkins, Marcia Schantz, Lorraine Schatzman, Inez Stone, Barbara Toland, Susan Tramont, Betty Wohl, and Sonja Zuckerman Klein. The honorary committee members are Gail P. Ballweg, M.D., Don L. Bednar, Barbara Carey, Ed. D., Hon. and Mrs. John F. Cosgrove, James L. Davis, Judson M. DeCew, Jr., Hon. Henry Ferro, Hon. Carlos L. Valdes, Lewis B. Freeman, Michael J. Freeman, Esq., and Della Laidlaw. Without the work of these people, the fundraiser would not have been possible.

In addition, I would like to recognize Louis B. Freeman, president of the Epilepsy Foundation of South Florida for his hard work and dedication to this worthy cause throughout the years. His commitment, along with that of his co-workers and the members of the Candle-

light Ball and Auction Committee, will advance the struggle against epilepsy.

MARCH IS WOMEN'S HISTORY MONTH

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. GALLEGLY. Mr. Speaker, I am pleased to rise today in honor of Women's History Month, which is being observed this month throughout our Nation.

It goes without saying that women have made invaluable contributions to our Nation since its very inception. Women of every race, class, and ethnic background have helped to shape and mold our Nation in countless ways, publicly, and privately.

Both in the home and in the workplace, women have played a vital and too often overlooked role in our society. Women have been at the forefront of any number of reform movements, such as the abolitionist movement, the suffrage movement, and the civil rights movement, and today women are achieving opportunities that were denied to them for far too long.

I would especially like to note that the Ventura County Commission for Women will hold a luncheon and awards program this Saturday. During this event, the commission will host an inspirational musical drama based on the lives of four great American women—Abigail Adams, Molly Pitcher, Harriet Tubman, and Susan B. Anthony.

Mr. Speaker, today women have the opportunities to decide their own role in society. Whether they choose family, career or both, I ask my colleagues to join me in honoring the many contributions of women, and in supporting Women's History Month observances this month.

TRIBUTE TO IRIS C. SHAPIRO

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. BERMAN. Mr. Speaker, I rise today to express my admiration and respect for an extraordinary citizen, Iris C. Shapiro. Iris is this year's recipient of the prestigious Golden Woman Award. This award will be presented by the Boys and Girls Club of the San Fernando Valley in appreciation of her commitment to the welfare of the children in our community.

Iris has served the southern California community for many years. Her seemingly infinite energy, pleasant personality, and ready willingness to be helpful has endeared her to all those fortunate enough to know her.

Iris is a successful and popular businesswoman. She and her husband Bernard have cofounded and developed an outstanding equity golf club which has been in operation for 25 years. Throughout her career, Iris has always shown a willingness and desire to give

freely of her valuable time to aid organizations or causes important to her community. At present, she is an active member of the California Institute Cancer Service, Las Hermanas, supporting Children's Hospital, Los Angeles County Museum of Art, and director of KCET's Women's Council.

Iris is the proud mother of four children. Her constant guidance, unselfish love, patience, and strong moral values influence and contribute greatly to the respect and admiration that she enjoys from her family, friends, and colleagues.

It is my distinct honor and pleasure to ask my colleagues to join me in saluting Iris Shapiro for her tireless devotion to serving the community and its children.

BIOGRAPHY OF SEATTLE

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. FALEOMAVAEGA. Mr. Speaker, through Public Law 102-188 (S.J. Res. 217, H.J. Res. 342), Congress and the President designated 1992 as the "Year of the American Indian." This law pays tribute to the people who first inhabited the land now known as the continental United States. Although only symbolic, this gesture is important because it shows there is sympathy in the eyes of a majority of both Houses of the Congress for those Indian issues which we, as a Congress, have been struggling with for over 200 years. In support of the Year of the American Indian, and as part of my ongoing series this year, I am providing for the consideration of my colleagues a short biography of Seattle, a chief of the Suquamish tribe who is known for his skills as an orator. This biography was taken from a U.S. Department of the Interior publication entitled "Famous Indians, a Collection of Short Biographies."

SEATTLE (SUQUAMISH)

The name of Seattle, Suquamish Indian chief, lives on not only in Washington's largest city, but in its State history, which gratefully records him as "the greatest Indian friend white settlers ever had."

Seattle, son of Chief Schweabe, witnessed as a boy the 1792 arrival in Puget Sound of British explorer Vancouver and his men, in their "immense whitewinged bird ship," the Discovery. The wonderful new riches, and the friendliness of the first white men he had ever seen, profoundly impressed Seattle, who became convinced as he grew up that peace, not war, was the right path for all men to follow.

It was a revolutionary belief. Battle and pillaging were a long-established way of life among Pacific Coast Indians, and as a young man, Seattle planned and led an alliance of six tribes against "horse tribes" to the northeast. Although his success in the undertaking won the young chief the high position of "Chief of the Allied Tribes" (the Duwamish Confederacy), it was his last feat as a warrior. Seattle devoted the rest of his life to promoting peace.

When Catholic missionaries entered the Northwest in the 1830's, Seattle became a convert to Christianity and took the baptismal name "Noah," after his favorite Bible

character. He inaugurated regular morning and evening prayers among his people, a practice they continued after his death.

Seattle had ample opportunity to demonstrate his belief in brotherhood. White settlers who founded a small community on Puget Sound in 1851 received unlimited friendship and help from him, and shared his people's fish, seafood, and venison. In 1852, the little settlement which had first been hopefully called "New York," and later "Alki Point," was renamed, for all time, "Seattle."

But as more white immigrants came to the Northwest, relations, with the Indians became strained and stormy. During the winter of 1854-55, several northwest tribes organized in the hope of driving whites out of the country. In January 1855, Washington Territory's first Governor and Superintendent of Indian Affairs, Isaac I. Stevens, called Seattle's bands together, and told them of plans for a treaty which would place them on reservations.

Seattle, over 6 feet tall, broad-shouldered, deep-chested, an impressive and powerful orator, replied to the Governor in a resounding voice which all his people assembled along the beach could hear. According to a white spectator's translation, the dignified old leader's words, although marked by sadness and resignation, were poetic. They are said to have gone, in part:

"Whatever I say, the Great Chief at Washington can rely on," Seattle said. "His people are many, like grass that covers vast prairies. Our people once covered the land as waves of a wind-ruffled sea cover its shell-paved floor, but now my people are few.

"Our great and good Father sends us word that if we do as he desires he will buy our lands... allow us to live comfortably... protect us with his brave warriors; his wonderful ships of war will fill our harbors. Then our ancient northern enemies will cease to frighten our women, children and old men.

"But day and night can not dwell together. The red man has ever fled the approach of the white man as morning mist flees the rising sun. It matters little where we pass the remnant of our days. They will not be many. The Indian's night promises to be dark... a few more moons... a few more winters."

Seattle was the first signer of the Port Elliott Treaty of 1855 which placed Washington tribes on reservations.

But in the wake of the new treaties, several Indian groups, placed on reservation lands which did not include hunting or fishing areas, opened attack on white settlers. "Horse" tribes of eastern Washington combined to lead a war in which they tried to enlist "canoe" Indians. Some coastal tribes did join the alliance, but Seattle's followers remained generally loyal to whites and were evacuated in sloops and canoes to Port Madison Reservation. Throughout this and other Indian wars of the period, Seattle faithfully supported the white cause, at the same time continuing to be a true and powerful leader of his own people.

In line with the tribal belief that mention of a dead man's name disturbs his spirit, Seattle levied a small tribute in advance upon the citizens of the new town named after him. At about 86, he died on Port Madison Reservation.

An Indian burial ground at Suquamish, Wash., 14 miles from Seattle, contains the grave of the great chief. A granite shaft erected there by the people of Seattle is inscribed: "Seattle, Chief of the Suquamish and Allied tribes, died June 7, 1866, the firm friend of the Whites, and for him the City of

Seattle was named by its founders." Each year the grave is the scene of a memorial ceremony conducted by local Boy Scouts on Scout Anniversary Day. In Seattle itself, a bronze statue represents the Indian leader in a typical pose, his hand outstretched in a gesture of perpetual peace and friendship.

ALPHA EPSILON PI HONORS L.
JULES ARKIN

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to congratulate Mr. L. Jules Arkin, attorney at law, for his marvelous contribution to our community. Mr. Arkin has dedicated his life to the well-being of our citizenry and I am proud to acknowledge his work.

The Alpha Epsilon Pi Foundation will honor Mr. Arkin with the Gitelson Medallion for Jewish Communal Service at a ceremony at the Omni International Hotel in Miami on the 14th of March.

The Gitelson Medallion for Jewish Communal Service award was established by the foundation in 1933 with the assistance of Dr. M. Leo Gitelson in honor of the scholar rabbi who best characterizes Jewish activity and communal service. Mr. Arkin's credentials certainly make him eligible for this special award.

An attorney at the firm of Therrel Baisden & Meyer Weiss, Mr. Arkin is a member of the American Bar Association, Florida Bar, and the Dade County and Miami Beach Bar Association. Mr. Arkin also served as the president of the Financial Federal Savings and Loan Association of Dade County until 1984.

In addition, Mr. Arkin has served as president of the Greater Miami Jewish Federation and is a member and past president of the Miami Beach Chamber of Commerce, as well as a trustee of the Mount Sinai Hospital of Greater Miami. He also serves as a member and past president of the Miami Beach Kiwanis Club and former chairman of the city of Miami Beach Social Services Advisory Board.

Mr. Arkin is a retired lieutenant commander of the U.S. Naval Reserve. He has dedicated his time as a member of the board of directors and board of trustees of the United Way of Dade County.

It is quite evident that Mr. Arkin's time became increasingly valuable throughout the years. With his memberships in various organizations for the good of our community, Mr. Arkin's tireless interest and stand for the people has earned him the respect and admiration of his colleagues.

Mr. Arkin serves not only the people of our community, but through his dedication and commitment to his work he is a servant of God. He is a member of the Temple Beth Shalom.

Mr. Speaker, I wish to acknowledge the lifetime work of Mr. L. Jules Arkin, who has selflessly and conscientiously made a difference in the lives of the many people who he has come into contact with. Mr. Arkin is a true winner, and a real source of strength and motivation to all who know him.

In addition, I would like to acknowledge the members of the dinner committee of Alpha Epsilon Pi Foundation who have contributed to the success of this event:

Stanley Arkin; Co-Chairman; Samuel Smith, Co-Chairman; Harry "Hap" Levy, Dinner Chairman; Steven Parker, Dinner Co-Chairman; Nathaniel Krumbeln, Foundation President and Jack Mades, Bruce Singer, Robert Dulberg, Mel Rosenberg, Edward D. Gold, Abe Corenswet, Alfred Bloom, Richard I. Feller, Irving Levin, William Shockett, Barry Bierman, Harry Gurwitch, George S. Toll, Philip H. Cohen, Judge Jacob Karno, Ivan W. Halperin, Lester H. Block, Arthur Teich, A. Edward Scherer, Irving Axelrod, Richard H. Stein, Sidney N. Dunn, Harold B. Berman, Dr. Jonathan Tenzer, Dr. Robert K. Ausman, Paul Aronin and Stanford H. Odesky.

HISPANIC EMPOWERMENT

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. RICHARDSON. Mr. Speaker, earlier this year a group of prominent Hispanics from around the country gathered in the Nation's Capital for the founding meeting of a new Hispanic organization titled, Hispanic PAC USA. The group's purpose is to encourage Hispanic empowerment by persuading Hispanics to run for political office and by supporting them with financial and other resources. Despite representing 9 percent of the U.S. population, Hispanic-Americans are woefully underrepresented in elected offices.

The distinguished Governor of Puerto Rico, the Honorable Rafael Hernandez Colon, delivered a moving speech to the Hispanic PAC USA attendees. I urge my colleagues to read Governor Colon's statement and learn more about the role Hispanic-Americans will be playing in the months and years ahead.

STATEMENT BY HON. RAFAEL HERNANDEZ
COLON, GOVERNOR OF PUERTO RICO

Mr. Chairman, Board Members, distinguished Hispanic leaders and friends; Muy Buenas Tardes. It is a privilege and an honor to address this founding board meeting and policy seminar of the Hispanic PAC USA.

We are here to face an important challenge. Hispanic leaders must define the future role that the Latino Community should play in a United States facing rapid and dramatic world trade. Our task is twofold: Hispanics must continue to evolve from the political trenches of each of our communities to the highest levels in this Nation's government, but must do so within a new world order where our countries of origin are playing a prominent role.

We have decided, by creating this organization, to develop the nuts and bolts needed to accomplish this task. Hispanic PAC USA is an action-forcing device that aims at the proper and just target-political empowerment. I congratulate Congressman Bill Richardson for sponsoring this initiative; transforming important ideas into concrete action.

The 1990 Census revealed that Hispanics are among the Nation's fastest growing population. As you well know, it showed that the Anglo-Saxon population only grew 6% in

the past decade, and the black population grew at a rate of 53%. Today, the 1990 Census figures reflect that 9% of the United States population is Hispanic. That means that there are 22.4 million Hispanics whose political energies can and must be harnessed towards common political goals. For Hispanics in the U.S., the time has come to show their mettle in American politics.

After the Mexican origin population, Puerto Ricans living in the states are the second largest Hispanic group, with 2.7 million or 10.5%.

But the Puerto Rican Community goes beyond the frontier of the 50 states. The Commonwealth of Puerto Rico is committed to promote the Hispanic goals in the United States as well as to promote the well being of our neighbors in the Caribbean and Latin America. Through our political relationship with the United States, Puerto Rico enjoys common market, common currency and common citizenship with this Nation; at the same time we are bound by our cultural heritage to the other side of this hemisphere.

Hispanic communities all over the United States must empower themselves with continuous massive "voter registration" and "get out the vote" campaigns.

We are proud of the 3,700 Hispanic elected officials nationwide, including 12 members in the United States Congress. Yet, we need to do much more. Hispanics are underrepresented in states like New Mexico with a Hispanic population reaching 38.2% of the total population, California 25.8%, Texas 25.5%, Arizona 18.8%, Colorado 12.98 and New York 12.3%. Our voice must be heard with the clarity and intensity our numbers demand. And it must be heard in every state legislature, in every county and every barrio in the United States . . . it must be heard here in Washington. One man, one vote and we cannot accept anything less.

Six years ago, I decided that Puerto Rico could not remain indifferent towards the low participation rate of our brothers and sisters in the political process within their own communities in the States. Two years later, through the Commonwealth offices in New York City, we were conducting a massive "voter registration" and "get out the vote" campaigns in that city. We called this initiative "Atrévete" and we are currently conducting it in the principal Puerto Rican communities across the United States.

The results are extremely rewarding. Puerto Ricans registered to vote increased from 324,000 in 1988 to over 500,000 in 1991, an increase of 38%. The percentage of Puerto Ricans actually voting in New York's mayoral election increased from 33% in 1985 to 55.2% in 1989. In 1991, we have increased the proportion of city councils from 8.5% to 20% in New York City; from 18% to 33% in Hartford, Connecticut; from 0% to 20% in Vineland, New Jersey; and from 0% to 40% in Camden, New Jersey.

The lady who helped Puerto Rico accomplish this extraordinary feat is here with us. Her name is Nydia Velázquez and I would like to congratulate her for a job well done.

Mexicans, Puerto Ricans, Cubans, Dominicans, Central and South Americans who live in the United States must step up these efforts. This Hispanic PAC must build a first rate political network of organizers and fundraisers to support these campaigns. We must reinforce and expand these endeavors across every Hispanic community in the United States.

But the experience of our "Atrévete" program leads me to encourage each member of this Hispanic PAC to look into the new

interrelations between Hispanics in the United States and their countries of origin. The nature of the economic relations between these countries and the United States is becoming critical to the future prosperity of the entire Hemisphere. It is in our roots, where our strength lies.

The United States, despite its vast internal market, cannot be indifferent to the lessons learned from the European Community. It is already in the early stages of a Hemisphere-wide approach to economic growth and prosperity. The global economic momentum is moving steadily toward economic association within nations and trade liberalization. Mexico, Canada and the United States are currently hammering out a free trade pact that will create a giant market with a population of 360 million and a combined gross product of 6 trillion dollars.

Similar changes are taking place south of the Rio Grande. The Central American countries are currently building on their common market experience of the 60's and 70's. The English-speaking countries of the Caribbean are expected to create a common market by the beginning of 1994. The Caribbean countries have also entered into a free trade agreement with Venezuela that will phase out tariffs on Venezuela's import from the Caribbean over the next five years. In South America, the member countries of the Andean Pact—Bolivia, Colombia, Ecuador, Peru and Venezuela—are planning to form a common market by 1995. Similarly, the four countries of Southern Cone—Argentina, Brazil, Paraguay and Uruguay—have signed a treaty to start a common market during this decade. More recently, Mexico and Chile signed a free trade agreement that is expected to double the existing trade between these two countries by the end of this decade.

The Commonwealth of Puerto Rico is also preparing itself to successfully face the new economic challenges; not only to strengthen the position of our Commonwealth, but to share our prosperity with others. A prosperous Latin America means a prosperous partner in our economic and social development at home.

Under my administration the Commonwealth of Puerto Rico has been sharing its more important economic tools with other Caribbean countries, with a positive result for both—Puerto Rico and the Region. We have shared the 936 tax benefits through our twin plan concept and the 936 funds are being used to finance projects in eligible CBI countries. Our Caribbean Development program has promoted more than \$862 million in investments in CBI countries, which means over 21,000 additional jobs in the region. The end result—Puerto Rico is better off today and so are the other Caribbean countries.

On a hemisphere-wide basis, President Bush has proposed the Enterprise for the Americas Initiative, which envisions the creation of a free-trade zone "stretching from Anchorage, Alaska to Tierra del Fuego in Argentina". Since June of 1990, the Initiative has gained rapid momentum. The United States has signed 28 framework trade agreements, including regional pacts with the Caribbean countries and the Southern Cone governments. Duty-free entry to the United States market provided by the United States Caribbean Basin Initiative (CBI) was expanded in October of last year, and in December the United States Congress passed, and the President signed into law, the Andean Trade Preference Act, extending duty-free coverage, similar to the one offered by the CBI products from the Andean region.

Hispanics in the United States have the responsibility to direct and move forward these initiatives since these new associations will bring an enormous political strength to our movement at home. We cannot afford to be left out of the important negotiations currently taking place. Hispanics must have a word on what could be our greatest asset for improving the quality of life that Hispanics deserve in this Country. We must demand participation.

The changing face of the world economy forces us to develop a political strategy with a two pronged approach: at home we must reinforce our grass root operations, abroad we must strengthen our bonds with other Hispanics countries. If we are to have an integrated market in this Hemisphere, where the vast majority of the population will be Hispanic, we must act now to ensure that our communities play a leadership role in the economic, social and political developments in the years to come.

The political strength of the Hispanic population in the United States depends on the degree of internal unity and the magnitude of support from the countries of origin. Let us put an end to the low participation rate of our people. Let us never again be undercounted, underrepresented, or underestimated in any form. And above all let us look forward and move ahead to seize the new opportunities that are for the betterment not only of ourselves but also of this Nation.

Muchas Gracias.

A TRIBUTE TO FOUR RETIRED DOMINICAN NUNS

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I am pleased to recognize four retired Dominican nuns who have devoted most of their lives to God and to the happiness of others. After their arrival to Florida from Cuba in the 1960's, Sister Rose Rodriguez, Sister Mary Pilar, Sister Joanna, and Sister Nieves helped establish a parochial school, started a mission for migrants, and worked with migrant children. They were recently featured in The Miami Herald for the love and support they have provided in all their years of service to God. The article "Sisterhood" by Bea Moss tells of how their years in retirement still keeps them busy:

The four retired Dominican nuns who live in a quiet Westchester neighborhood now spent much of their time in prayer.

Once they taught in parochial schools, worked with migrant children and started a mission for migrants in Wachulla, Fla.

They still do good works.

Sister Rose Rodriguez, 85, Sister Mary Pilar, 90, Sister Johanna, 85, and Sister Nieves, 88, came to the United States from Cuba shortly after the revolution. The late Bishop Coleman Carroll of the Miami Archdiocese asked them to help open a school in the then new St. Timothy's parish.

Now Sister Nieves occupies some of her time knitting baby clothes on a small loom. She knits small three-inch squares and then sews them together into bonnets, booties and tiny jackets to give to parishioners and people in need. She also weaves shawls and decorative tissue covers.

"I've been doing this for many years, since I was a girl," said Sister Nieves, who learned

from a grandmother who raised her after her parents died.

KNITTING LESSONS

Now Sister Nieves is teaching Sister Johanna to knit.

"I just started a blanket," said Sister Johanna, glancing at Sister Nieves. "Sometimes, I do something wrong, and she takes it apart."

"She began making baptism outfits eight years ago after seeing an exhibit of handmade baby clothes," Sister Cecilia said. "All day Sister Nieves is knitting."

Sister Rosa helps with the household chores, and Sister Mary Pilar sits in a rocker fingering her rosary most of the time.

A housekeeper cooks for them in the neat home filled with religious objects, reminders of their faith.

Sister Cecilia, director of the Confraternity of Christian Doctrine at Gesu Church, looks after the women.

Sister Nieves always wanted to become a nun.

"I liked to see the nuns praying and singing when I was a girl," she said.

Sister Johanna, who originally came to the United States from Mexico, remembers seeing nuns in California.

"They were in their white habit and black cape, and I went to the priest and told him that's what I wanted to do," she said.

Later she went to Cuba, back to California, back to Cuba. She ended up in Florida.

PRAYING TOGETHER

Friends from Cuba, relatives and the Dominican order helped buy and furnish the home where they nuns live. Before they moved, they lived in a Catholic nursing home in South Dade.

"They have prayer together and meals, and the whole atmosphere is sort of a quiet, prayerful place for them," said Sister Denise, a school sister of Notre Dame who is vicar for the religious office in the archdiocese.

The house was bought by the Dominicans to care for their own, Sister Denise said. The archdiocese paid for their care at the nursing home.

The retired nuns also receive a small pension from the archdiocese for the years they served and taught in Florida.

Sometimes, the sisters talk of the days before they were forced to leave Cuba.

Sister Johanna misses the island, the community, the house she lived in there.

"Now everything is destroyed," she said.

Mr. Speaker, I commend these four Dominican nuns who in their commitment and recognition of others helped improve the life of so many. They are an inspiration to us all.

PORTUGAL ECONOMIC REPORT

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. HAMILTON. Mr. Speaker, I would like to bring to the attention of my colleagues a report on the Portuguese economy prepared by the Agency for International Development [AID] provided to the Congress pursuant to section 1205(b) of the International Security and Development Cooperation Act of 1985, as amended.

The report is an important summary of the remarkable transformation of the Portuguese

economy since 1974, and of the boom years in Portugal since accession to the European Community [EC] in 1986. Portugal has been the beneficiary of large financial inflows from the EC since 1986. Net financial flows to Portugal from the EC in 1990 totaled 1.6 percent of GDP, a sum in excess of \$900 million. Most of this funding was in the form of structural assistance to help modernize the physical infrastructure of the Portuguese economy. U.S. economic support fund assistance to Portugal in fiscal year 1990 totaled \$39.4 million, and in fiscal year 1991 \$42.6 million.

The report from AID, which was submitted to the Congress February 20, 1992, follows:

ECONOMIC REPORT TO THE CONGRESS—
PORTUGAL, JANUARY 1992
I. EXECUTIVE SUMMARY

Since 1974, Portugal has undergone a remarkable transformation, both economically and politically. It is now a pluralistic democratic state which is nearly fully integrated into the European Community (EC). Its policy performance under a recent IMF standby arrangement was exemplary. Real GDP growth was quite robust in the latter half of the 1980s, and even during the past two years of stagnation in the world economy. The unemployment rate in 1990 was below 5%; export volumes rose by over 12% (following a rise of nearly 20% in 1989). The Government has pursued a policy of prepaying its foreign debts, financed from privatization receipts. This has contributed to a decline in the country's debt-to-GDP ratio from 55% in 1986 to 31% in 1990. Direct investment grew by over eightfold during the same period; foreign reserves by nearly tenfold.

Problems do remain. Inflation hovers above 12%, reflecting expansionary fiscal policies and also labor shortages in some sectors. This has delayed convergence of inflation rates with other EC members, a prerequisite to being included in the European Monetary Union. But overall, especially given its ability to attract private foreign investment and the benefits of ever-closer integration into the EC, Portugal's economic prospects look exceptionally good. By 1990, GDP per domestic resident stood at \$5,670, which is approximately the same as South Korea's per capita GDP, according to IMF sources. In virtually every respect, it appears that Portugal has graduated from the ranks of developing countries.

II. ECONOMIC BACKGROUND AND POLICY SETTING

In the three years following the socialist revolution of April 1974, Portugal's political and economic systems were radically transformed. A representative political system was introduced and trade unions were legalized. In the economic sphere, however, three major institutional changes hampered Portugal's potential for sustained economic growth:

1. Under a comprehensive land reform, large farms in the central wheat-growing regions of the country were taken over by landless farmers and worker cooperatives.

2. Labor legislation was enacted making it extremely difficult to dismiss employees.

3. Banks, insurance and transportation companies, and large industrial companies were nationalized.

The public sector budget deficit expanded rapidly, partly to finance these nationalizations, and also due to large public sector wage increases; generous subsidies for food and fuel; large increases in government staff; and rapid expansions in public investment. These developments, alongside the 1974 oil

price shock, declining remittances and continuing political unrest, resulted in falling productivity and serious balance-of-payments difficulties.

Under an IMF stabilization program in 1978-80, Portugal initially succeeded in substantially reducing the balance-of-payments deficit, but did not make much progress in lowering the government's budget deficit. With a lapse in adjustment efforts in 1980-83, the annual inflation rate rose above 22%. In 1982, the budget deficit comprised 13% of GDP, and the payments current account deficit hit 14% of GDP.

These adverse circumstances convinced Portuguese officials to enter a second IMF-supported stabilization program in 1983-85. The program centered on deep cuts in aggregate demand through restrictive tax, expenditure and credit policies; sharp price adjustments; and crawling-peg devaluations to change relative prices in favor of the export sector. Stabilization was accompanied by recession, with real GDP falling by 0.3 percent during 1983 and another 1.6 percent during 1984. But the stabilization program, accompanied by structural reforms under the aegis of integration into the EC, laid the basis for a prolonged economic boom. (Portugal's economic performance from 1985-1991 is reviewed in Section IV.)

III. RELATIONS WITH THE EUROPEAN COMMUNITY

In 1986, Portugal and Spain acceded formally to the European Community (EC), providing those countries with virtually uninhibited access to the goods, capital and labor markets of other EC members. This launched them both on a sustained economic boom. Portugal's dramatic economic turnaround since 1985 has been based both on the very favorable external trade and investment environment created by the accession, and substantial structural adjustment assistance from the European Community.

Under the Articles of Accession, a transition period of seven years (ten years for agriculture) was allowed during which Portugal undertook to drop all trade and capital barriers against other EC members and adopt the Common Agricultural Policy. To assist the process of making Portugal a competitive member of the Community, sizable amounts of structural adjustment funds were provided. (See table, below.) Entry into the Community was thus a dynamic force for change in Portugal's economy, both through financial assistance and via the accompanying economic stabilization and structural adjustment conditions attached to the assistance. Large increases in private foreign investment were stimulated by a vastly improved level of business confidence, attributable both to Portugal's accession to the EC and to its successful implementation of economic stabilization and structural adjustment measures. Investment was also spurred by the country's low tax burden, which still ranks among the lowest in Europe.

Public financial flows from the Community into Portugal have grown to comprise more than 2% of GDP per annum:

PUBLIC FINANCIAL FLOWS FROM THE EC TO PORTUGAL
(In percent of GDP)

	1986	1987	1988	1989	1990
Net inflows	0.9	1.0	1.7	1.8	1.6
Gross inflows	1.1	1.8	2.4	2.4	2.4
of which, structural funds	1.0	1.4	1.9	2.0	2.0

Source: OECD.

These financial flows have been largely in the form of non-reimbursable grants. The IMF projects that annual disbursements of

EC Structural Funds alone will yield the equivalent of 2%-2.25% of GDP through 1993.

IV. ECONOMIC POLICIES AND PERFORMANCE IN THE 1980S

The economic policies adopted by Portuguese authorities in the early 1980s laid the basis for a dramatic turnaround in the economy after 1985. Although expansionary fiscal policies contributed to overheated domestic demand, with associated higher inflation levels and rising imports, exports grew dramatically, as did income from tourism and remittances. Foreign investment also rose rapidly. Important progress was made in privatization of public enterprises and accelerated foreign debt repayment.

Government finance

Portugal's large and persistent public sector borrowing requirement (PSBR) remained a threat to anti-inflationary efforts throughout much of the 1980s (Table I). Following the socialist revolution, rapid rises in public sector expenditures were followed by growing public debt and interest payments. Underlying problems included pervasive subsidies, a weak tax system and bloated public sector employment. The PSBR peaked at nearly 18% of GDP in 1985, then hovered in the 10% range until 1988. More rapid progress in reducing expenditures was retarded partly by disbursements of large net transfers from the EC, which requires matching budgetary outlays. For this reason, Portuguese authorities reportedly would prefer that the structural funds should be disbursed more slowly, in order not to contribute to higher budget deficits.

Much of the early progress in reducing the budget deficit resulted from increases in prices and reduced subsidies for food, feed, fertilizer and fuels. During 1983-85, most public enterprises were given freedom to raise prices in line with market developments and in accordance with their need to raise investment capital, reducing their dependence on the government budget. But prices for those products for which government retained control on average did not keep pace with inflation. Subsidy expenditures began to rise again in 1988, although in 1989 domestic prices for petroleum products were increased to conform with international prices.

In 1986, a new petroleum tax and the value added tax (VAT) were introduced, substituting for a complex array of earlier taxes. By 1989, it was estimated that implementation of the VAT system coupled with the rationalization of income taxes had yielded an increase in revenue equivalent to 1.2% of GDP. Improvements in government revenue, together sharply reduced borrowing by public enterprises, led to a decrease in the public sector borrowing requirement to a more acceptable 6.1% of GDP in 1989. The government's program to assume predetermined amounts of enterprise debt, and then retire it using privatization proceeds, was clearly a contributory factor: receipts from privatization in 1990 amounted to 2% of GDP, 80% of which was devoted to reduction of foreign public debt. The public sector borrowing requirement remained below 7% of GDP in 1990.

Monetary and exchange rate policies

The challenge for Portugal following completion of its IMF standby arrangement in 1985 was to improve coordination of fiscal and monetary policies, while deepening financial markets, liberalizing foreign exchange allocation and moving to indirect monetary controls. Considerable progress has been made in liberalization of banking, following a decade of being a state-con-

trolled monopoly, and in making the transition to less administered forms of monetary control. Measures exchange transactions, and introduction of various new financial instruments. The central bank was given authority to operate in the money market.

But persistently high government deficits have resulted in monetary policies inconsistent with the goal of inflation rate convergence with other EC members, a prerequisite to monetary union. One result was that inflation ticked up to double-digit levels again in 1989, necessitating a tightening of controls on credit. The exchange rate at that time was devalued on a "crawling-peg" policy, according to which aggregate nominal depreciation could not exceed 3% per annum. But large unanticipated capital inflows following the adoption of that policy led to progressive appreciation in the real effective exchange rate (Table I). In response, the government in October of 1990 adopted a more flexible exchange rate policy, together with more restrictive controls on capital inflows. Authorities believed that inclusion within the EC's Exchange Rate Mechanism, which would formally constrain the escudo vis-a-vis other EC currencies, would have to wait until a better anti-inflation policy mix had been obtained.

Privatization

The July 1987 election of the first single-party majority government since the 1974-75 revolution led to a series of measures designed to facilitate private sector activity and privatization. By March of 1988 the new government had ratified a law permitting the sale of up to 49% of the equity in state enterprises to private interests; this was revised in 1989 to allow the purchase of majority interests. Other laws opened additional sectors to private investment entry, including steel, petrochemicals, oil refining, transport, telecommunications, and energy. Separate laws were passed to increase the amount of privately owned land vis-a-vis that of co-

operatives and to open new sectors such as newspapers and radio broadcasting to private enterprise. Privatization revenues in 1990 were estimated to be in the range of 2% of GDP. Authorities authorized the participation of foreign investors in privatization actions, except in the case of financial institutions, which are to remain under domestic control.

V. RECENT ECONOMIC PERFORMANCE AND OUTLOOK

Portugal enjoyed strong economic performance in 1990, with real GDP rising by 4.4% and unemployment falling below 5%. GDP was estimated to have risen again by 3.2% in 1991. Exports volumes, after growing by nearly 20% in 1989, sustained an increase of nearly 13% in 1990; in terms of dollar value, exports grew by more than 25% on average annually in 1990/91 (Table II). Imports also picked up, shifting the external current account from a surplus of 0.4% of GDP into a deficit of 0.3%. Despite prepayments on the government's external debt and tightened controls on capital inflows from abroad, net capital inflows remained buoyant, and indeed, more than sufficient to cover the increased deficit on current account. Non-gold reserves rose by over 45% in 1990, bringing them to the equivalent of 7.6 months of imports, up from only 2 months in 1986.

The weakness in this performance stems from persistent inflation, which rose to 13.4% in 1990. Expansionary fiscal policy fueled excess demand, as reflected both by rising import demand and shortages in certain labor markets. Nontradeable goods prices rose by 19% in 1990. Labor shortages and the trade deficit were expected to continue to widen. Thus, the process of inflation convergence within the EC appears to be stalled, as are prospects for early inclusion in the European Monetary Union. Nonetheless, with recovery in important export markets, and with continuing improvements in receipts from services (including tourism),

the current account deficit in 1991 was not expected to exceed 1% of GDP. This amount was expected again to be more than financed by autonomous capital inflows, leading to a further buildup of official reserves.

In short, Portugal has turned in an exceptional economic performance, and looks set to continue doing so. Export growth has been phenomenal. Private foreign investment also is quite strong, buoyed by the economic policies that Portugal has pursued and by the country's ever-closer integration into the EC, which provides insurance that those policies will be sustained. By 1990, GDP per domestic resident¹ stood at \$5,670. By way of comparison, this is roughly equal to South Korea's per capita GDP (\$5,593 in 1990), according to IMF sources. In virtually every respect, it appears that Portugal has graduated from the ranks of developing countries.

¹ GDP per domestic resident excludes both expatriates and their remittances.

VI. DEBT-SERVICE PROSPECTS

Portugal's external debt burden has fallen substantially from its peak in 1985, when it constituted 81% of GDP. Restraint on new public and public-guaranteed borrowing, strong balance-of-payments results and solid GDP growth contributed to the decline in total debt to about 31% of GDP by end-1990 (Table III). Total external debt in comparison to Portugal's foreign exchange earnings fell even faster. Recent improvements in Portugal's debt-servicing burden are also reflected by the government prepayments made from 1986 onward, financed from privatization receipts.

Portugal should continue to have little difficulty in servicing its debts in the medium term, given strong autonomous capital inflows, remittances and net income on services account. Given Portugal's full EC membership, these sources of income look secure.

TABLE I.—GOVERNMENT OF PORTUGAL FINANCES¹

	[Billions of escudos]						
	1985	1986	1987	1988	1989	1990	1991
Current revenue	1,266	1,659	1,873	2,285	2,819	3,268	3,998
Taxes	1,178	1,510	1,685	2,103	2,485	2,919	3,487
Nontax revenue	88	149	187	182	334	349	511
Current expenditures	1,386	1,764	2,023	2,341	2,757	3,398	4,121
of which:							
Subsidies	144	131	98	110	127	128	511
Interest	285	405	452	467	510	698	864
Current balance	-120	-105	-151	-56	63	-131	-173
Capital revenue	272	115	41	23	101	109	173
Capital expenditure	396	317	298	334	473	553	665
Capital balance	-124	-202	-256	-311	-372	-444	-492
Overall balance	-244	-307	-407	-367	-309	-574	-665
PSBR ²	419	453	545	558	435	567	500
As percent of GDP:							
Current expenditure	39.3	39.9	39.1	39.0	38.5	39.8	40.8
Capital expenditure	11.2	7.2	5.7	5.6	6.6	6.5	6.6
Overall deficit	6.9	6.9	7.9	6.1	4.3	6.7	6.6
PSBR ²	11.9	10.2	10.5	9.3	6.1	6.6	4.9
Memorandum items:							
GDP (billions of escudos)	3,524	4,420	5,175	6,003	7,168	8,530	10,105
Inflation (consumer prices, excluding rent—percent)	19.3	11.7	9.4	9.7	12.6	13.4	12.4
Real eff. exchange rate	100.0	99.0	97.7	98.0	102.4	109.1	115.2

¹ Including central government, local governments and the social security system, but excluding public enterprises. Fiscal items in 1991 based on budget.

² Public sector borrowing requirement including public enterprises

³ provisional.

⁴ projected.

⁵ March 1991.

Source: International Monetary Fund, National Accounts basis.

TABLE II.—PORTUGAL: BALANCE OF PAYMENTS

	[Billions of U.S. dollars]				
	1986	1987	1988	1989	1990
Current account:					
Trade balance	-1,634	-3,581	-5,518	-4,865	-6,580
Merchandise exports	7,209	9,226	10,874	12,720	16,427
Merchandise imports	8,844	12,847	16,392	17,585	23,007

TABLE II.—PORTUGAL: BALANCE OF PAYMENTS—Continued
(Billions of U.S. dollars)

	1986	1987	1988	1989	1990
Services balance	-.032	.244	.631	.478	.957
Receipts	2.820	3.646	4.037	4.630	6.370
Payments	2.852	3.402	3.406	4.152	5.413
Transfers	2.810	3.786	4.322	4.540	5.484
Current account balance	1.144	.449	-1.066	.153	-139
Capital account:					
Direct investment	.239	.476	.842	1.653	1.984
Portfolio investment	.404	.816	1.814	1.050	.725
Other capital	-.891	-.604	-2.363	1.302	-1.003
Capital account balance	-.248	-.688	.293	4.005	1.706
Errors and omissions	-1.007	.639	1.640	.497	1.974
Overall balance	-.111	1.777	.867	4.645	3.542
Counterpart items:					
Reserve assets ¹ (- = increase)	.111	-1.521	-.365	-4.654	-3.542
IMF credits and loans (- = repayment)		-.256	-.502		
Memorandum items:					
Total reserves minus gold	1.456	3.327	5.127	9.952	14.485
Months of import coverage by (nongold) reserves	2.0	3.1	3.8	6.8	7.6

¹ Changes are not equal to change in levels of Total Reserves Minus Gold because of valuation changes.

Source: IMF, International Financial Statistics.

TABLE III.—PORTUGAL: EXTERNAL DEBT
(Millions of U.S. dollars)

	1986	1987	1988	1989	1990
Total	16,301	18,464	17,362	17,899	18,623
Short-term	1,429	2,199	2,595	2,901	2,546
Public enterprises	1,185	1,288	1,031	1,085	984
Other	244	1,911	1,564	1,813	1,562
Medium and long-term	14,872	16,265	14,767	14,998	16,077
General government	5,003	6,069	5,850	5,785	5,193
Bank of Portugal	846	594	5	1	
Non-financial public enterprises	7,025	7,509	6,942	6,378	7,179
Other monetary institutions	1,196	1,013	669	772	859
Other (including private)	802	1,080	1,301	2,062	2,546
Debt ratios:					
A (percent) ¹	55	50	42	39	31
B (percent) ²	125	109	89	81	66

¹ Debt/GDP.

² Debt/foreign exchange earnings (including exports of goods and services, and transfers).

Source: International Monetary Fund.

MIAMI FLUTE ENSEMBLE HONORED BY WHITE HOUSE

HON. ILEANA ROSLEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I am pleased to recognize the Wolfson Campus Pipers, the Miami-Dade Community College 16-member flute ensemble which received the honor of performing for the First Family at the White House's holiday open house. The ensemble was featured in the Miami Herald for this proud recognition.

The article, "MDCC Group Proud to Play for Top Brass" by Elizabeth Grudzinski, tells of how their love of the flute bonds them together to create the beautiful music they perform:

Four years ago, Zane Hobbs had never even picked up a musical instrument. Saturday, he will play the flute in the White House.

Hobbs, 35, is a member of the Wolfson Campus Pipers, a 16-member flute ensemble based at the downtown campus of Miami-Dade Community College. Several weeks ago, the group received an invitation to perform at the White House's holiday open house.

"I was totally flabbergasted," said Hobbs. "At first I thought it was a joke. But it's like a dream come true."

Love of the flute is the glue that binds this unlikely group together. The members came from an assortment of backgrounds and oc-

cupations. Hobbs is originally from Detroit and works as a Miami Beach lifeguard. Julie Delgado, 35, was born in a small town in the Philippines and is a critical-care nurse at Miami Heart Institute. Other group members include a professional musician, teachers and full-time music students.

Differences in background vanish when group members talk about their music.

"I'm just in love with music," said Delgado. "When I play the flute, it's an expression of myself. I would be incomplete without it."

"Music has always fascinated me," said Hobbs. "The flute has so pure and sweet a tone."

The Pipers were founded in the early 1970s by Althea Kaplan, professor of music at MDCC. The group performs music from the Renaissance and classical periods as well as show tunes and holiday music. They have played at malls and hospitals as well as "at the swanky places in town, like Vizcaya and the Miami City Ballet," said group member Brian Cook.

But nothing as swank as the White House. "We're just a little flute ensemble, and they want us to play at the White House?" wondered Arin Finocchiaro, 20. "My first reaction was, 'Are you sure it's THE White House?'"

The invitation was unexpected. Wolfson Campus President Dr. Eduardo Padron "got a call from the White House, asking us to play. I don't know how they found out about us," said Kaplan.

Prompting the invitation, according to a White House spokesperson, was a letter to Barbara Bush written by John Schmitz, vice chairman of the college's board of trustees.

"I was extremely impressed by the group, so I wrote and suggested that they should be invited to play at the White House," said Schmitz.

Mr. Speaker, I commend the Wolfson Campus Pipers for their incredible talent and dedication, traits which undoubtedly contributed to their success. Their music is an inspiration to all.

THE INTERNATIONAL MANAGEMENT AND DEVELOPMENT INSTITUTE [IMDI]

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. GILMAN. Mr. Speaker, I would like to draw attention and pay tribute to the International Management and Development Institute [IMDI], a nonprofit educational institute headquartered in Washington, DC. IMDI was founded 23 years ago by Gene E. Bradley, now the chairman of the organization, as a business-government partnership of coequals whose deliberations and voices are nonpartisan and nonadversarial.

IMDI's new president and CEO is Don Bonker, the distinguished former Representative from the State of Washington. As Members of this House know very well, Congressman Bonker was an exceptionally active participant in

and architect of many of the important issues before us. He is now bringing that same leadership and dynamism to his new position as president and CEO of IMDI.

IMDI's mission was—and is—to bring together international business and government leaders for dialogue and ideas which contribute to sound trade and investment policies. Many Members of Congress know about this first hand. Some 70 Senators and Congressmen are members of the Congressional Faculty and Partnership Committee of the Atlantic Corporate Committee of IMDI. They participate in sessions throughout the year with IMDI's corporate members from Europe and the United States.

IMDI is now embarked upon an urgent and timely goal: A comprehensive undertaking to prepare key policy statements and recommendations for its leadership meetings scheduled for March 17-18, 1993, in Washington, DC. This will, of course, coincide with the advent of the next Presidential administration and the new Congress.

IMDI's members have a clear sense of urgency at what they see as a critical turning point of both opportunity and danger. They are concerned that there appears to be no bold vision coming from Europe, the United States, or the Asia/Pacific in bringing about an integrated global trade and investment framework. Protectionist pressures threaten the conclusion of the Uruguay round of the trade talks. The emerging democracies of Eastern Europe and the former Soviet Union are struggling with their transitions. Clearly, new economic nationalism and protectionism will deal a severe blow to these nations' integration into the existing world trading system—with inevitable political consequences. It will be ironic—and tragic—if the old barriers of the cold war fall only to be replaced by new walls of trade and economic nationalism. After spending trillions to help bring about the collapse of the communist empire, it behooves the United States, Europe, and the Asia/Pacific to mobilize our best international corporate and government efforts to assure that these struggling nations make a successful transition to free enterprise and democratic institutions.

Mr. Speaker, the activities and efforts of IMDI are aimed at providing the opportunities and means to act together in achieving positive results through partnership. IMDI has just made a major contribution to addressing the critical issues of economic and trade warfare at its recent conference in London and Ditchley Park, England.

Former Prime Minister Margaret Thatcher spoke to conference participants and was awarded IMDI's Leadership Award for the 1980's. Her remarks underscored the West's accomplishments and the historical significance of communism giving way to the forces of democracy. At the same time, Prime Minister Thatcher emphasized that it is urgent and imperative to exercise leadership and work together to consolidate the opportunities which now exist. She stressed the importance of government-business partnership and the need for principles and consistency in these times of unprecedented change. Finally, she enjoined IMDI and other forces to work actively in forging the necessary bold vision and leadership.

Mr. Speaker, it was quite a group that was present at IMDI's recent conference. Participants included three members of Congress, the special assistant to the President and senior director for European Affairs at the National Security Council, the assistant United States Trade Representative for Japan and China, the European Commission's Ambassador to the United States, and top corporate leaders from both Europe and the United States. One of these corporate members, British Gas, extended generous hospitality throughout the conference. Conference results and recommendations, a summary of which follows, go to a much wider audience of IMDI's international membership of some 1,200 leaders. In addition to legislative and executive branch officials, included were trade and economic experts from academia, policy institutes and the media; corporate members from many nations; and fifty Ambassadors to the United States from both Europe and the Asia/Pacific.

Mr. Speaker, in order to more fully inform our colleagues of this recent conference, I request that the following summary of the main points and proposals at IMDI's Ditchley Park Conference, February 15-16, 1992, be inserted at this point in the RECORD.

Overriding threat of economic nationalism—In their surveys, participants ranked as very high the threat of economic nationalism and the failure of the Uruguay Round of the trade talks. Discussion of specific U.S.-Japan and European-Japan trade problems led to a general assessment of the danger of economic nationalism escalating into international disputes. The new protectionism is seen as coming from both the left and right of the political spectrum.

Need for New Approach to GATT—Participants believe there is a need for different approaches to the Gatt, ways of getting beyond the present gridlock. The world is shifting from security threats to economic competition and trade tensions accordingly arise. A new high-level initiative could inject needed political will to bring the GATT and U.S.-Japan-European trade and investment issues into a more harmonious balance. This would favorably impact trans-Atlantic and trans-Pacific political/security issues as well.

Role of Agriculture—Participants noted that agricultural interests in all of the affected countries have considerable clout and that agriculture's linkage with other issues cannot be dismissed. At the same time, ways need to be found to keep the relatively small agricultural components of national economies from undermining agreement on the much larger issues in international trade and investment.

Dangers to Emerging Democracies—After spending trillions on the Cold War and witnessing the demise of communism, participants believe the West must better mobilize to assist the emerging democracies of East Europe and the former Soviet Union. These nations would be dealt a severe blow by protectionism and economic nationalism. Their integration into the western trading system offers the best prospects for making the painful transition from the command economies to free enterprise. Governments, the G-7, the IMF and other institutions need to do more. Participants see a meaningful role for the private sector in assisting Eastern Europe and the new states of the former U.S.S.R.

A New Initiative is Possible—Participants believe that IMDI itself can provide the scope and structure for an activist, cor-

porate-driven group to accelerate the process of transition in Eastern Europe and the former U.S.S.R. IMDI will outline the founding of a center which could act as a catalyst between the emerging private sectors and governments in those countries, on the one hand, and businesses, foundations, and government circles in Europe, the U.S. and Japan, on the other.

Shared Leadership—The United States can and should no longer carry the entire leadership burden. Europe must become a full partner, a co-pillar in the now significantly changed political and security environment. Japan will also have to play more of a global partnership role.

Business-Government Partnership—Corporate and government leaders must work together in these demanding times. More than before, the business community will be the flag carrier of international politics. Government cannot be expected to come up with all the answers. Corporate participants emphasized their need to operate 24 hours a day regardless of delays in governments' policies and decisions. Participants believed that corporate leaders should sound off and take a greater role on key issues, particularly when various governments are preoccupied with political and electoral considerations.

Role of IMDI—Participants agreed that IMDI's importance for the times derives primarily from its being a corporate-driven, neutral forum. Its Washington activities and the Ditchley conference illustrate the fact that IMDI is a transmission belt for business to carry its concerns and issues to government partners and leaders, and vice versa.

Mr. Speaker, I believe the foregoing conveys the essence of what IMDI is all about. It stresses the need for a bold new vision to deal with immediate challenges. It is concerned about slippage on both the trade and economic front and sees us plagued by what it calls the FUD factor, namely Fear, Uncertainty, and Doubt. It believes that America, Europe, and the global economic community stand poised at an exciting, promising, yet highly dangerous turning point in human history.

IMDI members believe we can begin to prepare a design of a bold new vision. A critical moment for presenting this design will be when IMDI meets with the new leadership of the White House and Congress on March 17-18, 1993, during the important first hundred days following the U.S. elections. At that point, IMDI will present and discuss its next "White Paper/Special Report to the President and Congress of the United States." This mission of vision is what IMDI is all about. With it, we can begin getting down to working out the details. The devil may indeed lie in the details, but IMDI sees a much bigger devil in lack of a vision to get going.

WHO'S LOSING RUSSIA?

HON. HARRY A. JOHNSTON II

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. JOHNSTON of Florida. Mr. Speaker, former President Nixon asked:

What has the United States * * * done so far to help Russia's first democratic, free-

market oriented, non-expansionist government?

His answer: Some grain, a few Peace Corps volunteers and an easy "photo-op" international conference, comprising a "pathetically inadequate" response to the changes in the former Soviet Union.

While I am not accustomed to quoting President Nixon, I believe that his recent memorandum entitled "How to Lose the Cold War" is a devastating commentary on this Administration's policy toward Russia and the other former Soviet republics. Mr. Nixon makes a strong case that our stake in the success of President Boris Yeltsin's reforms is enormous, but that our response to date has been slow, timid, and superficial. As he says, "The hot-button issue in the 1950's was, 'Who Lost China?' If Yeltsin goes down, the question of 'who lost Russia' will be an infinitely more devastating issue in the 1990's."

I highly recommend to my colleagues the following articles from today's New York Times—one by the Times' Thomas Friedman and the other by National Public Radio's Daniel Schorr—which summarize Mr. Nixon's views and provide excellent analyses of President Bush's growing failure to seize this historic moment.

[From the New York Times, Mar. 10, 1992]

NIXON SCOFFS AT LEVEL OF SUPPORT FOR
RUSSIAN DEMOCRACY BY BUSH

(By Thomas L. Friedman)

WASHINGTON, March 9.—Former President Richard M. Nixon has sharply criticized President Bush and Secretary of State James A. Baker 3d for what he calls the Administration's pathetic support of the democratic revolution in Russia. He says one of the historic opportunities of this century is being missed.

In a memorandum circulated among friends and foreign affairs experts, Mr. Nixon faults Mr. Bush and other candidates for virtually ignoring the issue in the Presidential campaign.

Mr. Nixon argues passionately that if President Boris N. Yeltsin fails in his effort to transform Russia into a free-market democracy, everything that has been gained in the peaceful revolution there in 1991 will be lost. He said that would weaken democratic forces and embolden dictators from China to Eastern Europe and from the Middle East to Korea.

AS IF A PENNY-ANTE GAME

Despite having so much at stake, Mr. Nixon says, the Bush Administration's support for Russia in some areas is comparable to assistance extended to a small country like Burkina Faso, formerly Upper Volta.

"The stakes are high, and we are playing as if it were a penny-ante game," Mr. Nixon said.

While not mentioning Mr. Bush or Mr. Baker by name in his critical passages, Mr. Nixon leaves no doubt about the way he feels they have inadequately supported President Yeltsin. The Administration's support has been primarily \$3.75 billion in commercial credits to buy American grain, and an international aid conference in Washington that produced a onetime airlift made up of medical supplies and enough leftover Persian Gulf war rations to feed Moscow for one day.

'PHOTO-OPPORTUNITY' PARLEY

"What has the United States and the West done so far to help Russia's first democratic, free-market oriented, none-expansionist gov-

ernment?" Mr. Nixon asks in the memo. "We have provided credits for the purchase of agricultural products. We have held a photo-opportunity international conference of 57 foreign secretaries that was long on rhetoric but short on action."

"We have decided to send two hundred Peace Corps volunteers—a generous action if the target of our aid were a small country like Upper Volta but mere tokenism if applied to Russia, a nation of almost 200 million people covering one-seventh of the world's landmass," he added. "This a pathetically inadequate response in light of the opportunities and dangers we face in the crisis in the former Soviet Union."

Mr. Nixon argued that the United States and its Western allies should provide much larger amounts of humanitarian aid, reschedule the debts incurred by the former Soviet Union until the new market economy begins to function, and create a multi-billion dollar fund to help stabilize the Russian ruble as soon as Russia gets control of its money supply.

His critique comes at a time when Mr. Bush has almost forsaken the foreign policy front as he concentrates on his re-election. Administration foreign policy experts have been complaining privately that the President has become so concerned about the isolation trends in the country—which his main Republican rival, Patrick J. Buchanan, has been encouraging—that he has not only muted his support for foreign aid and increased assistance to the former Soviet lands, but he has also virtually stopped talking about foreign policy at all, except to extol the victory in the gulf war.

The only reason that the Administration now has \$400 million to spend in helping Russia and the other republics dismantle their nuclear weapons is because the money was pushed through by Congressional Democrats last year, without the support of Mr. Baker or Mr. Bush.

TAKING ISSUES TO VOTERS

Congressional leaders have told the Administration that if it wants a 1992 foreign aid bill that will include such things as money for international peacekeeping operations and increased contributions to the International Monetary Fund so it can help Russia, the President is going to have to get out and fight for it in Congress and with the public.

"The American people overwhelmingly oppose all foreign aid because they want to see that money spent on solving our problems at home," said Mr. Nixon, who published a sanitized, much less critical version of his memo in Time magazine this week. "But the mark of great political leadership is not simply to support what is popular, but to make what is unpopular popular if that serves America's national interest."

"What seems politically profitable in the short term may prove costly in the long term," he added. "The hot-button issue in the 1950's was 'Who lost China?' If Yeltsin goes down, the question 'Who lost Russia?' will be an infinitely more devastating issue in the 1990's."

The Democratic Presidential candidates, none of whom have much foreign policy experience, have not been much more aggressive than the President on the Russian aid issue. While all have said that Russia and the other former Soviet republics should be helped in their move toward democracy, none has made the issue a centerpiece of his election campaign or pushed it as a major item in his campaign advertising.

Mr. Nixon's memorandum is the latest of many public policy pronouncements that

have helped to refurbish the image of the former President, who resigned in disgrace in 1974 over the Watergate scandal. Mr. Nixon has also just published a book, "Seize the Moment: America's Challenge in a One-Superpower World."

He begins his analysis in the memo by writing, "While the candidates have addressed scores of significant issues in this Presidential campaign, the most important issue since the end of World War II—the fate of the political and economic reforms in Russia—has been virtually ignored."

What will determine whether "the final battle of the cold war will be won or lost," he argued, is whether "President Yeltsin's economic reforms succeed in creating a successful free-market economy."

If Mr. Yeltsin fails, Mr. Nixon said, "war could break out in the former Soviet Union as the new despots use force to restore the 'historical borders' of Russia."

"The new East European democracies would be imperiled," he continued. "China's totalitarians would breathe a sigh of relief. The new Russian regime—whose leaders would cozy up to the Soviet Union's former clients in Iraq, Syria, Libya and North Korea—would threaten our interests in hot spots around the world."

In light of these stakes, "the West must do everything it can to help President Yeltsin succeed."

SIX STEPS OUTLINED

"The bottom line," Mr. Nixon said, "is that Yeltsin is the most pro-Western leader of Russia in history." He said the West must help the Yeltsin Government in six ways:

By providing humanitarian food and medical aid to get the Russian Government through the critical months until the reforms start working.

By creating a "free-enterprise corps" that will send thousands of Western managers to Russia to infuse newly independent enterprises with capitalists tools.

By rescheduling Soviet debt incurred under President Michael S. Gorbachev and defer interest payments until the new market economy begins to function.

By allowing greater access to Western markets for Russia's exports.

By joining with other industrial nations "to provide tens of billions of dollars for currency stabilization through the I.M.F. as soon as Russia gets control of its money supply."

By creating a single Western-led organization to coordinate government and private aid to Russia and other republics, as the United States did in rebuilding Europe after World War II.

The Nixon Library is holding a two-day foreign policy conference in Washington starting Wednesday, and Mr. Bush will be giving the keynote address. This may explain why the last paragraph in his analysis contains the only explicit reference to the President:

"President Bush is uniquely qualified to meet this challenge," Mr. Nixon said, because the leadership he exhibited in the gulf war "can insure that the cold war will end not with just the defeat of Communism but also with the victory of freedom."

[From the New York Times, March 10, 1992]

HOW TO LOSE THE COLD WAR

(By Daniel Schorr)

WASHINGTON—President Bush, on the defensive against "America Firster" Patrick Buchanan and "America Come Home" Democrats, is in danger of snatching defeat from the jaws of cold war victory.

Says who? Says Richard M. Nixon, that's who.

The former President is coming to Washington tomorrow for a conference organized by his Presidential library on "America's changing role in the world." A memorandum he has privately circulated in advance is titled "How To Lose the Cold War." It makes clear that he is planning a head-on challenge to the Bush Administration's faltering response to the crisis in the former Soviet Union.

The strikingly blunt four-page memorandum suggests that the Pentagon planners who, according to an article in this newspaper on Sunday, foresee a world where America is No. 1 and internal upheaval in the former U.S.S.R. is nothing to worry about, are not living in the real world.

In the real world, according to Mr. Nixon, if reform fails to produce a better life for Russia and the other former Soviet Republics, "a new and more dangerous despotism will take power, with the people trading freedom for security and entrusting their future to old hands with new faces."

"The West," Mr. Nixon says, "has failed so far to seize the moment to shape the history of the next half-century. * * * If [Russian President Boris] Yeltsin fails, the prospects for the next 50 years will turn grim. The Russian people will not turn back to Communism. But a new, more dangerous despotism based on extremist Russian nationalism will take power. * * * If a new despotism prevails, everything gained in the great peaceful revolution of 1991 will be lost. War could break out in the former Soviet Union as the new despots use force to restore the 'historical borders' of Russia."

In his scary scenario of a reconstituted nationalist Russia, Mr. Nixon sees renewed threats around the world, from former Soviet clients like Iraq, Syria, Libya and North Korea, contributing to a spread of conventional weapons, ballistic missiles and nuclear technology.

"If freedom falls in Russia," the memorandum says, "we will see the tide of freedom that has been sweeping over the world begin to ebb, and dictatorship rather than democracy will be the wave of the future."

Mr. Nixon, never one to understate his case, is clearly seeking to jolt the Bush Administration into accepting the survival and success of President Yeltsin as something like a national emergency for the United States. For Mr. Nixon, there may be unconscious self-identification with Boris Yeltsin when he writes, "like all strong leaders who try to make a difference, Mr. Yeltsin is not perfect. He has made serious mistakes. But he is an extraordinary historic figure."

What the U.S. and the West so far have done to aid Yeltsin's Russia—grain credits, a "photo-opportunity international conference" in Washington in January, an airlift of surplus food, a Peace Corps contingent—Mr. Nixon views as a "pathetically inadequate response in light of the opportunities and dangers we face in the crisis in the former Soviet Union."

The former President proposes a "crucial" six-point program including humanitarian food and medical aid; a "free enterprise corps" of Western-managers to help with free market skills; the rescheduling of the Soviet debt and interest payments; greater access for Russian exports to Western markets; participation in a ruble stabilization fund, and the creation of a single Western organization to coordinate governmental and private aid projects.

The U.S., he continues, must "provide the leadership" and "bear our share of the bur-

den." Mr. Nixon warns: "The stakes are high and we are playing as if it were a penny-ante game."

Directly challenging President Bush, the former President acknowledges the current unpopularity of foreign aid and asserts that "the mark of great political leadership is not simply to support what is popular but to make what is unpopular popular if that serves America's national interest."

"President Bush is uniquely qualified to meet this challenge," says Mr. Nixon. "The brilliant leadership he demonstrated in mobilizing the coalition abroad and the American people at home to win victory in the Persian Gulf can insure that the cold war will end not just with the defeat of Communism, but also with the victory of freedom."

However flattering the wording of Mr. Nixon's challenge, it is bound to add to President Bush's predicament. He, too, has been lavish in praise of President Yeltsin, but has shown himself hesitant to make any substantial investment in the success of the new Russian Government.

In December, the Administration failed to support a move in Congress to designate \$1 billion in the defense budget for disarming nuclear weapons and avoiding an atomic "brain drain" in the former Soviet Union. Since then, the Administration has proposed a \$25 million institute in Moscow to employ some of the thousands of nuclear scientists and technicians left jobless by the country's breakup.

But this falls woefully short of the need. As Mr. Nixon noted, American assistance has been largely symbolic. The Administration has been less than vigorous in pressing Congress to make good on President Bush's pledge to increase resources of the International Monetary Fund to help finance assistance to the former Soviet republics.

More preoccupied with his candidacy than with his Presidency, Mr. Bush has shown little inclination to come more dramatically to Russia's support. And Mr. Nixon by implication criticizes the President for becoming too preoccupied with domestic issues. "Tinkering with the tax code or launching new domestic initiatives will have little economic significance," he says, "if a new hostile despotism in Russia forces the West to rearm."

It is ironic that the President should find himself in a foreign policy face-off with both an interventionist Republican predecessor and an isolationist Republican aspirant, but not with his Democratic opponents. Mr. Bush has been under some criticism in Congress, notably from Representative Les Aspin, Democrat of Wisconsin and Chairman of the House Armed Services Committee, for an inadequate response to the crisis in the former Soviet Union. But the Democratic candidates, who collectively have little foreign policy experience, have tended to concentrate on domestic issues. So Mr. Nixon stands almost alone in flinging down the interventionist gauntlet to a President who has seemed more worried about isolationist sentiment.

As chilling a warning as any is this statement from Mr. Nixon: "The hot button issue in the 1950's was, 'Who lost China?' If Mr. Yeltsin goes down, the question of 'Who Lost Russia?' will be an infinitely more devastating issue in the 1990's."

Mr. Nixon has also made sure that the incumbent will not be able to duck the question. Tomorrow, the former President will give the keynote speech at his conference. (The printed program lists him as "President

Richard Nixon.") The scheduled speaker at the dinner that evening is President Bush.

It has been a long time since Mr. Nixon positioned himself so well to shake up the policy of a Republican Administration. The two will undoubtedly have a lot to talk about at the dinner table.

TRIBUTE TO EUFAULA, AL,
PRESERVATIONISTS

HON. WILLIAM L. DICKINSON

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. DICKINSON. Mr. Speaker, today I would like to pay tribute to five residents of the Second Congressional District who were recently honored by the Alabama Historical Commission for their historic preservation efforts. The commission, celebrating its 25th year, named Douglas C. Purcell, Mrs. George Alexander, L.Y. Dean III, Mrs. Carl Strang, and Joel P. Smith Silver Anniversary Award recipients.

These recipients are all citizens of the beautiful, historic town of Eufaula, AL where preservation efforts were begun prior to the creation of the historical commission by the Alabama State Legislature. The activities of these award winners have been vital to ongoing preservation activities in the Eufaula area.

Mrs. Strang chaired the first Eufaula Pilgrimage in 1966. She has also been active in the Eufaula Heritage Association and has served on the board of the Historic Chattahoochee Commission. While serving on the commission she was instrumental in the publication of historic books and pamphlets devoted to the Lower Chattahoochee River Valley's history.

Mrs. Alexander had a leading role in obtaining grant funds for and conducting a historic buildings survey in Eufaula. She successfully nominated the Seth Lore Historic District and Glenville's historic district for recognition on the National Register of Historic Places. She also helped to secure a HUD grant for the restoration of the antebellum Wellborn House, the area's first Greek revival mansion.

Mr. Purcell serves as Alabama adviser to the National Trust for Historic Preservation and has been nationally recognized. He was an organizer of the Historic Chattahoochee Commission, for which the first bi-State compact for a preservation commission was passed by Congress. He has published an article in a recent issue of Historic Preservation Forum. He is past president of the Alabama Preservation Alliance and a frequent speaker at regional and national heritage tourism conferences.

Mr. Dean, president of Eufaula Bank and Trust, set the bank's policy of making generous loans at low rates to foster historic restoration projects. He has become an avid spokesman for historic preservation in Alabama.

Mr. Smith, a past president of the Heritage Association, has authored several articles about Eufaula's historic properties and the Eufaula Pilgrimage. He has twice received the Alabama Historical Commission's distinguished preservation award. He and his wife, Ann, were charter members of the Alabama

Live-In-A-Landmark Council. Smith also restored the Lampley-Robinson pioneer cottage, which now houses the offices of "The Eufaula Tribune."

I ask Members of Congress to join with me in recognizing these citizens for their central roles in helping Eufaula become "Symbol of the Old South" while remaining "Cradle of the New."

[From the Eufaula Tribune, Dec. 11, 1991]

FIVE HONORED FOR HISTORIC PRESERVATION EFFORTS

Five Eufaulians were among Alabama's historic preservationists honored in Montgomery during the Alabama Historical Commission's historic preservation conference, celebrating the commission's 25th anniversary.

Silver anniversary awards were given in honor of Alabama's pioneer preservationists. Those from Barbour County who were recognized were: Douglas C. Purcell, Mrs. George Alexander, L.Y. Dean III, Mrs. Carl Strang and Joel P. Smith.

Several of the Eufaulians' involvement with historic preservation began before the Historical Commission was chartered by the Alabama Legislature.

Progress and preservation have gone hand in glove in historic Eufaula. Following the impoundment of the Chattahoochee River, and creation of Lake Eufaula, progress became so rapid—with construction of new inland docks, big industries, new motels, apartments and new homes—heritage-conscious Eufaulians worried about old landmarks being destroyed to make way for new buildings. Other vintage buildings were victims of demolition by neglect.

When a house-wrecking crew demolished the antebellum home of Gov. William Jelks, many local people began to wonder if something couldn't be done to preserve some of the town's proud old buildings. When Shorter Mansion was placed on the auction block in the summer of 1965, a small group appealed to the Eufaula City Council. Mayor E.H. Graves Jr. appointed Joel P. Smith, Tribune publisher, chairman of a citizens' committee to look into the possibility of bidding on the Greek Revival-style mansion on North Eufaula Avenue.

They purchased the showplace with its handsome Corinthian columns, for \$33,000. Townspeople pledged or gave more than \$50,000 toward preserving the mansion that was admired by tourists. "The Eufaula Heritage Association was born, not organized," President Yank Dean often quipped. He served as Heritage Association president and Mrs. Strang served as vice-president until 1972 when Smith and Mrs. Martha Houston were elected to the respective offices.

Dean, president of EB&T, maintained Eufaula didn't need a revolving fund, as did Savannah, where endangered landmarks were purchased. The bank made generous loans at low rates to foster restoration projects. He became a spokesman for historic preservation in Alabama.

Mrs. Strang chaired the first Eufaula Pilgrimage, 27 years ago. She helped organize the community and a small army of Eufaula ladies, dressed in period costumes, hosted the 2,000 visitors who came to the Bluff City's first tour of homes in 1966. She insisted the Heritage Association be led by successful men in the community, fearing it could evolve into an historical society rather than a preservation-oriented organization.

Mrs. Strang also served on the Historic Chattahoochee Commission's board and played a leading role with the commission's

publication of historic books donated to the Lower Chattahoochee Valley's history and pamphlets promoting the basin's historic properties.

Mrs. Alexander assisted AHC director Warner Floyd in seeking a grant to fund an historic buildings survey in Eufaula. She and Mildred Houston worked with volunteers who researched the deeds on the town's historic buildings. She also did necessary paperwork to successfully nominate the Seth Lore Historic District and Glennville's historic district to the National Register of Historic Places.

She completed research for an application for a HUD grant to restore the antebellum Wellborn House, the area's first Greek Revival mansion. The Eufaula Arts Council moved from Orange Street to Front Street, where it was restored as an art museum.

Purcell, Alabama advisor to the National Trust for Historic Preservation, is a nationally-recognized preservationist. The fledgling Historic Chattahoochee Commission was organized under his directorship and the first bi-state compact for a preservation commission was passed by Congress. Historic Preservation Forum recently published his article on the Chattahoochee Commission's operations, and he is a frequent speaker at regional and national heritage tourism conferences. He is a past president of the Alabama Preservation Alliance.

Smith is a past president of the Heritage Association and has written several magazine articles, including one in Antiques magazine, about Eufaula's historic properties and the Eufaula Pilgrimage. Twice he received the Alabama Historical Commission's distinguished preservation award and he and Mrs. Smith were charter members of the Alabama Live In A Landmark Council. Once the award was shared with his wife, Ann. They often open their antebellum home they restored for the Pilgrimage and other, preservation events. Smith also restored and adapted the Lampley-Robinson pioneer cottage as offices for The Eufaula Tribune.

TRIBUTE TO SY MAXWELL

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. BERMAN. Mr. Speaker, I rise today to pay tribute to an outstanding leader and my good friend—Sy Maxwell. The Boys and Girls Club of the San Fernando Valley will be honoring Sy with the prestigious Golden Man Award in recognition of his outstanding service to the children of the San Fernando Valley.

Sy believes deeply in the work of the Boys and Girls Club and has long been an active member and officer of the board of directors. In recent years, he has served as vice president, secretary, and member of the executive committee.

Sy has earned his distinguished record of achievement in the San Fernando Valley. He has worked as an insurance broker and agent since 1955, and is the founder and present partner of a successful regional insurance firm. Sy has also diligently supported the Independent Insurance Agents & Brokers Association of California in a variety of capacities during his career. His longstanding commitment to the association includes distinguished serv-

ice as president of the San Fernando Valley Chapter in 1969 and 1970, first chairmanship of the professional liability and workers' compensation committees, as well as being a 20-year member of the legislative committee, the last 4 years as chairman. Most recently Sy has served as member of the board of directors.

Throughout his life, Sy has consistently put his commitment to improving the quality of life in our community ahead of personal or material gain. He has set exemplary standards of excellence not only in his professional career, but in his private life through his tireless efforts on behalf of numerous community and social issues. He is founder and member of the board of directors of Insurance Council for the City of Hope and past president of its Club 500. He is also past president of the Beverly Hills Business & Professional Mens Association.

Sy and his lovely wife Charlotte have four children who share our pride in his many accomplishments. It is my distinct honor to ask my colleagues to join me in saluting Sy Maxwell whose many years of community service are an inspiration to us all.

DR. DANIEL MINTZ: A CARING PHYSICIAN WITH A MISSION

HON. ILEANA ROSLEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROSLEHTINEN. Mr. Speaker, I would like to pay tribute to a physician who has devoted over two decades in the research and development of a cure to a disease which kills 300,000 Americans a year, children and adults alike, and has become the third leading cause of death in the United States. The disease is diabetes and the physician is Dr. Daniel Mintz, director of the Diabetes Research Institute at the University of Miami.

Diabetes already affects 14 million Americans. The disease occurs when the body cannot produce its own insulin, which helps regulate blood-sugar levels and carbohydrates. It decreases the amount of energy provided to the body and can shorten a person's life.

Dr. Mintz and his team of 70 doctors and researchers have in the past few years astonished the medical community with a major accomplishment in the research of diabetes. They are now able to reverse diabetes in a procedure which involves transplanting insulin-producing islets into the patient's liver.

This procedure, which was first tested in a human patient in 1989, is merely in its developing stages. But Dr. Daniel Mintz has a mission: To quickly find a cure to this disease, an achievement that would allow patients to enjoy the freedom they so much desire.

This freedom might come sooner than expected. A \$60 million state-of-the-art diabetes research and treatment center is scheduled for completion next fall at the university's medical school campus. Dr. Mintz has recently begun recruiting 200 of the best scientists in the world to join his already prestigious staff. His ambition is to have these leading scientists and researchers work together to coordinate

their efforts, minimize duplication, and keep the program focused.

Dr. Mintz has great hopes for the future. I am confident that with his commitment and dedication, and that of his team of health care professionals, a cure to this devastating disease is imminent.

I am proud to have this opportunity to honor Dr. Daniel Mintz, a physician who deeply cares for his patients and understands their frustrations. His hope and devotion to his work is an inspiration to us all.

SALUTE TO THE SEABEES

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. GALLEGLY. Mr. Speaker, I am proud to rise today to honor the U.S. Navy Seabees as they mark their 50th anniversary, as well as the golden anniversary of the Naval Construction Battalion Center in Port Hueneme, CA.

Formed during the early days of World War II, the Seabees from the first letters of construction battalion—performed remarkable feats of construction during World War II, participating in every major invasion in both the Pacific and Atlantic theaters of operation. Military historians agree that the Seabees played a significant role in the Allied victory, particularly in the war against Japan.

After serving with distinction in both the Korean and Vietnam wars, the Seabees showed their can-do spirit during Operations Desert Shield and Desert Storm, where they provided swift assistance in moving equipment and supplies and building key facilities. They off-loaded Marine Corps equipment and supplies, built a 500-bed hospital, 10 camps, a prisoner of war compound, 3 galleys, 10 aircraft parking aprons, 2 runways, 2 hangars, 3 ammunition supply points, and 4 medical facilities.

In addition, by building 200 miles of four-lane highway in the sands of Saudi Arabia, the Seabees enabled our ground forces to achieve their incredibly successful end run against entrenched Iraqi forces. As President Bush said, our brave Seabees literally paved our way to victory.

Mr. Speaker, I ask my colleagues to join me in saluting the outstanding men and women of the Seabees, particularly those stationed at Port Hueneme, for their accomplishments and for their continued role in helping provide for the common defense.

COMMEMORATING THE 60TH ANNIVERSARY OF THE HUNGER MARCH

HON. JOHN D. DINGELL

OF MICHIGAN

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. DINGELL. Mr. Speaker, today we rise to commemorate a dark day in the history of the

American labor movement. March 7, 1992, marked the 60th anniversary of the hunger march staged by Detroit's Unemployed Councils at Ford Motor Co.'s Dearborn auto plant.

The hunger march was a watershed in the American labor movement. The dreadful events of the day served as a catalyst for change. The needless brutality raised public consciousness, helped to sweep Franklin Delano Roosevelt into office, and focused needed attention on the struggles of our working men and women.

On that bitter winter morning in 1932, during the height of the Great Depression, nearly 5,000 jobless workers from Ecorse, Detroit, River Rouge and countless other southeastern Michigan communities assembled in Detroit at Oakwood and Fort Street, and prepared to stage a hunger march on Ford's Dearborn auto plant to demand jobs, medical aid and emergency relief for the unemployed. As the procession entered the city of Dearborn, crossed Dix Avenue and approached gate three of the factory with the intention of delivering a petition to Ford officials, they were confronted by city firemen and police officers, who prepared to drench the crowd with fire hoses. The Dearborn police, perhaps nervous over rumors that the hunger marchers had been infiltrated by Communist agitators who intended violence, hurled tear gas canisters into the orderly procession. A few protesters picked up pieces of coal and rocks from the street to defend themselves against the police barrage. Without warning, from inside the gates of the plant, Dearborn police and guards from Ford Motor Co.'s infamous service department leveled their guns at the marchers and opened fire, spraying the crowd with hundreds of rounds of ammunition. In the chaos that ensued, several panicked protesters were trampled as the crowd bolted and ran. When the smoke had cleared, four people lay dead outside the plant's gates and over 50 unarmed demonstrators lay wounded and bleeding on Miller Road.

Instead of denouncing this attack on unarmed marchers, Dearborn and Detroit police officers used the incident as an excuse to launch a brutal crackdown on local workers, raiding the auto workers union headquarters, several ethnic meeting halls, and the homes of various union leaders. Police officers even went so far as to handcuff two of the seriously wounded hunger marchers to their hospital beds in a Detroit hospital on the premise that they were leftist agitators.

Five days later, nearly 60,000 people participated in a mass funeral procession for the slain hunger marchers. As they marched singing from Ferry Street to Grand Circus Park, their songs could be heard throughout the city.

The repercussions of March 7, 1932, were tremendous. While some in the business community used the incident as an excuse to charge Communist influence over unions, it is widely condemned even in most quarters of the business community as an unprovoked attack on unarmed, peaceful workers.

The 60th anniversary of the hunger march stands as a benchmark of how far working Americans have come, and as a rallying point for their continuing struggle. We ask our colleagues to join us today in remembering this dark anniversary and those who suffered and

died fighting for the dignity of working men and women in the United States.

This anniversary reminds us of both the struggles and the tremendous accomplishments of the American labor movement. Millions of American workers have contributed to the emergence of the United States as a world power and bolstered our Nation in times of hardship and prosperity. Organized labor has made vast strides over the past century by listening and tirelessly striving for fair working conditions and a decent standard of living for all Americans.

Organized labor has succeeded in bringing about legislation to require minimum wages, maximum hours, and progressive child labor laws. In addition, our labor movement has been instrumental in creating unemployment insurance in an effort to provide for the financial security of millions of wage earners. Through the force of collective bargaining and political organization, labor unions have often functioned as our social conscience, and engineered positive changes.

Additionally, the American labor movement has served as one of the foremost proponents of civil rights and legal services legislation and continually fought for increased Federal aid to education. In recent years, the labor movement has advocated comprehensive child care legislation, employer-provided family and medical leave legislation, and a national health care policy.

Labor's legislative successes have included the creation of the Occupational Safety and Health Administration, pension protection legislation, measures increasing the minimum wage, plant closing legislation, and polygraph testing protection measures.

The history of the labor movement in the United States serves as a source of immense pride. During the 60th anniversary of the hunger march, we pause to remember the major contributions working men and women in the labor movement have made, and will continue to make, in our everyday lives.

A TRIBUTE TO MENACHEM BEGIN

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. GILMAN. Mr. Speaker, earlier this week the world lost one of the premier leaders of the 20th century. Menachem Begin, a patriot who played a pivotal role in the development of Israel, will always be remembered as an outstanding national leader whose cherished beliefs helped to usher in a new world era.

The death of former Israeli Prime Minister Menachem Begin sadly brings the curtain down on an important chapter of Middle East history, and on a proud chapter in the history of Israel.

Prime Minister Begin was one of the few remaining survivors of that generation of Israeli freedom fighters who brought Israel's existence into being. His hard-nosed hawkish approach and his adherence to firmly rooted principles throughout his 50-year fight for Israel's integrity, began when he escaped the Nazis in 1942, after they had murdered his family.

David Ignatius, foreign editor of the Washington Post, writes of Begin in this morning's edition of that newspaper:

He was born into his generation of holocaust and redemption, and it was foolish of the Americans, let alone the Arabs, to imagine that they could ever sweet-talk Begin out of it, and into a sense of security and confidence that his entire history denied.

For Begin was a creation of his generation—a generation which Begin himself described as follows: "I survived 10 wars, two world wars, Soviet concentration camp, five years in the underground as a hunted man and 26 years in opposition in the Israeli parliament."

Menachem Begin, who survived hardships and horrors which seem almost unbelievable today, came to power as Prime Minister of Israel in 1977. The world trembled, for many feared that his hardline policies would undermine efforts for peace. Instead, his dedication to principles led to the only negotiated peace between Israel and any Arab State to date—an outstanding accomplishment which brought him the richly deserved 1978 Nobel Peace Prize, which he shared with Egypt's President, Anwar Sadat, who shared Begin's vision and courage.

Mr. speaker, I came to know Menachem Begin personally through my work on the House Foreign Affairs Committee. I had a high regard for his strong leadership and his dedication to his homeland and to the Israeli people.

He also came to be respected for his farsightedness, as exemplified by his bringing about Israel's destruction of the Iraqi processing plant where Saddam Hussein was assembling nuclear weapons. This act, in 1981, was widely criticized at the time. Subsequent events, however, proved Begin to be prescient.

Menachem Begin stepped down as Prime Minister of Israel in 1983. Sources close to him disclosed, after his death earlier this week, that he never forgave himself for being out of Israel on a mission to the United States, away from his family, when his wife died. Samuel Lewis, who was U.S. Ambassador to Israel, stated: "He always felt guilty, unfairly guilty, for not having been at her side."

Mr. Speaker, Menachem Begin's name will long appear in bold print in world history. I invite all of our colleagues to join with me in expressing condolences to his family, and do all of Israel, who have lost a genuine champion.

NATIONAL FOREIGN LANGUAGE WEEK

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. PANETTA. Mr. Speaker, I rise today to celebrate the 34th Annual National Foreign Language Week. National Foreign Language Week is designated every year as the first week in March and was first proclaimed by President Eisenhower in 1958 to acknowledge the importance of foreign languages as a key to understanding and opportunity.

As we approach the 21st century, our Nation faces global complexities and challenges never before countered in the history of mankind. As nations continue to become more interdependent, our citizens must possess the skills to effectively interact with our competitors, cooperate with our allies, and address our major world concerns. Support for foreign language acquisition and international education is particularly critical at this time due to the political and economic climate of our planet. Today's changing world conditions are focusing the attention of America on the inescapable reality of linguistic and cultural diversity—diversity which requires an increased commitment to prepare ourselves for the challenge of working harmoniously with other nations, and doing so in their language rather than demanding that they do it in ours.

Currently, the United States falls dangerously behind most other nations of the world in meeting the educational requirements which provide us with the necessary skills to communicate with other nations and understand other cultures. We are part of a global community and it is essential for people from the United States to communicate with others. Earlier foreign language instruction in American schools would give our youth better and broader professional opportunities. It would also create an essential awareness that the United States is not an island alone in the world. If we do not create that awareness, the United States faces a future less bright than our children deserve.

Americans have always lagged behind other countries in learning foreign languages, but rarely has the situation been so discouraging as it is today. Devoting the necessary years to understanding the ways of another country is the classic long-term investment: promoting expertise in foreign cultures is indisputably in the national interest. Peoples and languages which were once remote are no longer, for in many of our communities the strange sounds of unrecognizable languages and the sometimes misunderstood ways of other cultures are those of our neighbors. It is becoming increasingly apparent that we need knowledge and proficiency in other languages and cultures to cope on an everyday basis.

In recent years, I have had specific interest in helping to redress the lack of American competence in language and culture proficiency. During the last few Congresses, together with colleagues such as PAUL SIMON, CHRISTOPHER DODD, BILL BRADLEY, and GEORGE SANGMEISTER, I have introduced the National Security Through Foreign Language Assistance Act, the National Bureau of Language Services Act, the Foreign Language Assistance Act, the International Education for a Competitive America Act, and National Geography Awareness Week. Perhaps of greatest significance, for fiscal year 1991, Congress finally recognized the need to provide funding for the Foreign Language Assistance Act. I am very pleased that Congress approved increases in funding in this program, and title VI programs, which provide ongoing support for a broad category of foreign fellowships, research, study abroad, language and area studies centers, and centers abroad for intensive study of critical languages and cultures. It is these programs which provide the founda-

tion for foreign language and international studies education in U.S. higher education.

To help us enhance current education programs, create alternative education programs, assist small and medium businesses, encourage qualified teachers, and provide the necessary high level government expertise, I have introduced the Global Education Opportunities Act, H.R. 1154, which now has the support of 100 of my colleagues. Title I of this bill would provide in-service programs for foreign language teachers, training for elementary foreign language teachers, distance learning programs, the creation of state and municipal institutes to assist business and professions in gaining international competence, grants for developing materials in elementary foreign language, culture, geography, and international studies, and support for consortia in critical languages and area studies. Title II encourages undergraduate study abroad, makes it easier for students to use grants and other assistance for study abroad, and adds a study abroad dimension to other international programs. Such initiatives would provide a good start toward closing the gap between the rest of the world and the United States in international expertise and second language competency by the beginning of the 21st century.

Today we face a time in human existence that is truly a historical crossroads. We inhabit a globe characterized by terrorism, revolution, overpopulation, environmental degradation, widespread hunger, and regional warfare. We must seize the moment and begin now to develop the knowledge and understanding necessary to cope with these current global complexities and shape a better future. More than any other contemporary crises, the greatest danger we face is the quiet crises of global incompetence and lack of international understanding. We cannot delay, we cannot postpone, we cannot tarry. Our vision for the future and how we respond to it must begin now.

EDITORIAL SHOWS VOTERS' SUPPORT FOR LINE-ITEM VETO

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. SOLOMON. Mr. Speaker, we're supposed to represent the will of the American people, but in no other instance have we defied that will more than in denying the President the line-item veto.

Take heed, ladies and gentlemen, because out in the heartland of America, outside this Washington Beltway fishbowl, the people are demanding action on curbing the irresponsible spending of this Congress. Some of you will not, I'm sure, take heed, and many of you aren't going to be here next year.

As proof of this growing sentiment I proudly place in today's RECORD an editorial from my hometown newspaper, the Glens Falls Post-Star, which urges President Bush to challenge Congress on this issue. And I hope he does.

[From the Glens Falls Post-Star, Mar. 10, 1992]

SHOWDOWN OVER POWER OF PURSE

A showdown is looming between President Bush and spendthrift Democrats in Congress over the line-item veto.

The Senate recently rejected a measure sponsored by conservative Republicans that would formally accede to the chief executive more control over spending. In response, the White House is hinting that Mr. Bush may unilaterally exercise a line-item veto and let the issue be resolved once and for all by the Supreme Court.

Constitutional scholars are divided on whether the president already possesses line-item veto authority. In fact, Attorney General William Barr testified at his Senate confirmation hearing that he found "no basis for an inherent line-item veto in the Constitution."

Others, like Rep. Tom Campbell, R-Calif., a former Stanford law professor, disagree. They cite the "presentment" clause of the Constitution, which requires that every individual bill passed by congress be presented to the president for his approval or rejection.

Congress circumvents this constitutional requirement by folding various unrelated measures into omnibus spending bills, in effect forcing the president to approve on an indiscriminate basis both worthy spending items and wasteful ones.

This abrogation of constitutional checks and balances was dramatized by Ronald Reagan six years ago when he held up a 43-pound, 3,296-page omnibus bill that had been presented to him by Congress. He either had to sign it or plunge the federal government into chaos by vetoing it.

Is this good government? That is the question President Bush should raise as he stumps for the line-item veto.

Sen. Robert Byrd, D-W.Va., the irascible chairman of the Appropriations Committee, promises the mother of all battles if the President pushes too hard for the veto. "One man's pork is another man's job," says Byrd, who has carved out \$1.5 billion worth of pork for his home state during the last three years.

But the line-item veto is a winning political issue for Mr. Bush. Polls consistently show that more than two-thirds of the American people support this authority for the president. Surveys also show that many Americans are irate about Washington's profligate spending and runaway debt.

After all, why should taxpayers pick up the tab for such questionable spending as \$1.7 million to alter genetically Africanized honey bees or \$2 million to develop and stimulate sales of Native Hawaiian handicrafts? Why should they be shaken down for even \$100,000 toward prickly pear and mesquite research or \$200,000 for research into oil from the jojoba plant or \$75,000 for dairy goat research?

To members of Congress who control the public purse, these may seem trifling sums when measured against a \$1.5 trillion federal budget and a \$400 billion deficit. But, in the immortal words of the late Republican Sen. Everett Dirksen of Illinois, "A billion here, a billion there, and pretty soon you're talking about real money."

A fresh report by the independent General Accounting Office bears this out. It calculates that if a line-item veto had been in place between 1984 and 1989, the president could have saved taxpayers \$70 billion and reduced the deficit by 6.7 percent. That hardly amounts to loose change.

Whether a Republican or a Democrat is in the White House, the president should have a

line-item veto. Mr. Bush should make a constitutional stand for this executive authority.

IN HONOR OF THE SEPHARDIC HERITAGE WEEK

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to pay tribute to the organizers and participants of the Sephardic celebration taking place from March 1 to 8 throughout south Florida.

Sephardic Heritage Week brings together members of our community or a celebration of faith, fellowship, and tradition. Artists, performers, authors, historians, scholars, and spiritual community leaders join in the commemoration of Sephardic Judaic tradition.

This 8-day celebration features live oriental music, varieties of traditional foods and pastries from Sephardic lands, photography and film exhibits, presentations, as well as several tributes to community leaders. Folk dances and productions as well as seminars featuring lectures, workshops, and discussions are a part of Sephardic Heritage Week.

In addition, a celebration of the Sephardim and the Discovery of America honors the 500th anniversary of Christopher Columbus.

I am proud to have this opportunity to honor and acknowledge the members of the executive committees and those who have participated in the production of the Sephardic Heritage Week celebration:

Isaac Garazi, president of the American Sephardi Federation of South Florida; Ezra Cohen, president of B'Nai Sephardim Shaare Shalom of Hollywood; Fanny Haim, president and Clarita Kassim, chairperson of the Hebraica of Mar-Jewish Community Center; David Immanuel, president of Congregation Magen David; Dr. Leon Behar, president of Fesela Committee Miami; Vicky Levy, president of the Sephardic American Club; Isidoro Behar, president of Sephardic Congregation of Florida Temple Moses; Dr. Henry Green, director of the Sephardic Studies Program at the University of Miami; Dr. Roberto Beraja, chairman of Sephardic Heritage Week 1992; Fred Alcheck, Joseph Alhadeff, Isaac Anidjar, Helen Barak, Alegre Behar, Enrique Behar, Ida Behar, Isidoro Behar, Raquel Behar, Dora Behar, Becky Behar, Eli Behar, Ing. Alberto Benhaim, Baruna Benhaim, Isaac Benharroch, Yehuda Ben-Horin, Prosper Benzrihem, Silvio Berlefin, Rosita Caspi, Dr. Isaac Cohen, Nena Cohen, Reina Del Castillo, Soli Djermal, Nelly Egozi, Meyer Elmaleh, Norie Erzoff, Rebeca Esquenazi, Jaime Farin, Brana Fils, Joseph Fils, Rafael Gamal, Anita Garazi, Esther Garazi, Salomon Garazi, Sebeto Garazi, Dr. David Mafдали, Juan Matalon, Rebeca Matalon, Victor Matalon, Blanca Maya, Dora Maya, Jose Maya, Samuel Maya, Verona Maya, Roger Mimoun, Ing. Jaime Mitrani, Esther Mitrani, Luna Mitrani, Alba Motola, Serge Otmezguine, Sylvia Otmezguine, Ted Pardo, Elias Salama, Valeria Wolberg, Sally Young, and Irving Young.

CONGRESSIONAL TRIBUTE TO CAPT. DON LEACH, LT. SHELBY ADAMS AND SGT. PAUL CONNELL

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. GALLEGLY. Mr. Speaker, I rise today to salute three outstanding members of the Ventura County, CA law enforcement community—California Highway Patrol Capt. Don Leach, Lt. Shelby Adams, and Sgt. Paul Connell—who are being honored upon their retirement.

Don Leach began his career with the California Highway Patrol [CHP] in 1962, and assumed command of the Ventura area office in 1978. During his tenure, Captain Leach was involved in numerous departmental projects and community service organizations. Perhaps his most significant accomplishments were his roles in obtaining approval for the callbox network that now aids motorists on county highways, and for gaining approval to use radar on Highway No. 126, historically one of the most dangerous roads in the State.

Captain Leach should also be recognized for his highly successful role in supervising athlete transportation during the 1984 Los Angeles Olympic Games, and for helping to ensure the safety of former President Reagan during the President's motorcades from Point Mugu to his ranch in Santa Barbara.

Since his retirement last June, Captain Leach has continued his service on the Ventura County Fair Board, and has launched a new career as an attorney.

Shelby Adams began his career with the CHP in 1968 and served in a variety of capacities in the field and at headquarters in Sacramento. There, he participated in planning and goals development, and managed the department's disaster preparedness program.

After coming to Ventura in 1989, he formulated policies and procedures; developed deployment and enforcement strategies; served as liaison with elected officials and the news media; and served as the departmental representative on local community action committees before retiring in December.

It's been said that noncommissioned officers are the key to an army's success or failure, and the same is true of law enforcement. As a sergeant for 23 of his 27 years with the CHP, Paul Connell was an outstanding supervisor and motivator of his officers.

During his 20 years in Ventura County, Sergeant Connell also was directly in charge of protective service details, which are organized for the safe movement of dignitaries. For his thoroughness and close attention to detail during President Reagan's visit to the county, Sergeant Connell was praised by the Secret Service.

Although Sergeant Connell's seniority entitled him to be called the "senior sergeant," his peers believed he earned it through his knowledge and professionalism.

Mr. Speaker, I ask my colleagues to join me in honoring these outstanding veterans of law enforcement, and in wishing them well in retirement.

INTRODUCTION OF THE FEDERAL ENERGY EFFICIENCY BANK ESTABLISHMENT ACT

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. SYNAR. Mr. Speaker, I rise today to introduce the Federal Energy Efficiency Bank Establishment Act of 1992. This bill is a companion of S. 1874, introduced by Senator KOHL on October 24, 1991.

In July 1990, the Government Operations Subcommittee on the Environment, Energy and Natural Resources, which I chair, held a joint hearing on Federal facilities energy conservation with the Energy and Power Subcommittee of the Committee on Energy and Commerce.

During the hearing we explored the reasons why Federal energy use, which had declined by 16 percent in the late 1970's and early 1980's, was actually on the rise in the 5 years immediately prior to our hearing.

This failure to maintain the pace of Federal conservation was especially important because the Federal Government is both the Nation's biggest energy user and its biggest energy waster.

Why is this the case? At the 1990 hearing, witnesses from Federal agencies, the General Accounting Office, and corporate America all agreed on one point—without some form of incentive for installing better technology, energy efficiency improvements would take the Federal Government many years to accomplish.

Under the current system of procuring energy services there is little reason for Federal agencies to cut their energy use since they don't get to keep the financial savings which result. Thus inefficient technologies remain in place while better and ultimately cheaper ones lose out. After our hearing, I joined with Congressman SHARP in requesting an Executive order on energy efficiency which President Bush signed on April 17, 1991.

The Executive order mandates a 20-percent reduction in energy use by Federal facilities by the year 2000. The energy saved by the order is equal to 100,000 barrels of oil per day or \$800 million in energy costs per year.

H.R. 776, the National Energy Strategy bill currently pending before the Energy and Commerce Committee, contains several important amendments on Federal energy conservation including one which I cosponsored with Congressman MARKEY to allow agencies which install energy saving equipment to retain some of the savings which result from their lower energy use. But these valuable amendments cannot achieve their goals if funds are not initially available to prime the pump and get conservation investments moving.

The Federal Energy Efficiency Bank Establishment Act supplies this missing piece and jumpstarts the Federal energy efficiency program. Under the bill, beginning in fiscal year 1993, under a formula determined by the President and related to each agency's energy use, each Federal agency transfers funds to the Treasury which are used for a trust fund known as the Energy Efficiency Bank. The money in the bank is used to set up a revolving

loan fund to pay for energy efficiency projects which meet the standards set out in the Executive order and certain Federal laws.

The bill further sets out a selection schedule and criteria for awarding conservation loans for projects which are technically feasible, and gives consideration to whether a project is cost-effective on a life-cycle basis, has funds leveraged from other sources, and evaluates the degree of energy savings provided. Without a secure source of funds for conservation investments the Federal Government will miss out on a chance to become more efficient. But the effect on the country as whole will be much worse: We will miss out on a relatively easy way to reduce our dependence on imported oil from unstable suppliers and reduce the gases which cause global warming.

TRIBUTE TO NEW HAMPSHIRE TEACHER PAMELA PELLETIER

HON. DICK SWETT

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. SWETT. Mr. Speaker, I rise today to pay tribute to an exemplary high school teacher from my home State of New Hampshire. Pamela Pelletier, a biology teacher from Pelham High School, has been selected as one of the recipients of the "1991 Presidential Awards for Excellence in Science and Mathematics Teaching for Elementary Teachers."

The National Science Foundation recognized Pamela for her outstanding teaching methods and for the example she has set for others in her field. In addition to the award, the National Science Foundation will make a \$7,500 grant to Pelham High School. Pamela will direct the use of this money to enhance science programs and to supplement other resources.

Mr. Speaker, I am proud of Pamela for being one of only 108 science teachers across the United States chosen for this award. Her achievements both as a science instructor and as an adviser for student activities, such as peer outreaches, student government, and the crisis team, stand as evidence of her great accomplishments. By using techniques such as hands-on, cooperative learning and making her classroom student-centered, Pamela demonstrates the devotion to teaching and to students that will propel our Nation's students into the forefront of scientific achievement.

Mr. Speaker, I ask my colleagues to join me in congratulating Pamela on receiving this most deserved award. For our country to again reach the heights to which it soared, we must place great emphasis on the study of science and mathematics, the unique disciplines through which we provide ourselves and our children the opportunity to better our lives. By recognizing those who devote their careers to science education, we accelerate our technological progress that leads us all to better living. I commend Pamela for her great contribution to science education.

TRIBUTE TO ODESSA KOMER

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. BONIOR. Mr. Speaker, I am very pleased to join the UAW in honoring an impressive leader in Detroit's labor movement and a deeply committed friend of the working men and women of our community, Odessa Komer.

In many ways, Ms. Komer has come to symbolize our dedication to fairness and justice in the work place and society. Her long record of ground breaking and distinguished service in labor, civic and community activities has proven her to be a natural and effective leader. Her vision and leadership have always impressed those of us who have had the privilege to know and work with her.

Mr. Speaker, on this special occasion of her testimonial, I ask that my colleagues join me in saluting Odessa Komer's many years of service and dedication to the labor community in Michigan.

CONGRESSMAN KILDEE SALUTES HON. ROGER B. TOWNSEND

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. KILDEE. Mr. Speaker, I rise today to ask you and my colleagues to join me in recognizing the lifetime achievements of a true leader in the war for equality—the late Hon. Roger B. Townsend. For over 50 years Mr. Townsend fought to make America a truly pluralistic society. When he passed away, on January 18, 1987, America lost one of its truly great heroes.

Mr. Townsend was the first African-American elected to the Michigan House of Representatives from my own Genesee County and helped build the United Automobile Workers [UAW] and the Flint branch of the National Organization for the Advancement of Colored People [NAACP]. A tireless defender of human dignity, he served as role model for myself and the many others who followed in his footsteps.

Mr. Townsend was born to William and Ella Townsend, on March 29, 1912, in Rison, AR. He had one sibling, his brother, Berkeley. Though his family had little money Roger managed to continue his education, attending Arkansas State A&M College. The death of his father, coupled with the Great Depression, forced him to leave college to support his family. He found work in Muskegon, MI as a janitor in a foundry, but he was later forced back to Arkansas when the Great Depression eliminated his job. In 1932, he boarded a freight train bound north again, this time to my hometown of Flint, MI, where he eventually was hired by General Motors to work in the Buick Motor Division foundry in 1934.

The mid-1930's saw Mr. Townsend become active in the Flint community. A member of Buick UAW Local 599, he became the first Af-

rican-American recording secretary of the local and district committeeman. In 1939, he helped found the Flint chapter of the NAACP and later was elected branch president. He became a part of national history as he led the local effort to free the Scottsboro Boys, a group of African-American men accused of raping a young white girl in Scottsboro, AL. Mr. Townsend was also the first African-American to participate in the Flint Big Brother organization, served on the board of directors of the Flint Youth Bureau and was a member of the Urban League of Flint. He was active, too, in the Third Ward Community Civic League, seeking to promote political involvement.

In 1952, Mr. Townsend was elected to a seat in the Michigan State House of Representatives. He served six consecutive terms until 1964, when reapportionment eliminated at-large representation. He was forced into a race with a fellow incumbent and long-time friend. With his defeat, Flint's African-American community would not see another legislator elected from its ranks until the election of the Honorable Floyd Clack in 1982.

Mr. Townsend continued to work for the Buick Motor Division until his retirement in 1969. He was a licensed real estate broker and served as a branch manager for the Michigan Secretary of State. As an elected member of the Flint Charter Commission, he was instrumental in revising the city charter, creating today's strong-mayor form of government for Flint.

Mr. Speaker, Roger Townsend set a standard for dignity and for living to which every American should aspire. His contributions to the welfare of the citizens of our community and Nation will never be forgotten. He was a truly good person, a truly great American.

A CONGRESSIONAL SALUTE TO
MAYOR ROSALIE M. SHER

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. ANDERSON. Mr. Speaker, I rise today to pay tribute to a woman who has served her community with great distinction. It is my pleasure to take this opportunity to acknowledge the outstanding contributions and achievements of Mayor Rosalie M. Sher.

In April 1992, Mayor Sher will be retiring from public service, and the city of Hawaiian Gardens will be losing one of its most ardent supporters. Mayor Sher's introduction to politics began with her election to the Concord, California City Council, making her the first woman elected to office in Contra Costa County. After relocating to Hawaiian Gardens, Rosalie was elected to that city's council in 1984. During this four year term, she served as mayor pro tem from April 1985 through April 1986. Following a handily won reelection to a second city council term, Ms. Sher's leadership abilities were duly noted and subsequently she was elected mayor of Hawaiian Gardens in 1990 and 1991.

Rosalie will best be remembered as a mayor who made the people of Hawaiian Gardens her top priority. She actively pursued and

supported programs that improved services for senior citizens and youths in the community. She was particularly instrumental in addressing the need for new housing facilities for seniors. In addition, Mayor Sher made great strides in providing quality library services for the community.

Currently, Mayor Sher is completing her third term as chairperson for the Hawaiian Gardens Redevelopment Agency. In this capacity, she was responsible for the development of the Hawaiian Gardens Town Center.

In what little spare time she has, Rosalie is an avid golfer and reader. She also is a member of the California State Bar although time constraints do not permit her an active practice.

Mr. Speaker, my wife, Lee, joins me in bidding farewell to an outstanding citizen and in extending this much deserved congressional salute. We wish Mayor Rosalie Sher and her family all the best in the years to come.

ROBERT BELL: AN
ENTREPRENEUR WITH VISION

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to pay tribute to one of Florida's most eminent entrepreneurs, Robert Bell, who founded and built a small sun products firm into a multimillion dollar business. He is the president and chief executive of Sun Pharmaceutical Ltd., a company he started by selling suntanning products on Florida beaches. The company manufactures and sells sun protection and skin moisturizing products to almost every corner of the world, including its popular Banana Boat suntanning line.

Mr. Bell, a member of the Hall of Fame of the Institute of American Entrepreneurs, was named 1991 Florida Entrepreneur of the Year, an award he received for his accomplishments and leadership in the business community. He was recently recognized by the Florida Senate for this honor and for his creation so practical to the people of the Sunshine State.

Mr. Bell's ongoing efforts to prove America's stance as the true land of opportunity were again demonstrated during Operations Desert Storm and Desert Shield. He allowed his company to supply our troops in the Persian Gulf with sun protection products at no cost to the armed services. His contribution and support show a kind of generosity few entrepreneurs bear in today's competing world environment.

I commend Mr. Robert Bell for the vision and dedication which have made him one of the most prosperous entrepreneurs in Florida. His outstanding success is an example to all future entrepreneurs.

ALPHA EPSILON PI HONORS
HARRY B. SMITH

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. FASCELL. Mr. Speaker, on Saturday, March 14, the Alpha Epsilon Pi Foundation will present its award for Distinguished Community Service to Miami attorney Harry B. Smith.

The AEPi Foundation is a nonprofit organization that provides education scholarships to undergraduate members of AEPi fraternity. It also funds a speakers program, summer internships, and donations to charitable organizations for Jewish programming.

I have known Harry Smith for many years and can think of no one who may have a greater claim on this distinction. An honors graduate of my own alma mater—the University of Miami School of Law—Harry has not only had a distinguished career in law but has played a leading role in the Greater Miami community at large and the Jewish community in particular.

He presently serves on the boards of directors of the Greater Miami Jewish Federation, the Foundation of Jewish Philanthropies, United Way of Dade County, the National Foundation for Advancement of the Arts, the Heller Graduate School of Brandeis University, the American Committee for the Weizmann Institute of Science, and the American Jewish Distribution Committee. He is also a member of the citizens board of the University of Miami.

The AEPi award will be added to a long list of honors which have been bestowed upon this generous and caring man, including the Anti-Defamation League's Distinguished Service Award, the National Conference of Christians and Jews' Silver Medallion, and his election to The Best Lawyer in America and Who's Who in American Law.

I know our colleagues will want to join me in congratulating Harry B. Smith on this wonderful occasion and in wishing him all the best in the future.

INTRODUCTION OF LEGISLATION
TO ASSIST COMMUNITIES AD-
VERSELY IMPACTED BY MILI-
TARY BASE CLOSURES

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. SNOWE. Mr. Speaker, I rise today to introduce comprehensive legislation to assist the people of communities that face severe economic hardship as a result of military base closures.

In July 1991, when I spoke in this well on behalf of the resolution that I introduced along with Representative FOGLIETTA to reject the 1991 round of military base closures, I stated then that this House's responsibility to those communities would not end with that vote. No, Mr. Speaker, as the prospect of those bases closing draws near, our responsibility to the people of these communities is just beginning.

The people of Aroostook County in my district gave unwavering support to Loring Air Force Base and to the U.S. military for over four decades. Now, the base's closure portends a loss of nearly 20 percent of the county's employment, 14 percent of its income, and 17 percent of its population.

That is no way to reward the people who have given most to our national security. It is no way to reward those in Maine, or in the dozens of other communities nationwide, that will be hard hit by military base closures in the years to come. By introducing this legislation, entitled the Comprehensive Base Closure Reform and Recovery Act, I intend on taking strong action to help these people and their communities.

In recent months, several Members of this body have introduced very good legislation addressing various aspects of the community needs. However, these proposals have not been comprehensive in nature. Rather, they generally tend to address a narrow, or even single, aspect of the impact that a base closure has on a local community.

The legislation I am introducing today deals with all aspects of community recovery: economic, environmental, housing, etc. This bill will permit the Federal Government to fully live up to its responsibility to the communities.

For example, the Comprehensive Base Closure Reform and Recovery Act would address environmental cleanup matters, provide employers with tax incentives to hire former military base employees, and includes economic adjustment and conversion assistance for the local communities.

The major provisions of this bill would:

Require that before a military base is officially closed, or its operations substantially reduced, at least 75 percent of the environmental cleanup required under Federal law be completed. Also, it stipulates that not later than 2 years after a military base is closed, or its operations substantially reduced, all environmental cleanup efforts shall be completed.

Grant employers who hire people whose jobs have been terminated as a result of a base closure or realignment eligibility for the Targeted Jobs Tax Credit [TJTC]. The TJTC allows employers to take a 40 percent credit on the first \$6,000 in wages that the newly hired employee receives.

Require that if the principal home of a military employee living near a closed military base is sold for less than fair market value, and the employee successfully participates in the U.S. Army Corps of Engineers' Housing Assistance Program [HAP], any amount of money received to help compensate for the loss in the home's value will not be treated as income, subject to Federal income taxes.

Direct the Economic Development Administration [EDA] to ensure that Federal funds are reserved for the communities identified by the Bush administration as the most substantially and seriously affected by the closure of military installations. In order to accommodate this mandate, this bill increases the EDA's current funding authorization level from \$50 million in fiscal year 1991 to \$150 million for fiscal year 1993-95.

Direct the Secretary of the Department of Defense [DOD] to create a program to guarantee up to 10,000 dollars worth of loans, per in-

dividual, to civilian employees of the DOD at, or in connection with, a military base scheduled to be closed or realigned. The bill provides the Defense Secretary with the needed authority to develop and administer this program.

Directs the Secretary of DOD to convey to eligible State or local governments all right, title, and interest of the United States in any military installation scheduled to be closed pursuant to the base closure law, CERCLA—Superfund—and the Solid Waste Disposal Act. Under this section of the legislation, property at military installations will be turned over to State/local governments in the following order of priority: A political subdivision designated by State law to receive the conveyance of such property rights; the State; then to one or more political subdivisions which would best serve the interests of the residents of the local region, providing that these subdivisions accept the conveyance. Pending such conveyance, the Secretary of Defense is required to maintain the real property and personal property to prevent its deterioration.

Directs the Federal Government, when entering into contracts with private businesses for the closure of a military base, to give preference to business located in the general vicinity of the closed military base. The bill's language specifically mentions "environmental restoration and mitigation" as an area where local small businesses should get preference in getting federal contracts.

In drafting this bill, I have worked to include provisions addressing a wide range of concerns that have been brought to my attention, as a result of the experiences of northern Aroostook County that is facing the prospect of Loring AFB closing in 1994. I welcome the input of any and all concerned Mainers, and other interested parties, as this measure works its way through the legislative process.

In the meantime, I strongly urge all of my colleagues in the House to demonstrate their support for efforts to help local communities survive the impact of a closed military base by cosponsoring the Comprehensive Base Closure Reform and Recovery Act.

SYRIAN JEWS

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. HOYER. Mr. Speaker, as a signatory to the Universal Declaration of Human Rights, Syria has committed itself to respect the right of all its citizens to emigrate freely. Yet it treats this universal right as a privilege to be meted out to a select few by unaccountable government officials.

Syria's small 3,600-member Jewish community, like other groups, does not have the right to change its government legally and peacefully and cannot publicly criticize the government for human rights violations. Unlike any other minority however, the passports and identity cards carried by Syrian Jews note their religion.

Emigration is largely forbidden, but Jews in particular are singled out for additional prohibi-

tions and restrictions. They are not allowed to leave Syria without paying burdensome fees to the Mukhabarat—secret police—which is intended to ensure their return. As added insurance, whole families may never travel together. The young must leave behind the old; the mother her children and the brother his wife and sister. Those who travel without permission risk harsh criminal sanctions. Today two brothers, Eli and Selim Swed, arrested as far back as 1987 for traveling to Israel, remain imprisoned. For 2 years they were held incommunicado; for 3 years they were denied family visits; and last year the state formally sanctioned this gross human rights violation by sentencing the brothers to 6½ years in prison for illegally traveling to Israel.

The demands for respect of human rights and dignity have unleashed forces for worldwide change. Yet, Syria is out of step with those forces. Syria has reacted to some of the dynamic changes taking place in the world, trying to come to grips with a world no longer shaped by a Communist superpower vying for regional influence. But Syria remains an authoritarian state in a world impatient with and tired of such states and their leaders.

The right to emigrate ultimately may serve as the only guarantee of freedom in those states in which human rights are routinely violated or denied. We must insist on it being accorded all of Syria's citizens. And at a minimum we must continue to demand the immediate release of those individuals imprisoned for exercising a universal right.

As we have learned in country after country in Europe, the United States develops its strongest alliances, engenders its greatest respect, and ensures its lasting security when we stand firmly and unequivocally for the principles upon which our own Nation was founded and which are reflected in international documents such as the Universal Declaration of Human Rights. To the extent that our words here today impact upon the leaders and government officials of Syria, let our voices clearly be on the side of individual freedoms and human dignity. Let us go with a policy and vision that have served us and those who cry out for human rights so well in the past.

TRIBUTE TO REV. W. JEROME FISHER

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. DYMALLY. Mr. Speaker, I rise today to recognize Rev. W. Jerome Fisher, pastor of Little Zion Missionary Baptist Church, at 2408 North Wilmington Avenue in the city of Compton. This year we celebrate his 35-year anniversary as pastor of Little Zion Missionary Baptist Church.

His conviction to serve not only his congregation, but the entire community, has distinguished him as one of the true champions of the greater Los Angeles area. He has founded a scholarship program that assists children who need financial assistance to pursue their education. This program has given many children an opportunity that they would otherwise not have.

His integrity and deep commitment over the decades, to his community and its well-being, has earned him the admiration and respect of all who are privileged to know and work with him. Reverend Fisher's lifelong commitment to the community is a characteristic paralleled by very few and I rise today to commend him for his efforts. As pastor of one of Compton's largest churches, Reverend Fisher has become a friend to a great many people. His support in the community is evident in the size of his congregation and the respect he enjoys.

I know that my colleagues will want to join me in congratulating and paying tribute to Reverend Fisher for his unselfish devotion to serve his community. I hope that Reverend Fisher continues to serve our community for many more years to come. Again, I congratulate Rev. W. Jerome Fisher on this 35-year anniversary.

SCHOOL SPIRIT IS MIAMI HIGH'S WAY

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. ROS-LEHTINEN. Mr. Speaker, I am pleased to recognize the students and teachers at Miami Senior High School, whose innovative idea to sell a 1992 school's calendar has been met with great success. The calendar, which features a different teacher for each month, was developed in an attempt to raise funds for the school's band corps. The school was recently featured in The Miami Herald for their enterprising efforts. The article "The Men of Miami High" by Jon O'Neill follows:

Miami High teacher Jack Hunter doesn't mind being "Mr. July."

No, he didn't pose for a summer issue of Playgirl. Hunter and 11 of his colleagues grace the latest fund-raising effort of the school's Band Corps. It's a 1992 calendar that features a different teacher for each month.

It's being snapped up by students at \$5 a pop.

Hunter, a social studies teacher who also coaches the swim team, was pictured in a pool.

"It was all in good taste," he said. "I'm kind of shy and being in a calendar is not the usual role for a teacher. But I was flattered to be chosen."

The calendar was the brainchild of Lili Pineiro, the school treasurer and sponsor of the Band Corps, which includes flagettes, majorettes and rifle corps. When she attended Miami High, she was on the front of a calendar that featured students.

"We needed to raise money and you have to be creative," Pineiro said. "This is what came to me. I remember when I was in ninth grade I had a big crush on my English teacher and I would have killed for a picture of him. I just thought the kids would like it and that it would be fun to do."

She pitched the idea to her girls, and they loved it.

"I knew it would sell, for sure," said Stingarette captain Mini Esquijarosa, 17, a senior. "There are a lot of cute teachers here and everyone was really excited about it. When it came out, some of the girls were just saying 'wow.' Some of the teachers were, too."

To figure out whose pictures would be included, the school held an election among its female students. Twenty-five teachers were nominated, 12 were voted in.

"It wasn't just the best-looking teachers," said Milay Lao, 17, co-captain of the majorettes. "They were the most popular ones, the favorites. But some of them looked pretty good."

Pineiro worked hard getting the calendar ready. She said most of the selected teachers had a good sense of humor.

"They were all great about it," she said. "I think inside, they all loved it."

Jose "Tiger" Nuñez, athletic director at the school, 2450 SW First St., said he thought the calendar was "a great idea." Nuñez is Mr. March.

"It felt good to be voted in," he said. "I'm hearing a lot of comments from the students about it, though."

Social studies teacher Artie Cabrera is Mr. January. Since he boxes occasionally, he posed in the ring.

"I didn't mind it and I know the kids are enjoying it," he said. "Anything to help the girls raise money."

Pineiro said she would like the calendar to be an annual event. It certainly got the attention of the students.

"Now the boys want a calendar with the female teachers," she said. "But they want them to wear bathing suits."

Mr. Speaker, I commend the students and teachers at Miami Senior High School for their great display of pride and school spirit. Their hard work and support will surely pay off.

ROMANIAN ELECTIONS AND TIMING FOR NORMALIZING RELATIONS

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. SMITH of New Jersey. Mr. Speaker, the Romanian people have once again tasted the privilege and responsibility of a democratic system. In May 1990, the Romanian voters went to the polls and chose their President and Members of Parliament in the first multiparty elections since World War II. Last month, for the first time, the Romanian people had a genuine voice in deciding their local officials—mayors and city council members. The long-awaited local elections were finally set for February 9, and the runoff balloting was held on Sunday, February 23.

The people of Romania—the voters—now look with great anticipation to their upcoming round of elections for Members of the Parliament. Mr. Speaker, I believe the United States Congress and administration must stand by the people of Romania to ensure that this political birthright is granted as scheduled in the late spring. Domestic and international confidence in Romania's march to democracy faded with each postponement of the local elections, and I trust it will not be eroded by any delays in the parliamentary elections.

In fact, I am hopeful that the parliamentary elections will be the best indicator that, indeed, Romania has stepped into the community of nations which honors and upholds democratic principles. This would enable us to move ahead, in total agreement, towards full

normalization of relations. As many of my colleagues know, I, along with Representatives FRANK WOLF and TONY HALL, worked diligently to suspend most-favored-nation trading status during the Ceausescu era when the abuse of human rights was pervasive and systemic and there was no consent of the governed. It would be my honor to stand in this House Chamber, following the parliamentary elections, and urge support among my colleagues for the new trade agreement—including MFN—with Romania that would appropriately reflect the democratic progress in that country.

Mr. Speaker, the Congress should delay until after the parliamentary elections any decision regarding the United States-Romanian trade agreement. As noted in the White House press statement made last August when the President waived the Jackson-Vanik provision of the Trade Act of 1974,

MFN status is a separate issue, which will be decided on the basis of further substantial progress toward a market economy and democratic pluralism, including the holding of free and fair local and parliamentary elections in the near future.

The United States waiver of the Jackson-Vanik provision, Mr. Speaker, made Romania eligible for credit guarantees for commercial imports of United States agricultural products. United States humanitarian assistance continues to be extended to the people of Romania. Through private voluntary organizations, the United States has provided assistance in health care, surgery and medical treatment for institutionalized children, guidance in adoption-related activities, and comprehensive services for those with disabilities. The Peace Corps has tasked more than a dozen of its volunteers to focus on special education and childhood development within several orphanages. Food assistance, as well as technical assistance, equipment, and material support for energy policy reform has been provided.

Mr. Speaker, these various projects, in addition to democratic initiatives, demonstrate to the people of Romania the concern which we have for them and their political reform progress. Certainly both the local and parliamentary elections are seen as steps toward true political reform.

The local elections, Mr. Speaker, had become a proving ground through which the Romanian electorate and observers abroad gauged the ruling National Salvation Front's willingness to grant the people a voice. While these elections were recognized internationally as a major milestone in Romania's progress toward a democracy, I believe they have set the tone—strategically and politically—for the parliamentary elections.

While the voter turnout for the local elections reflects a general loss of confidence in their ability to change the direction or pace of reform, the election results demonstrate the voters' wish for change in political leadership. Between now and the parliamentary elections tentatively planned for May or June, prodemocratic Romanian activists must build on the momentum which coalesced in the final weeks before this election. The voters also have had a glimpse of the power which is entrusted to them within a democratic system, and I am hopeful that this will invoke greater participation in the upcoming parliamentary

elections. The opposition parties, particularly the Democratic Convention, must recognize their potential of becoming a moving force in the Parliament.

The local elections in February have determined the winners of 2,951 mayoral seats and more than 40,000 city council members across the country. The mayors were elected by majority vote and the local councils ran on lists and will gain seats by a system of proportional representation. The Judet—county—councilors will be elected by closed ballot by the local councilors within 30 days after constitution of the local councils.

The number of members on each city council depends on the population of the city or the village. For example, villages with up to 3,000 in population will have 11 councilors, while cities with 200,001 to 400,000 in population 31 councilors, and the Bucharest Council will have 75 councilors.

Mr. Speaker, a member of my staff, Dorothy Taft, was invited by the International Republican Institute to serve as an international election observer in Romania. She was one of a 30-member mission organized by the International Republican Institute [IRI] and the National Democratic Institute [NDI]. As outlined in the Copenhagen Document on Human Rights of the Conference on Security and Cooperation in Europe, observers, both foreign and domestic, were invited and accredited by the Romanian Government to observe the election proceedings.

The preliminary assessment made by the IRI-NDI delegation on February 11 in Bucharest, "This election represents a meaningful step forward for the process of democratization in Romania," is on target.

The campaign period was fraught with many hindrances to the democratic opposition parties and unacceptable conditions were set up by the election law, which was approved by the Romanian Parliament in late November and signed by Iliescu on November 26. The 60-day campaign period began on December 8. There was particular concern that, though promises had been made, campaign finance legislation was rejected in late December and distribution of media time—through the Ad Hoc Commission of Parliamentarians on the Media—for the political parties was not available until more than 1 month into the campaign.

When public campaign financing is not equally available to political parties in democratically nascent countries, the advantage of the incumbent political party in these countries is greater than the incumbents' advantage in developed democratic systems. The ruling parties are able to exploit the basic, underlying support of the infrastructure without competition.

When election monitors interviewed voters in the villages where the democratic opposition and the Hungarian democratic party were active, the issue of media access was not a major determining factor in voter education. In voter after voter, there was a confidence in knowing the candidates either personally or through town meetings. Voters would comment that the party affiliation was not as important as the character of the candidate himself. Obviously, because local candidates were from the local village, electronic media was

not a determining factor. Nonetheless, this issue will be especially important in the upcoming parliamentary elections and in regions where the democratic opposition is not well organized. The Romanian Parliament has a unique responsibility to complete consideration of the law on media and ensure it provides a balanced, democratic access to the electronic and print media for all candidates.

Unfortunately, the February 9 elections were scheduled during exams for the college students, one of the important and active political sectors in Romania. This concern had been raised in preelection assessments by IRI and NDI. On January 30, the Government of Romania issued a statement announcing how this and several other problems were being rectified. The Government agreed to waive the cost of round-trip tickets home by rail or road from February 7 to 10, so that the students could vote.

While students were required to vote in their home districts, military personnel were required to cast ballots where they were stationed. There is concern that military personnel, not being part of the local communities, have no vested interest in local affairs and the platforms of the local candidates. During the last election, this will again be an issue for the parliamentary elections and the election law should resolve this complication. During the last election, political parties and local candidates were unable to campaign on the military bases but shortly before February 9, the Government changed the regulations to permit the parties and candidates to speak and post materials on military bases.

One of the most significant advances made in the election process since the May 1990 election was the provision for domestic election observers. More than 5,000 Romanian citizens served the important role as election observer. Training for such observers continues in Romania and certainly many more will be prepared for the parliamentary elections. Mr. Speaker, I believe it is imperative that the electoral law governing the upcoming elections include this important, confidence-building provision.

I congratulate the ongoing work of organizations, such as the International Republican Institute, in training the political parties in Romania to become effective and instructing candidates how to convey their ideas and stand on the issues facing their country. The work with the newly elected mayors is especially important during this time of transition.

Certainly the local elections became a laboratory for voter education, electoral reform, and democratic coalition building. In preparation for the parliamentary elections, the Government and the electorate must continue that progress. Mr. Speaker, I hope that in 3 months we will all be encouraged by the reforms made and the completion of a fair parliamentary election process. I hope that in 3 months we can all fully support unconditional MFN for Romania and its people. The timing is crucial.

DEFENSE AND THE NEW WORLD DISORDER

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. CONYERS. Mr. Speaker, as we begin the budget cycle with the great changes that have taken place in the world, much of our focus has been, and will continue to be on the money spent on the defense of this Nation. As part of this process the Pentagon has disclosed a number of scenarios which are the justification for the inflated and unnecessary budget the Department of Defense is clinging to in desperation.

Recently, I discovered two excellent articles written by Mr. David Evans of the Chicago Tribune. This Pulitzer Prize winning author tersely points out the folly in this particular area of Defense policy. With great humor Mr. Evans exposes the seven scenarios for possible U.S. military action in the light that the average American might see them. Not only are the seven scenarios out of touch with reality, but the Defense Department budget is based on two of these scenarios occurring at the same time. In his satirical way Mr. Evans is underlining the need for a true reassessment of the threats which effect this Nation. No longer can we afford the deception of building a threat specifically designed to preserve the defense budget.

The second article is a more serious look at just who is financing executive pay and bonuses in the defense industry. The acquisition offices in the Department of Defense must simply get costs in line with reality. It isn't the business of DOD what a major contractor pays their executives, but it is the business of the Department how much of that salary/bonus is paid by the taxpayer. This is just a small slice of how the relationship between the Department of Defense and the large contractors works to the great disadvantage of the American taxpayer—all in the exalted name of national security.

Mr. Speaker, I ask that the two enclosed articles, "Scenarios of New World Disorder" and "Defense Firms' Top Guns Have Taxpayers To Thank for Top Pay" by Mr. David Evans be placed in the RECORD and I strongly urge my colleagues to read them.

[From the Chicago Tribune, Jan. 5, 1992]

DEFENSE FIRMS' TOP GUNS HAVE TAXPAYERS TO THANK FOR TOP PAY

(By David Evans)

WASHINGTON.—The shameless excesses of corporate compensation carry over into America's military-industrial complex, where the defense industry's top guns are paid much, much more than the chiefs of our military services.

On the civilian side, we have the Rolex watch and Gucci shoe set. The chief executives of the five largest defense companies receive compensation packages ranging from \$1.5 million to more than \$9.3 million. That's about \$4,000 to \$25,000 a day in salary, bonuses and stock options.

On the military side, we have the Timex watch and Corfam shoe set. Gen. Colin Powell, chairman of the Joint Chiefs of Staff, and the chiefs of the Army, Navy, Air Force

and Marine Corps are five men at the very top of their profession. They each make about \$110,000 per annum, or roughly \$300 a day.

Their pay accords with the view of 18th Century author Edward Gibbon, who wrote in "The Decline and Fall of the Roman Empire" that the "modesty in peace and service in war" of the military order "is best secured by an honorable poverty."

Our generals aren't exactly like Julius Caesar eating turnips with the troops on campaign, but they don't get bonuses for winning wars nor, for that matter, do they get free lunches. When Powell eats in the chairman's dining room, for example, he pays for the crabcakes and the low-calorie chicken fajitas on the menu.

Indeed, compared to the salary differentials in industry, the military pay system is a model of socialist egalitarianism. Powell makes only 11 times more money than a private first class, which coincidentally is pretty close to the Japanese differential between executive pay and worker compensation.

In contrast, a hundred-fold difference or more separates the pay of American chief executive officers from the workers. The defense industry is no exception, as exemplified by the case of General Dynamics, where a mid-grade F-16 production worker at its Ft. Worth plant earns \$36,600 a year in wages and fringe benefits, tops, while in 1991 its chief executive officer, William Anders, received more than 250 times that amount in pay, bonuses and stock options.

The relative egalitarianism of the military pay system applies to raises too. When Congress, the military's board of directors, approves a pay raise for Powell, the privates and the rest of those at the bottom get the same rate of increase.

This is not the case in corporate America, where top executives frequently receive double-digit pay raises while the vast bulk of their employees are admonished to rest content with single-digit increases, if any.

No self-respecting Marine Corps colonel would accept this situation. At The Basic School at Quantico, Va., every new Marine officer is taught that the troops eat first, then the officers. If the chow runs out, the leaders go hungry.

There is no comparable accountability in the defense industry. Consider the case of General Dynamics and McDonnell Douglas, which teamed up to design and build the A-12 attack jet for the Navy. The program went belly-up in an ugly cloud of cost overruns and delays, and the two companies said they couldn't afford to pay back the \$1.35 billion they'd already received from the Navy for work they never performed. However, these two companies were able to afford their chief executives' multimillion-dollar pay packages.

Taxpayers are underwriting the situation. According to a Pentagon expert on military contracts, corporate salaries are part of a company's cost base, which are figured on a pro rata basis into its negotiations for weapons prices and profits. Executive salaries are just a so-called pass-through expense. Therefore, higher levels of executive pay, fringe benefits and perks translate ultimately into higher unit costs for weapons and parts.

Don't waste time dropping a B-52's load of shame on overpaid defense executives. It slides off like water on a waxed car. Instead, establish a ceiling on the amount the government will reimburse a defense contractor for overhead expenses, including top-level compensation. The rule needn't limit how much chief executives can be paid by soft-

hearted boards of directors, just the amount that flinty-eyed Uncle Sam will contribute.

Elsewhere in his book, the venerable Gibbon told the tale of one George of Cappadocia, a 4th Century defense contractor who provided rotten meat to the Roman army at ripoff prices. "His employment was mean; he rendered it infamous," Gibbon wrote.

Although this George was subsequently beattified for his dragon-slaying activities, he could just as easily have been designated the patron saint to defense contractors. They've been taking first pass at the public trough ever since.

SCENARIOS OF NEW WORLD DISORDER

(By David Evans)

WASHINGTON.—The New World Disorder should be the title of a secret Pentagon document that contains seven scenarios for possible U.S. military action in the next decade. There are enough wars on this list to call for a bigger, not a smaller military.

Retitled, with interpretive comments, we have:

The Russians Are Coming, Again. An expansionist and hungry clique in Moscow launches a tank blitzkrieg to seize the sausage industry in Poland. U.S. military airlifters substitute battalions for bread to counterattack.

Poltergeist IL Saddam Hussein gets recycled into a replay of his 1991 invasion of Kuwait. But in 1995 the Iraqis don't stop at the Saudi border) they get it right this time, punching through and overrunning the ports and oilfields in the kingdom's vital eastern province.

Kim Il Sung's Hostile Takeover. The aging North Korean leader launches 300,000 troops in a surprise attack south to reunify Korea by force, thereby achieving world dominance of the sneaker industry.

The Baghdad-Pyongyang Axis. Using a secret hotline to coordinate their plans, fraternal dictators Saddam Hussein and Kim Il Sung attack virtually simultaneously.

From Operation Just Cause to Just Because. Dope-dealing officers in the U.S.-installed Panama Defense Force threaten to close the Panama Canal, promoting eight days of "mid-intensity" gunplay by Army Rangers and U.S. Marines to install a more grateful group of dope-dealing Panamanian colonels.

Manila Meltdown. Imagine Imelda Marcos, who's running for president of the Philippines a few years hence. She can't hold it together. There's a revolt, and U.S. forces are dispatched to rescue Imelda and 5,000 Americans, each of whom is allowed to board the packed evacuation planes carrying only a pair of Imelda's shoes.

The Empire Strikes Back. Reformist movements in Russia collapse, a right-wing faction comes to power bent on militarizing the economy. The Quayle administration ignores a \$600 billion deficit and does likewise, boosting U.S. weapons production to equip new divisions, fighter squadrons and naval battle groups. Defense contractors rejoice.

With the exception of the resurgent Evil Empire, these sanctions occur with little warning, and the fighting, although intense, is of fairly short duration. American military forces must be poised to move quickly, smash massively and come home.

This capability is hugely expensive. It is much different than a strategy of holding the initial enemy onslaught, building up our forces and counterattacking.

Consider the short-warning, short-duration aspects—a standing-start war means that

military forces, as well as the transport units to move them, must be kept on costly active-duty status. It can take anywhere from 30 to 90 days or more to call up, train and deploy cheaper reserve forces. A short notice, short war is over before the reserves show up.

The two-front, short-notice war scenario maximizes everything: a large number of active-duty combat forces, with warehouses full of munitions and parts to sustain them, and an enormous increase in existing airlift and sealift assets to move them speedily in two opposite directions.

Recall the effort to defeat Iraq: 100 percent of the transport was used to move roughly 30 percent of the fighting forces. They were supported in-theater by virtually 90 percent of the logistics units, which in turn were tapping in to about 90 percent of the so-called WRM, the "war reserve material" stocks.

That was a single-front war, with five months to get ready. The simultaneous two-front war scenario implies a defense budget of \$500 billion, not the \$280 billion budget today that Congress is trying to cut.

The issue isn't self-serving scenarios, but secrecy. These are not war plans, but generalized visions of conflict that shape the size and composition of military forces and budget. Instead of an open discussion about what America must be prepared to do, and the risks involved, the shaping process is all happening in secret. Maybe in the two-front scenario the active forces could handle one threat and reserve forces the other.

Instead of scenarios, perhaps the focus should be on fixing existing problems; for example, replacing the gas turbine engine in the M-1 tank with a diesel would reduce its tremendous dependence on convoys of fuel trucks.

Opening the books, though, might be too revealing. Imagine a secret plan in 1945 to refight Germany by 1950. It would be equivalent to the anticipated replay of the war against Iraq, but it does suggest what many suspect—the last war with Iraq could have been titled George Bush's Voodoo Victory.

IN RECOGNITION OF ALFONSO ACOMPORA ON HIS 20TH ANNIVERSARY AT WALDEN HOUSE

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Ms. PELOSI. Mr. Speaker, I rise today to recognize Alfonso Acompora for 20 years of dedicated service to Walden House and the city of San Francisco.

As chief executive officer of Walden House, one of the largest substance abuse treatment centers in California, Alfonso has worked tirelessly with the HIV infected, the dual diagnostic, pregnant addicts, and all the disenfranchised that substance abuse has affected. His latest battle is being waged against the crack cocaine epidemic in San Francisco.

Alfonso joined the staff of Walden House in 1971, and quickly worked his way up to CEO. His history as a troubled youth intensified his desire to aid those with substance abuse problems. He has been an integral force in building Walden House from what was once a 30-bed facility to one that services over 400 people a day in 12 facilities throughout San

Francisco. Walden House has become a model for education, prevention, and treatment services, remaining on the cutting edge of social problems affecting the city of San Francisco.

In the past years, Alfonso has served on drug task forces for San Francisco Mayor Art Agnos and California Governor Pete Wilson. He has also served as a drug advisor to the White House and consultant to many programs across the United States.

Mr. Speaker, I join with the people not only of Walden House, but of the entire San Francisco community, in praising Alfonso Acompora for 20 years of dedicated and selfless service to those in need, and look forward to many more years of Alfonso at the helm of Walden House.

TRIBUTE TO PENNDOT'S SNYDER COUNTY MAINTENANCE OFFICE

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. GEKAS. Mr. Speaker, I rise today to pay tribute to the employees of the Pennsylvania Department of Transportation [PennDOT], Snyder County Maintenance Office, for the outstanding safety record that they have maintained over the years.

The employees of this office have accumulated 4,536 days without a lost-time work injury. This means that in over 12 years of working in a hazardous environment, in all types of inclement weather, these workers have not lost a day of work because of injury. I know that this feat is very difficult to achieve and is a testament to the hard work, dedication to the job, and outstanding skill of these employees. There should be no doubt that the Pennsylvania Department of Transportation and all the citizens of the Commonwealth of Pennsylvania are proud to have these workers on the job for them.

Mr. Speaker, I ask all of my colleagues to join me in paying tribute to the outstanding employees of PennDOT's Snyder County Maintenance Office, who have given new meaning to the words, "Safety first."

TRIBUTE TO PASTOR ERNESTINE M. SHIVER

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. TOWNS. Mr. Speaker, I want to recognize the achievements and contributions of Pastor Ernestine Shiver, of St. Paul's United Church of God, in Brooklyn, NY. Pastor Shiver has dedicated her life to her family, church, and community in her position of pastor for the past 15 years.

With Pastor Shiver at the helm, her church congregation has grown not only in size, but in faith. She has addressed vital community needs such as: Food and clothing for the homeless; education and preventive services;

surplus food programs; and counseling services. Pastor Shiver knows that true service to the Lord consists of faith in action. She embodies that philosophy in all of her labors of love. It is my pleasure and blessing to know this humble and dedicated servant of the Lord.

ELEMENTARY SCHOOL NAMED AFTER WING AND LILLY FONG

HON. JAMES H. BILBRAY

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. BILBRAY. Mr. Speaker, I rise today and ask my colleagues to join me in honoring two outstanding individuals from Las Vegas, NV, Wing and Lilly Fong. In February 1992 these two individuals were the first Chinese-Americans to have the honor of having an elementary school named after them.

At the age of 13, Wing immigrated to the United States from Canton, China. He attended Woodbury College in California, where he earned a business administration degree and met his future wife, Lilly. They married in 1950 and settled in Las Vegas. Wing joined the firm of Pioneering Distribution. Mr. Fong opened his own grocery store, and, in 1955, he opened the town's first specialty restaurant and shopping center. Currently, he is president of Wing Fong's Enterprises and is a director of Nevada State Bank.

His civic involvements have led him to become director of the Greater Las Vegas Chamber of Commerce, and chairman of the National Conference of Christians and Jews. He has also served as chairman of St. Jude's Children's Home in Boulder City.

For many years, Lilly Fong has been involved in community service. She has served as a member of the U.S. Small Business Advisory Council and the Governor's Commission on the Status of Women. Also, Mrs. Fong's fund-raising efforts have been greatly appreciated by numerous art centers.

Judging from the involvement of Wing and Lilly Fong, it seems very appropriate to have an elementary school named in their honor. I am indeed honored to congratulate them today and ask my fellow Members to do the same.

CONGRESSMAN IKE SKELTON DELIVERS PRINCIPAL ADDRESS AT COMMISSIONING OF U.S.S. JEFFERSON CITY; CALLS FOR PRUDENCE IN PREPAREDNESS

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 10, 1992

Mr. EMERSON. Mr. Speaker, our distinguished colleague from Missouri [Mr. SKELTON] was the featured speaker at the commissioning ceremony for the U.S.S. *Jefferson City* SSN-759, the newest submarine of the fleet. This vessel is, of course, named for the capital city of Missouri, which is in Congressman SKELTON's congressional district. Mrs. Skelton christened the ship in March 1990.

I regrettably had other commitments and could not attend the commissioning ceremony in Norfolk, VA, February 29, 1992. Congressman SKELTON favored me with a copy of his remarks, which should be of interest to all Missourians, interwoven as it is with lore about our capital city and the proud mantle the ship bears.

Most importantly, Congressman SKELTON sounds an articulate, intelligent, coherent, and persuasive call for prudence and vigilance on the part of the United States, as we chart the waters of a radically altered world in 1992 and beyond. With his usual common sense, Mr. SKELTON advances a compelling rationale for maintaining an appropriate level in defense people-power and technology as we look ahead. His message speaks for itself. I commend it to all colleagues and Americans.

ADDRESS BY CONGRESSMAN IKE SKELTON

INTRODUCTION

This is an historic day, a proud day for Missouri. For today, we celebrate the commissioning of the USS *Jefferson City*, named in honor of Missouri's capital city. And, in a larger sense, we are celebrating the continued freedoms we all enjoy as Americans.

FREEDOM

We are a unique people. We have experienced 203 years of unprecedented freedom under the Constitution—freedom made secure by those who have worn the uniforms of our Nation's Armed Forces. Without them, freedom and democracy would long have since vanished. While the near-term is marked by turbulence and transition in the world, we need to remind ourselves of the great achievement of recent American statecraft. We have led the winning side in the two epic struggles of this century—the fight against fascism and the less costly but more complex struggle against Soviet communism. American resolve and leadership has helped shape a better world for untold millions.

It is fitting that we pay tribute to our uniformed servicemen and women for two recent victories—we won the cold war against the Soviet Union and we won an impressive victory in the Persian Gulf.

The cold war—described by President John F. Kennedy as the "long twilight struggle"—has come to an end. It is still hard to believe that this great and bitter contest against Soviet expansion ended in the unexpected fashion that it did. America's sons and daughters in uniform contributed significantly to the victory against the Communist threat. For that, our Nation is grateful.

Last year's Persian Gulf war was a stunning victory. The flower of America's youth sailed the ships, attacked across the desert, and flew in combat to defeat a brutal foe. They have written a magnificent chapter in American military history.

As part of that military operation thirteen submarines conducted surveillance and reconnaissance operations in support of Desert Shield and Desert Storm. Two sister ships of the one we are about to commission—the USS *Louisville* and the USS *Pittsburgh*—launched Tomahawk cruise missile attacks against critical targets in Iraq. In fact, the *Louisville* made history by delivering the first submarine-launched cruise missile ever used in combat.

A NOTE OF WARNING

But in the midst of this tribute to our success, let me sound a note of warning to my fellow countrymen. Major George C. Mar-

shall, the future World War II Army Chief of Staff, noted in 1923 "The regular Cycle in the Doing and Undoing of Measures for the National Defense." He observed that, "We start in the making of adequate provisions and then turn abruptly in the opposite direction and abolish what has just been done." Today, we are in the midst of making one of those changes in direction. This is now the eighth year of real defense budget cuts, and we know that more dramatic reductions are in store.

Secretary Cheney and General Powell crafted a plan a year and a half ago that will result in a twenty-five percent reduction in the size of our forces and the size of the defense budget. A further cut of \$50 billion over the next five years has been recommended by the President as a result of events last August in Moscow when the old Communist order finally collapsed. I believe the Secretary and his military advisors have put together a pretty good plan, not perfect, but pretty good. But to readjust the plan every year in a dramatic fashion as some would have them do, is simply more than we should do in light of the uncertainty of the world around us.

As many of you know so well, there are more than a few self-styled "defense experts," who would increase the pace and extent of the planned cuts. My warning is against our Nation engaging in a military disarmament binge. In 1997 our Nation's military forces would be at the breaking point in responding to a Desert-Storm contingency and a conflict in Korea at the same time. General Powell acknowledged this troubling possibility in testimony before the Congress two weeks ago.

Those who would slash our military even further than the planned 25 percent reduction, while sincere and well-meaning, lack an understanding of history's lessons. Time and time again, in this century we have followed the dangerous and costly path of demobilization, disarmament, and unpreparedness, only to regret that course of action a few short years later.

After the First World War we withdrew from world affairs and allowed our military to wither away. As a matter of fact, at the time of the fourth naval disarmament conference of 1935, the seeds of the Second World War had already been sown. But we ignored the gathering storm and were caught unprepared when it came. After our tremendous victory over Germany and Japan in 1945 we once again cut our military. And once again, we were caught unprepared when war broke out in Korea less than five years later.

Here is a brief catalogue of the cuts we are making today and are planned for the future. A year ago the Army possessed 18 active divisions. Two have been demobilized and the plan is to demobilize four others by 1997. The Navy reached a high water mark of 570 ships in its effort to build to 600 ships. This past December there were 499 ships in the fleet and current plans will have the Navy at the 450 ship level by 1997. The Air Force is also reducing. It had 41 fighter wing equivalents

in 1988. By this year it will have reduced its force structure to 28. By 1995 it will have 26, 15 active and 11 in the Guard and Reserve.

If we go much more beyond these cuts in force structure, we will end up in the same situation in which we have found ourselves after almost every other war we have fought in our history—with a military force ill-prepared to fight. We should remember the high cost of unpreparedness: Bataan in 1941, The Kasserine Pass in 1942, Pusan in 1950, and Desert One in 1980. This cost was paid by the blood of young Americans in uniform. Never again should we allow this to happen. Let us learn from history rather than repeat it.

We still live in a dangerous and uncertain world. The kaleidoscope of the future is unpredictable. Few foresaw the bombing of Pearl Harbor, the North Korean invasion into the south, or Saddam Hussein's invasion of Kuwait. The American people understand George Washington's wise counsel that "To be prepared for war is one of the most effectual means of preserving peace." I am convinced they will support measures needed to maintain an adequate and credible national defense.

JEFFERSON CITY

This boat is now ready to assume its role in keeping the peace. It is named for a city that has played an important and distinguished role in American history; a city named, appropriately, for the third President of the United States. Jefferson City is located in central Missouri, on the south bank of the Missouri River, along the trail of Lewis and Clark. It was carved out of timberland and planned by Daniel M. Boone, son of the famous pioneer, and Major Elias Bancroft. Its early settlers came from Kentucky, Virginia, and Tennessee, as well as from Germany and other nations of the Old World. Incorporated in 1826, it played a key role in the westward expansion of our Nation, and was a vital river port during the War Between the States. Today, the Missouri Capitol building dominates Jefferson City's skyline. This heartland city of America, which currently has a population of over 35,000, provides a proud legacy for this new Navy submarine.

A CELEBRATION

We gather here today to participate in an important occasion, the commissioning of an American attack submarine. Those of you who have been specially chosen to take this sleek, stealthy vessel to sea, understand the serious, even solemn task, that has been entrusted to you by your superiors. They, in turn, have been empowered by the Congress and the people of the United States to take special care of an institution important to our Nation's security, the United States Navy.

It has been called upon on many occasions in our Nation's short history, especially in this century, to give service in the cause of freedom. The Navy will continue to be a calling for you and your comrades who have the privilege of wearing the uniform of one of our country's Armed Forces. You more than

most understand that ours is a seafaring nation. We depend upon seaborne commerce. The only way to secure our interests throughout the world is to maintain a strong Navy.

Yet this is also a festive occasion. Parents, wives, sons, daughters, friends, and colleagues have come today to wish you well as you take charge of this fine boat. We thank them for coming, for sharing this moment of pride and joy.

There are others to thank. First, those sons and daughters of America—both close by in Newport News and in countless factories across this country—who helped build this boat. She is a work of art, an engineering marvel, that we too often take for granted. Second, let us thank the American public, whose support for the construction of this vessel and its manning is crucial. Third, those of us who do not wear the Navy blue sincerely thank you who are entrusted with the care of this ship. We thank you for the sacrifices that you and your families have borne over the months and years past and will continue to bear in the days ahead.

Let me also add that this Nation of ours is very fortunate to have men such as you willing to protect our interests far from home. The sacrifices of sailors willing to go to sea and assume such heavy responsibilities are not always appreciated in our society. Even less appreciated are the sacrifices of Navy wives. To the wives and 108 children of these men who are about to go to sea let me express a heartfelt thanks. Your support is crucial to the well-being of these men and to our country as a whole.

A special word of appreciation goes to the former Secretary of the Navy, James Webb, for designating this boat to be named the USS *Jefferson City*. On a more personal note, sincere appreciation goes to former Secretary of the Navy Will Ball for asking my wife Susie to be the ship's sponsor. Not long after the christening ceremony took place in March of 1990, my wife told me that, with the exception of her wedding day and the day each of our three sons was born, the day of the christening was the most memorable day of her life.

A FINAL WORD

And, now, a final word—to the ship's captain, Commander Russell Harris, and his men. In a few moments you, the captain and crew of this newest submarine of the fleet, will man your stations. You will assume your duty as former generations of sailors have over time stretching back to our Nation's beginnings. You will carry our hopes and prayers into the silent depths of the ocean.

So, I say to you, Captain Harris and crew, in the words of American poet Henry Wadsworth Longfellow:

Sail on, nor fear to breast the sea,
Our hearts, our hopes, are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o'er our fears,
Are all with thee,—are all with thee.

Thank you and God bless.